

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.222

Case No. : C.R.No.3811 of 2017

Date of Decision : July 14, 2023

M/s Mahindra Hire Purchase (Regd.) Petitioner

vs.

Sukhdev Singh and another Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Vijay Lath, Advocate
for the petitioner.

Mr. Sandeep Arora, Advocate
for respondent no.2.

* * *

GURBIR SINGH, J. :

1. Challenge in this revision petition is to order dated 01.11.2016, passed by learned Additional District Judge, Jalandhar (hereinafter referred to as - the Executing Court), whereby objections filed by respondent no.2 - Bhajan Singh (father of judgment debtor Sukhdev Singh) have been allowed and execution application of the petitioner against judgment debtor Sukhdev Singh was dismissed.

2. Learned counsel for the petitioner submits that an application for execution of Award passed by the Arbitrator was filed for recovery of sum of Rs.1,57,103/-. In order to discharge the liability, respondent no.2 Bhajan Singh (father of judgment debtor Sukhdev Singh) issued a cheque for satisfaction of the Award, but later he filed an application for return of the said cheque. The said application was contested by the petitioner on the

ground that when the bailiff went to the house of judgment debtor in pursuance to the warrant of attachment of his movable assets, then respondent no.2 issued the cheque in question while admitting the liability of his son but the cheque was dishonoured. Thereafter, movable properties, which were lying in the house, were attached. It is further submitted that both son (judgment debtor) and his father, respondents no.1 and 2 respectively were residing in the same house having common mess but respondent no.2 - Bhajan Singh, by managing the bills of the said property in his name, filed objections qua attachment of the said articles and these objections have been wrongly allowed by the learned Executing Court. It is further argued that without giving any opportunity of hearing to the decree-holder to furnish fresh list of property of the judgment debtor - Sukhdev Singh, the execution petition was dismissed.

3. I have heard the submissions made by learned counsel for the parties.

4. The application for execution of Award dated 27.10.2003 was pending against judgment debtor - Sukhdev Singh for recovery of amount mentioned in the Award. Warrant of attachment of the property of judgment debtor - Sukhdev Singh was issued. Property of judgment debtor lying in the house was attached. His father Bhajan Singh moved the objections by producing the bills of the attached articles in his name. Learned Executing Court allowed the objections filed by respondent no.2 - Bhajan Singh. The Executing Court, on the basis of documents produced before it, came to the conclusion that since the said articles belonged to the

objector, the same be released in his favour.

5. Keeping in view all the aforesaid circumstances, I find that there is no illegality qua this part of the impugned order releasing the attached articles in favour of the objector. So, there is no ground to interfere in the same.

6. However, instead of giving the decree-holder an opportunity to produce the list of property belonging to judgment debtor - Sukhdev Singh, the learned Executing Court dismissed the execution application. Para no.11 of the impugned order dated 01.11.2016 is as under :-

"11. No list of property of Judgment Debtor Sukhdev Singh for attachment has been furnished till date by the Decree Holder. Hence, I find no ground to proceed this execution application further and the same is dismissed. File be consigned to the Record Room."

7. After dismissal of the objections filed by a third party, duty was cast upon the Executing Court to give opportunity to the decree holder to produce list of property of the judgment debtor for recovery of the amount of Award but learned Executing Court failed in its duty. This part of the impugned order, whereby execution application was dismissed, is *per se* wrong.

8. Accordingly, the present revision petition is partly allowed. The impugned order dated 01.11.2016, whereby the execution application has been dismissed, is hereby set aside and execution application is hereby restored to its original number and stage. The learned Executing Court is directed to dispose of the same in accordance with law.

9. The petitioner is directed to appear before the learned Executing Court on 10.08.2023. The petitioner is also directed to take steps for recovery of the amount of Award. If petitioner is negligent in pursuing the execution application, then learned Executing Court is free to proceed in accordance with law, without being influenced by any observations made herein above.

10. Pending applications, if any, shall stand disposed of along with this judgment.

July 14, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.