

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-5778-2014 (O&M)

Date of decision : 06.01.2023

Jagtar Singh

... Petitioner(s)

Versus

Ashok Kumar (deceased) through LRs

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Harkirat Singh Sandhu, Advocate for the petitioner.

Mr. Vishal Mehta, Advocate for

Mr. Naresh Gopal Sharma, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

The present revision petition under Article 227 of the Constitution of India has been filed challenging the order dated 19.01.2012 (Annexure P-2) and order dated 27.09.2013 (Annexure P-3) whereby the petition filed by the defendant-petitioner herein under Section 95 of the Code of Civil Procedure, 1908 (CPC) was dismissed.

The facts relevant to the present *lis* are that the plaintiff-respondent had filed Civil Suit No.41 of 11.02.2002 against the defendant-petitioner titled as Ashok Kumar Vs. Jagtar Singh for recovery of Rs.1,83,600/-. Vide judgment and decree dated 08.06.2006 the said suit was decreed for recovery of Rs.36,000/-. The defendant-petitioner approached the Trial Court by filing a petition under Section 95 CPC for recovery of compensation to the tune of Rs.50,000/- on the ground that the application

for attachment of his property before the judgment was filed on insufficient grounds. It is apt to note that as is clear from the impugned order, Annexure P-2, the Court on an application under Order 39 Rules 1 and 2 CPC and Order 38 Rule 5 CPC ordered the attachment of the property granting liberty to furnish security to the tune of Rs.2,00,000/- within one month to avoid such attachment. Till then, the defendant-petitioner was restrained from alienating the property. The defendant-petitioner in his written statement filed in Civil Suit No.41 of 11.02.2002 had not denied that there were some transactions between the parties. It is, however, his stand that an amount of Rs.1,34,000/- stood paid by him. The Trial Court vide judgment and decree dated 08.06.2006 decreed Civil Suit No.41 of 11.02.2002 for Rs.36,000/-. The defendant-petitioner thereafter filed a petition under Section 95 CPC for recovery of compensation to the tune of Rs.50,000/- for wrongful attachment of his property.

Learned counsel for the defendant-petitioner would contend that his case is squarely covered under the provisions of Section 95 CPC and that the attachment of the property was sought without sufficient cause.

Per contra, learned counsel for the plaintiff-respondent has contended that the petition under Section 95 CPC has rightly been dismissed inasmuch as the defendant-petitioner failed to make out any case for grant of relief under Section 95 CPC.

Heard.

In the present case the defendant-petitioner, except for examining himself as DW-1, failed to lead any further evidence. No

evidence was led qua any loss of business to the tune of Rs.50,000/- as

alleged nor any evidence was led to the effect that an amount of Rs.20,000/- was incurred as litigation expenses.

Section 95 CPC reads as under :

“Section 95. Compensation for obtaining arrest, attachment or injunction on insufficient ground : 1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section, -

(a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or

(b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable grounds for instituting the same,

the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding fifty thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury (including injury to reputation) caused to him:

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.”

In the present case there is neither any argument nor any evidence to the effect that the attachment which was eventually ordered by the Trial Court in Civil Suit No.41 of 11.02.2002 was on insufficient grounds. The defendant-petitioner had admitted that there were business

transactions between the parties. He, however, took a stand that certain

amounts had been paid. That being so, it cannot be said that there were no sufficient grounds for ordering the attachment of the property. In fact, the defendant-petitioner was given an opportunity by the Court to furnish security to the tune of Rs.2,00,000/- failing which the property was to be attached. That being so, it cannot be said that there were insufficient grounds for attaching the property. It is further to be noticed that neither the order of attachment nor the order passed under Order 39 Rules 1 and 2 CPC and Order 38 Rule 5 CPC was ever challenged by the defendant-petitioner.

In view of the above, I do not find any merit in the present revision petition which is accordingly dismissed. Pending applications, if any, also stand disposed off.

06.01.2023

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO