

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 2398 of 2019 (O&M)

Date of Decision: 18.07.2023

Mansha Ram and Others

... Petitioner(s)

Versus

Sunil Kumar and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. G.C.Shahpuri, Advocate
for the petitioner(s).

Mr. Surinder Singh, Advocate
for the respondent No.1.

Anil Kshetarpal, J.

1. In a suit for grant of decree of specific performance of the agreement to sell, the Court below granted an alternative relief of recovery of the amount along with interest to the respondent (decree holder). In the execution petition, the Executing Court has ordered issuance of the conditional warrants of arrest against the judgment debtors on 28.03.2019, which is the subject matter of challenge in the present revision petition.

2. In substance, there is a joint and several decree against the petitioners for the recovery of ₹13,15,000/- along with the interest @ 12% per annum from the date of agreement till its realization.

3. It is evident that at one stage, the judgment debtor No.3 (Parmal Singh) made a statement before the Court below that he is prepared to pay his part of the liability i.e. ₹ 1,60,000/-, however, he did not pay the same. It

is also evident that at one stage, the Court below ordered recovery of the

amount by public auction of the property of the judgment debtors. Subsequently, on the request of the judgment debtors, the auction was kept in abeyance because they undertook to pay the amount.

4. The Court, after noticing that all the three judgment debtors have refused to receive the court notices, has ordered issuance of the conditional warrants of arrest.

5. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

6. The learned counsel representing the petitioners has informed the Court that the petitioner No.1 has died. The petitioner No.2 and 3 are the children of the petitioner No.1. They are also the judgment debtors. He submits that the Executing Court was not right in directly issuing the conditional warrants of arrest of the petitioners without first resorting to sale of the property. He submits that the amount payable under the decree can be recovered from the sale of the property.

7. On the other hand, the learned counsel representing the decree holder submits that the petitioners have been playing hide and seek with the Court and after having undertaken to pay the amount, they have failed to honour the commitment.

8. This Court has considered the submissions while evaluating their respective arguments. It is well settled that the arrest and detention of the judgment debtor in the execution of the money decree should be resorted to only as a matter of last resort. Here in this case, the judgment debtors are the owners of the property. At one stage, the Court below fixed the case for auction of the property, however, it was kept in abeyance in view of the

undertaking given by the petitioners. Once the petitioners failed to honour the commitment, the Court, at the first instance, should have proceeded to make an attempt for selling the property owned by the judgment debtors by public auction. The conduct of the petitioners may be deplorable, however, that itself would not be sufficient to detain them in civil imprisonment.

9. Keeping in view the aforesaid facts, the impugned order is modified to the extent that the Executing Court will, at the first instance, proceed to recover the amount by selling the property of the judgment debtors and thereafter, proceeds in accordance with the law.

10. With the observations made above, the present revision petition is disposed of.

11. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 18, 2023
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No