

2023:PHHC:060255

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2404-2023 (O&M)
Date of Decision: April 27, 2023

M/s Rimpay Enterprises and another

...Petitioners

Versus

Parveen Lata (Deceased) through her LRs

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Surinder Garg, Advocate
for the petitioners.

Ms.Amrita Garg, Advocate
for caveator/respondent.

ARCHANA PURI, J.

Challenge in the present petition is to the order dated 03.04.2023 (Annexure P-18) passed by learned Addl. Civil Judge (Sr. Divn.), whereby, the applications filed by the petitioners-defendants, under Order 21 Rule 26 CPC and for recalling the order dated 15.02.2023, vide which, non-bailable warrants had been issued, were dismissed.

The background facts, as culled out, from the paperbook, are that, initially, Parveen Lata (since deceased) had filed a suit for recovery of Rs.43,19,535/- along with interest against present petitioner, on the allegations that the petitioners-defendants used to purchase cotton from the respondent-plaintiff and after adjustment, an amount of Rs.49,45,381/- was

due on 31.03.2016, which had not been paid by the petitioners-defendants.

Even though, fact of business dealings, as such, has not been disputed, but however, it was claimed by the present petitioners that settlement had reached between the parties, in the shape of Canter and land and in this regard, a writing was also given by the respondent-plaintiff. Without mentioning the fact of settlement, so reached, the respondent-plaintiff had filed suit for recovery. In this context, when the petitioners-defendants met the respondent-plaintiff, they were apprised that the summons have been wrongly issued and the matter has already settled between them and respondent-plaintiff shall withdraw the suit. On this assurance, the petitioners-defendants, did not make appearance, but however, suit was not withdrawn and consequently, ex-parte decree was passed on 31.10.2019 against the petitioners-defendants.

On coming to know, about passing of the ex-parte judgment and decree, the petitioners-defendants filed an application under Order 9 Rule 13 CPC, thereby, seeking setting aside of the judgment and decree, copy whereof is Annexure P-3. During the pendency of the said application, since, there was no stay, execution remained pending and in the said execution, the respondent-plaintiff gave list of property of the petitioners-defendants, which is factory premises. Jamabandi annexed was for the year 2010-11, whereas, the petitioners-defendants had already sold the property vide sale deed dated 12.01.2017 and as such, the respondent-plaintiff had given wrong list of property, to mislead the Executing Court.

In pursuance of the attachment of the said property, one Harish Goyal-objector, who was purchaser of half share of factory premises, filed

objections under Order 21 Rule 58 CPC, mentioning therein that petitioners-Judgment debtors are not owner of the property. Thereupon, the Executing Court, vide order dated 02.05.2022, allowed the objection petition filed by the purchaser of half share of the property and ordered the release of the property. Copy of the said order passed on the objection petition is Annexure P-4. While releasing the property from attachment, also the concerned Executing Court had ordered the decree holder i.e. respondent-plaintiff, to file fresh list of properties on 30.05.2022. However, the list of properties was not filed.

Thereafter, before Executing Court, an application under Order 21 Rule 37 CPC was filed by the respondent-plaintiff-decree holder, upon which, notice was sent to the petitioners-judgment debtors. However, service was not effected, at first instance. Thereafter, when the service was effected, the petitioners-judgment debtors did not make appearance and consequently, non-bailable warrants against the petitioners was ordered to be issued, vide order dated 15.02.2023, copy whereof is Annexure P-11.

In this backdrop, an application for recalling of the order dated 15.02.2023, vis-a-vis, issuance of non-bailable warrants was filed by the petitioners-judgment debtors. Another application was also filed under Order 21 Rule 26 CPC for seeking stay of the execution as respondent-plaintiff had filed appeal to challenge the order passed on application under Order 9 Rule 13 CPC.

Vide impugned order, both the aforesaid applications were dismissed.

Feeling aggrieved, the petitioners-defendants-judgment

debtors have filed the present revision petition.

Before proceeding further, suffice to consider that vis-a-vis, application under Order 21 Rule 26 CPC seeking stay of proceedings before the Executing Court, on the ground that appeal to challenge the order passed on the application under Order 9 Rule 13 CPC, is pending, on query, learned counsel for the petitioners-defendants has very fairly made submission that he does not assail the impugned order, vis-a-vis, this application, as he is seeking stay of proceedings before learned lower Appellate Court, where, an appeal, vis-a-vis application under Order 9 Rule 13 CPC is pending. As such, in the present revision petition, relief qua application under Order 21 Rule 26 CPC is not pressed.

In these circumstances, the impugned order is assailed only qua recalling of the order dated 15.02.2023, vide which, the non-bailable warrants of the petitioners-defendants was issued to procure their presence.

It is submitted that by learned counsel for the petitioners-judgment debtors that the application for seeking detention in prison of the petitioner No.2-judgment debtor was sought without complying the order passed in the application under Order 21 Rule 37 CPC. Also, it is submitted on account of his medical ailment, having arisen on account of fall from the stairs, petitioner No.2 could not make appearance before the Court below and for this reason, his remaining away from the Court is not intentional. As such, there is bonafide reason for not making appearance before the Court concerned. Considering the same, it is submitted that the impugned order of issuance of non-bailable warrants should be recalled.

Moreover, also it has been submitted that prior to the filing of

the application for seeking detention in prison of judgment debtor, the respondent-plaintiff, as such, has not complied with the direction given by the Court below, about furnishing of the list of properties, passed at the time of acceptance of objection petition under Order 21 Rule 58 CPC. As such, a prayer has been made for acceptance of the present revision petition.

On the contrary, learned counsel for the respondent-plaintiff has resisted the claim of the petitioners-judgment debtors. It is submitted that even though, there are different modes of execution but the choice is with the decree holder, as to which mode, he intends to execute the decree, in his favour. It is submitted that no doubt, at first instance, the respondent-decree holder had intended to execute the decree against the property of the petitioners-judgment debtors, but however, this simply does not debar the respondent-decree holder from exhausting his remedy against the person of the judgment debtors.

In this regard, it is submitted that the Order 21 Rule 30 CPC provided that every decree for payment of money, including the decree of payment of money as the alternative to some other relief, may be executed by detention in civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both. Considering this provision, it is submitted that very fairly, the respondent-plaintiff had proceeded against the petitioners-judgment debtors, thereby, seeking detention in prison and therefore, the impugned order, as such, cannot be faulted with.

Section 51 of CPC deals with powers of Court to enforce execution. Therein, subject to the conditions and limitations, as may be

prescribed, the Court may, on the application of the decree holder, order execution of the decree, by different modes, as herein given:-

- “(a) by delivery of any property specifically decreed;*
- (b) by attachment and sale or by the sale without attachment of any property;*
- (c) by arrest and detention in prison *for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;*
- (d) by appointing a receiver; or*
- (e) in such other manner as the nature of the relief granted may require:”*

The various modes mentioned in this Section are not open to the Executing Court in every case. The Court ought to be guided by the procedure laid down in the Code and must resort to the method appropriate for each case.

Very true, as so pointed out by learned counsel for the respondent-decree holder that simultaneous execution, both against the property and person of judgment debtor is allowed under Order 21 Rule 30 CPC and there is no debar created by any provision in CPC, thereby, debarring the decree holder to firstly carry out the execution against the property of judgment debtor. It essentially does not provide that the decree holder should exhaust his remedy against the property, at first instance.

However, considering the aforesaid position about the simultaneous execution against the property and person of judgment debtors, to be carried out, certain facts and circumstances, arising in each case individually, ought to be taken into consideration.

As already observed aforesaid, in the pending execution, the respondent-decree holder, firstly had started process for attachment of the

property of the petitioners-judgment debtors. However, one Harish Goyal had filed objection petition under Order 21 Rule 58 CPC and the same was allowed vide order 02.05.2022 and the attached property was released. At the time of disposal of the objection petition, a specific direction was given to the decree holder to file fresh list of properties. This order is dated 02.05.2022 and the list was ordered to be filed on 30.05.2022. However, the list of properties was not filed, till the filing of the application under Order 21 Rule 37 CPC, on 03.10.2022.

On query put by the Court, it was submitted by learned counsel for the respondent-decree holder that the submission was made before the Court concerned that the petitioners-judgment debtors, as such, does not have property. Moreover, an appeal qua allowing of the objections under Order 21 Rule 58 CPC, was under challenge.

However, to counter the submission, so made, learned counsel for the petitioners-judgment debtors has placed on record, copies of various orders, so passed by the Executing Court, till the filing of the application under Order 21 Rule 37 CPC. Perusal of the same reveals that on 30.05.2022, when the list of properties was not filed, the case was further adjourned for filing of the same for 20.07.2022. Thereafter also, the list of properties was not filed and again same order was repeated on 20.07.2022 and the case was adjourned for 01.09.2022 and then for 03.10.2022, for filing of list of properties. However, it was on 03.10.2022, an application under Order 21 Rule 37 CPC was filed. In the said order also, it was observed by the Court that list of properties, as per order dated 02.05.2022, has not been filed. Nowhere, it states about any intimation having been

given by the respondent-decree holder about inability to file list of properties for one or the other reason.

Thus, it is evident that without complying with the repeated orders passed by the Executing Court for filing list of properties, abruptly the respondent-decree holder, diverted her mode to seek execution of the decree and proceeded against the person of judgment debtors, by seeking his detention, by way of filing of an application under Order 21 Rule 37 CPC. This abrupt diversion from one mode to another, is uncalled for. Things would have been different, had respondent-decree holder brought this to the notice of the Court, by way of filing an application about inability to file the list of properties or the judgment debtors not having property, but however, respondent-decree holder has not so bothered. In these circumstances, abrupt shifting from one mode to another mode for seeking execution, as such, is uncalled for.

The issuance of non-bailable warrants is an off-shoot of the steps initiated by the respondent-plaintiff against the person of the petitioners-defendants, while discarding the another mode for seeking execution of the decree in question, more particularly, when, respondent-plaintiff has filed an appeal also, to challenge the order passed on the application under Order 21 Rule 58 CPC, thereby, asserting about sale deed in favour of the purchaser, being collusive.

In the given circumstances, the present revision petition is hereby allowed and the order dated 15.02.2022 is set aside, qua issuance of non-bailable warrants. However, respondent-plaintiff-decree holder may proceed further, to seek execution of the decree, in any of the modes,

provided under the law, after complying with the directions, so given or making suitable submission before the Court concerned, vis-a-vis, ability or non-ability for furnishing list of properties of the petitioners-defendants-judgment debtors.

April 27, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No