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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3825-2023
Date of Decision:- 14.11.2023

AKASH SHARMA AND ANR. ...Petitioners

Vs.

STATE BANK OF PATIALA NOW SBI ...Respondents

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Karan Bhardwaj, Advocate for the petitioners.
Mr. Shashank Bhandari, Advocate for the respondent – Bank.

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AMARJOT BHATTI, J. (Oral)

1. The petitioners have filed civil revision petition under Article 227 of the Constitution of India for setting aside the order dated 01.07.2023, Annexure P-8, passed by Additional Civil Judge (SD) Jagadhari in Exe/53/2019 titled as “State Bank of Patiala now State Bank of India Vs. Akash Sharma and another” in which conditional warrants have been issued for 11.07.2023.

2. It is argued that the petitioner Akash Sharma is 47 years old and he is suffering from severe medical condition i.e., a neurological disease. Due to his medical condition, he is unable to earn his livelihood. He is unemployed and entirely dependent on his family members. He had applied for loan from the Bank by mortgaging his property purchased vide sale deed dated 17.12.2003. The suit filed by the Bank was decreed

ex-parte vide judgment and decree dated 05.10.2011 in which execution application has been filed. The property which was mortgaged with the bank was put on sale by public auction later-on on the basis of third party objections the sale in public auction was cancelled and the money was refunded to the auction purchaser vide order dated 19.01.2019, Annexure P-5. The Bank sought permission to file fresh execution and the previous execution application was dismissed as withdrawn as per order dated 24.01.2019. Thereafter, fresh execution application has been filed on 25.02.2019 which is Annexure P-6. In the said execution, notice was issued to the JD and thereafter on 08.04.2019 the learned Executing Court issued show cause notice to the petitioner under Order 21 Rule 37 CPC for 02.07.2019. The case was adjourned from time to time. The conditional warrants were issued as per order dated 11.12.2019 and some dates were also given to explore the possibility of compromise. Thereafter, the file was taken up during the pandemic of Covid-19. The compromise could not take place and ultimately his fresh conditional warrants were issued. The interim orders passed in the execution are Annexure P-7. During this period, the petitioner – Akash Sharma was not aware of the conditional warrants issued against him. It is not the case that he is having money and he is not paying it back deliberately. In-fact, he has no means to pay and for this reason he cannot be sent to civil imprisonment and to support his arguments he has relied upon authority cited **in 1982 SCC 360 titled Jolly George Varghese and another Vs. Bank of Cochin**. It is pointed out that the respondent / decree holder did not file any application under Order 21 Rule 37 CPC with the request for conditional warrants of arrest and no satisfaction was recorded by the Court that he was delaying the execution of decree or he was not paying the amount deliberately. There is no compliance of mandatory provisions of CPC. It is prayed that the impugned order dated 01.07.2023, Annexure P-8, may kindly be set aside by accepting the present civil revision.

3. On the other hand, learned counsel representing the respondent Bank referred to the order dated 19.01.2019, Annexure P-5, where 3rd party objections filed by Mohinder Kaur were accepted and the money deposited in auction was refunded back to the auction purchaser. There is specific finding of the Executing Court that the JD i.e. the present petitioner was not owner of the property on the basis of which he had raised the loan. Therefore, the petitioner raised loan from the bank in a wrongful manner. The petitioner availed numerous opportunities but he did not satisfy the decree deliberately. The petitioner never raised any objection before the Executing Court that because of his health condition he is unable to earn or he is unable to pay the amount. The efforts to effect compromise also failed. Ultimately, the Executing Court issued show cause notice as to why he be not arrested under the provisions of Order 21 Rule 37 CPC. There is deliberate willful default on the part of the present petitioner. The revision preferred by the petitioner is without merits and the same deserves dismissal.

4. I have considered the arguments and have gone through the record carefully. Admittedly, there is a decree in favour of the respondent Bank on the basis of which the Bank filed execution application. The record further shows that in the first execution application the property

which was mortgaged with the Bank by the JDs was put on public auction, however, later-on 3rd party objections were filed by Mohinder Kaur which were accepted and accordingly the auction proceedings were set aside and the money received was returned back to the auction purchaser. As per order dated 19.01.2019, Annexure P-5, the Court observed that the JD was not the owner of the property against which he took loan from the Bank. It is further not disputed that the said execution application was dismissed as withdrawn with the liberty to file fresh execution application. Thereafter, second execution application was filed which is Annexure P-6 and notice was issued to the JD, the present petitioner appeared through his counsel whereas nobody appeared for the other JD namely Anita. The perusal of interlocutory orders, Annexure P-7, indicate that file was taken up in routine during pandemic Covid-19. Thereafter, the case was adjourned from time to time for effecting compromise and ultimately when compromise could not be effected the conditional warrants of arrest were issued on different dates. During the course of arguments, the learned counsel representing the Bank made it clear that no application was filed by the Bank under Order 21 Rule 37 CPC and the show cause notice was issued to the JD by the Executing Court under Order 21 Rule 37 CPC. The provisions of Order 21 Rule 37 CPC runs as under:-

> **"37.Discretionary power to permit judgment-debtor to show cause against detention in prison.-**(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment debtor who is liable to be arrested in pursuance of the

application, the court shall, instead of issuing a warrant for his arrest, issue a notice calling upon on him to appear before the court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

Provided that such notice shall not be necessary if the court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment debtor is likely to abscond or leave the local limits of the jurisdiction of the court.

(2) Where appearance is not made in obedience to the notice, the court shall, if the decree holder so requires, issue a warrant for the arrest of the judgment debtor."

The aforesaid provision indicates that the application is required to be filed by the decree holder for the execution of a money decree by sending the Judgment Debtor to civil prison. In routine, firstly the notice is required to be issued calling upon the JD to appear before the Court on the date fixed and to show cause notice why he should not be committed to the civil prison. There is a proviso to the said provision where notice is not required to be issued where the JD is likely to abscond or leave the local limit of the jurisdiction of the Court. Furthermore, in-case the JD does not appear in compliance to the notice then the Executing Court can issue warrant for arrest of the JD. In the case in hand, no application is filed by the respondent – Bank under Order 21 Rule 37 CPC. The Executing Court straightway issued show cause notice to the JD. No doubt there is order dated 19.01.2019, Annexure P-5 vide which sale of mortgaged property by way of public auction was set aside and money deposited by the auction purchaser was refunded back. The perusal of interlocutory orders, Annexure P-6, further shows that effort was also made to effect compromise but it could not materialize and thereafter the conditional warrants of arrest were issued from time to time without filing of application under Order 21 Rule 37 CPC by the decree-holder. Therefore, in my opinion, the respondent – Bank was required to file his application regarding recovery of decreetal amount from the JD by following the procedure as provided under Order 21 Rule 37 CPC.

5. Considering the aforesaid factual position, the order passed by the Executing Court issuing warrants of arrest straightway is not justified. Therefore, the Civil Revision preferred by the present petitioner/JD Akash Sharma is accepted. However, the Bank is at liberty to file application under Order 21 Rule 37 CPC and the executing Court may proceed as per law.

The Civil Revision is accordingly disposed of.

Pending application (s), if any, also stands disposed of.

14.11.2023 **(AMARJOT BHATTI)**
snd **JUDGE**

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