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

CR-4465-2023

Date of Decision:- 09.08.2023

SUKHDEV SINGH

....Petitioner

Vs.

TARSEM SINGH

...Respondent

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Sanjeev Kumar Arora, Advocate for the petitioner.

AMARJOT BHATTI, J. (Oral)

1. The petitioner Sukhdev Singh has filed the instant revision petition against the impugned order dated 05.07.2023, Annexure P-1, passed by Additional Civil Judge (Sr. Divn.), Faridkot in execution application No.285 of 2014 titled Tarsem Singh Vs. Sukhdev Singh vide which application filed by the respondent under Order 21 Rule 37 CPC has been allowed and the conditional warrants of arrest of the petitioner/JD Sukhdev Singh has been issued.

2. Learned counsel for the petitioner argued that the aforesaid order is illegal and against the law and facts of the case. The respondent/plaintiff had filed suit for recovery on the basis of pronote and receipt dated 24.12.2009 against the present petitioner/defendant which

was decreed in his favour vide judgment and decree dated 11.09.2014 vide which the plaintiff was held to be entitled for the recovery of Rs.98,000/- along with interest as detailed therein. Copy of judgment and decree dated 11.09.2014 is Annexure P-2. The present petitioner, feeling aggrieved of this judgment and decree, filed an appeal which was also finally dismissed by Additional District Judge, Faridkot vide judgment and decree dated 05.11.2015. In the meantime, on 27.10.2014 the decree holder filed an execution application for the execution of decree dated 11.09.2014 and the warrants of attachment of his property were issued. The warrants of attachment were duly effected and one application under Order 21 Rule 66 CPC was filed. The petitioner has filed objections against the said attachment of property on 21.11.2017. The reply to the objections was filed on 21.12.2017 and later-on vide order dated 15.02.2018 the property was ordered to be released from attachment as he was not owner of the same. In-fact the said property was owned by his father Tarlochan Singh. Thereafter the decree holder/respondent filed an application dated 30.07.2018 under Order 21 Rule 37 of CPC which is Annexure P-3. The present petitioner filed reply dated 30.10.2018 to the said application which is Annexure P-4. The matter was also referred to Mediation Centre for amicable settlement on 31.05.2019. The parties settled their dispute for a sum of Rs.1,65,000/-. On 25.07.2019 his wife paid Rs.25,000/- to the decree holder and case was adjourned to 31.08.2019 for making payment of Rs.35,000/- on the next date. On 31.08.2019 the petitioner paid a sum of Rs.25,000/- to the DH and it was again adjourned for 19.10.2019 to make the payment of balance amount of Rs.1,15,000/-. The Executing Court has totally ignored that the DH has already received Rs.50,000/-

from the present petitioner. He was lodged in Central Jail, Ferozepur. His production warrants were ordered to be issued for 02.12.2022 and accordingly he was produced through video conferencing. His wife again paid Rs.5,000/- to the DH on 20.01.2023. His wife again paid Rs.8,000/- to the DH on 13.02.2023. Case was again adjourned for remaining payment. On 28.04.2023 his wife paid Rs.15,000/- to the DH. The order dated 16.06.2023 regarding conditional warrants of arrest is Annexure P-6. He filed an application for his immediate release from detention as there was no compliance of Order 21 Rule 41 CPC or Order 21 Rule 40 CPC. The matter was taken up on 22.06.2023 and the DH has received Rs.50,000/- as part payment and on the statement of DH, he was released from custody. The copy of application dated 20.06.2023 and order dated 22.06.2023 are Annexure P-7 and P-8 respectively. Now again his conditional warrants of arrest have been issued as per order dated 05.07.2023, which is Annexure P-1. The learned Executing Court has failed to consider the safeguards provided under Section 51 of CPC. The impugned order is in violation of the aforesaid provisions. Therefore, it is prayed that the impugned order dated 05.07.2023, Annexure P-1, may kindly be set aside by accepting the present revision.

3. I have considered the arguments and stand taken by the learned counsel for the petitioner. Admittedly, the suit filed by Tarsem Singh against the present petitioner Sukhdev Singh has been decreed to the tune of Rs.98,000/- along with interest as detailed therein vide judgment and decree dated 11.09.2014. The copy of judgment and decree dated 11.09.2014 is Annexure P-2. The appeal preferred by him was also dismissed by learned Additional District Judge, Faridkot vide judgment

and decree dated 05.11.2015. The facts narrated in the petition clearly indicate that decree holder filed an execution application on 27.10.2014 and firstly the lesser coercive method was used by way of attachment of property. When the notice was issued under Order 21 Rule 66 CPC the present petitioner appeared and filed objections and ultimately the property was released from attachment vide order dated 15.02.2018 as it was standing in the name of his father Tarlochan Singh. Thereafter, the DH was fully justified in filing application under Order 21 Rule 37 CPC. It is conceded that the matter was also referred to Mediation Centre for amicable settlement of their disputes. The matter was settled for a sum of Rs.1,65,000/-. The contents of petition indicate that some of the payments were made from time to time. Prior to this, his conditional warrants of arrest were issued and he was sentenced to civil imprisonment. However, on the receipt of the part payment of Rs.50,000/- the DH suffered statement regarding his release. Copy of order dated 22.06.2023 is Annexure P-8. Even thereafter, when the balance payment was not given by the present petitioner again the process was initiated by issuing his conditional warrants of arrest. The judgment and decree pertains to the year 2014, which the Executing Court is trying its level best to execute the same. The coercive method is being used under compelled circumstances as the present petitioner/JD has failed to honour the decree of Court. Even during the course of arguments, learned counsel for the petitioner did not show any inclination on the part of the petitioner to make payment of balance amount in favour of the DH.

Therefore, considering the factual position, I do not find any illegality or irregularity committed by the Executing Court while passing

the impugned order dated 05.07.2023, Annexure P-1 and the same is, accordingly, upheld.

The Civil Revision preferred by the petitioner is, accordingly, declined.

Pending applications, if any, also stand disposed of.

09.08.2023

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(AMARJOT BHATTI)
JUDGE

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