

CR-5139-2019 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-5139-2019 (O&M)

Date of decision: July 03, 2023

M/s Windal Auto Pvt. Ltd. and others

....Petitioners

versus

M/s R.M.S. Engineering Works and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kunal Dawar, Advocate for petitioners.

Mr. S.S. Khurana, Advocate for respondent No.1.

ARUN MONGA, J.

Revisionists herein seek setting aside of an order dated 23.07.2019 (Annexure P-1) passed by the learned Civil Judge (Jr. Division), Faridabad whereby their application for rejection of the execution petition was dismissed.

2. Relevant factual narrative first. A civil suit was filed by plaintiff/respondent in the Court at Faridabad for recovery of Rs. 1,18,10,572/- along with costs and interest @ 24% against supply of goods in the course of business. Suit was decreed on 03.05.2018 in favour of plaintiff/ respondent No.1 by the learned trial Court for recovery Rs. 1,18,10,572/- with costs alongwith interest @ 6%. Appeal against the same filed by JDs was dismissed. Decree holder /respondent then filed execution petition 13.07.2018(Annexure P-4) wherein, vide order dated 09.08.2018, warrant of attachment of the petitioners' bank account No. 06622100000077 in Kotak Mahindra Bank was issued. The account was attached, but had only a paltry credit balance of Rs.1,560/-.

2.1. Vide order dated 14.09.2018, a notice was issued to the JD-petitioners to show cause as to why they should not be committed to civil prison for not obeying the decree. JD-petitioners filed reply to the show cause notice and after hearing arguments, learned Executing Court observed that the JDs had taken the same defence in the trial which was duly dealt in the judgment i.e., supply of sub standard material and

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concealment of facts etc. The learned executing court found that the reply to the show cause notice was unsatisfactory. It then passed order dated 04.10.2018 for issue of conditional warrant of arrest of JD for recovery of the decretal amount.

2.2. JD-petitioners challenged the said order dated 04.10.2018 by filing a revision petition bearing CR No. 8035-2018, which was dismissed vide order dated 07.02.2019 by a co-ordinate bench of this Court. The abovementioned revision petition was filed only with regard to the issuance of warrant of arrest, without recording its satisfaction by the executing court, and the question of jurisdiction was neither raised nor gone into.

2.3. In the meanwhile, JDs also filed application/objection petition under section 39(4) read with section 47 CPC in the executing court questioning the jurisdiction to execute its own decree. Objections filed by the JDs were dismissed by the court on 01.12.2018 (Annexure P-8). Thereafter, petitioners (Judgment Debtors) filed CR No. 901-2019 against executing court's order dated 01.12.2018. Vide order dated 07.02.2019 passed by a co-ordinate bench of this Court, the same was dismissed as withdrawn, with liberty to file an appropriate application before the executing court by relying upon the certificate issued by the Bank, through which it was projected that the bank accounts were actually and factually in Mumbai and inviting the executing court's fresh opinion on its territorial jurisdiction. Another application dated 06.03.2019 (Annexure P-10) was thus moved by the JDs before the executing Court under section 39(4) read with section 47 CPC, questioning its territorial jurisdiction to execute its own decree and praying for dismissal of the execution petition.

2.4. Pertinently, CR No. 8035-2018 filed by the JD-petitioners in this Court against order dated 04.10.2018 passed by the executing court was dismissed by a co-ordinate bench of this Court vide order dated 26.03.2019 observing, *inter alia* that the JDs had failed to appear before Executing Court in total disregard of the specific directions issued by the executing court. This Court further observed that neither any application was filed by Judgment Debtors seeking exemption from appearance before the executing Court nor they challenged the aforesaid order dated 14.09.2018 before any

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superior Court. Order dated 23.07.2019 impugned herein was passed by the executing court dismissing the JD-petitioners' application dated 06.03.2019 under section 39(4) read with section 47 CPC. It is observed therein that the credit balance in JDs' account in Kotak Mahindra bank, which had been attached, was just Rs.1,560.80, whereas the decretal amount was more than Rs. One crore. The court ordered that conditional warrant be issued for 23.08.2019 calling upon the JD to appear and show cause why he should not be committed to civil prison for not complying with the decree. Hence, yet another foray before this Court through the instant civil revision.

3. Learned senior counsel for the JD-petitioners vehemently argued that the JDs' account in Kotak Mahindra bank, which has been attached is maintained and operated by them at Mumbai. The same neither opened nor operated nor maintained at Faridabad. As per Section 39(4) and Order 21 Rule 6(b) of CPC, the executing court was required to transfer the decree to a competent jurisdictional court where the bank account is situated; where the JDs are actually residing, carrying on their business and within whose territorial jurisdiction the movable and immovable property sufficient to satisfy the decree against the JDs is situate.

4. Learned counsel for the respondent decree holder opposed aforementioned contentions and argued in support of the impugned order.

5. The rival contentions are dealt with hereinunder.

6. The petitioners' grievance against the impugned order is on two counts- firstly, the attachment of their bank account in Kotak Mahindra bank and secondly, against the issue of conditional warrant of arrest in execution of the decree.

6.1. While dealing with and rejecting the petitioners' objection against attachment of their bank account No.66622100000077 held in Kotak Mahindra Bank, the learned executing Court observed/held as under:

"4. xx xx xx. It has been contended on behalf of the judgment debtor that as account is being opened and operated from Mumbai, the same can not be operated from anywhere else, particularly in Faridabad but this contention of judgment debtor does not have any relevance particularly in the scenario when the Central Banking system is already prevalent all over the country. Moreover, the aforesaid bank account has already attached by the concerned bank Officials in pursuance of the

direction issued by learned predecessor executing court. Had the contention of the judgment debtor have any relevance, the banking authorities would have taken the objections regarding the attachment of aforesaid bank account on the ground that as the bank account has been opened in Mumbai, Maharastra, the same can not be attached them anywhere else. The bank Officials did not take any such objections and attached the aforesaid bank account. The attachment of the bank account itself implies that the same can be maintained and operated from all over the country. Further, the judgment debtor has also taken the objection that the present court has no jurisdiction in the present execution petition as the judgment debtor firm is situated in Mumbai. But the perusal of record reflects that the present execution petition has been filed by decree holder against the judgment and decree passed on 03.05.2018. Since 3.5.2018, the decree can not be executed and decree holder can not reap the fruit of decree till date. Further in pursuance of execution of the decree dated 03.05.2018 the bank account of judgment debtor which is within the legal jurisdiction of this court, has already been attached, therefore, the executing court has no reason to sent the present petition to Mumbai where the judgment debtor firm is situated. Though, there is a provision for transfer the execution petition from one jurisdiction to other if the executing court thinks that the decree is not executable in is jurisdiction but in the present case, when the bank accounts of the judgment debtor are within the legal jurisdiction of this court. Presently, his court has no reason to send the present petition to Mumbai. Moreover, when there are chances of execution of the present decree, it is injustice to make the decree holder roaming from one pillar to other. xx xx xx”

6.2. It is not disputed that in the prevailing computerized and centralized banking system, the said bank account can also be operated at and money can be withdrawn/paid from its Faridabad branch. In that sense, the amount lying in this account is also the property of the JD available within the territorial jurisdiction of the learned Executing Court at Faridabad. In my opinion, sound and sufficient reasons have been recorded for the observations made by the learned executing court and the view taken by it regarding attachment of the said bank account and rejecting the petitioners' contention that the attached amount in the said bank account was the JDs' property outside it's own territorial jurisdiction. I am inclined to agree with the same. Further, the account attached has only a paltry credit balance of Rs.1,560/-. The decretal amount is more than Rupees one crore. The objection to its attachment seems to be yet another dilatory tactic and is patently trivial, which ex facie has been raised with *malafide* intent to just create a hurdle and cause further delay in execution proceedings. It is liable to be rejected on that score also.

7. Vide the impugned order dated 23.07.2019 dismissing the petitioner's application, the only further direction given by the learned executing Court is that the conditional warrant be issued calling upon the judgment debtor to appear (and show cause) why he should not be committed to civil imprisonment for not obeying the decree. The Judgment/debtor is in revision before this court only against the impugned order dated 23.07.2019.

7.1. Let us now examine the petitioners' contentions against the issue of conditional warrant of arrest of the JDs in execution of the decree. Before proceeding, the relevant provisions contained in Sections 38, 55, 56, 58, Rules 10, 11, 11A, 12, 17, 30 Order XXI of the CPC, for ready reference, are reproduced as under:

SECTIONS

"38. Court by which decree may be executed. - A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

xx xx xx

55. Arrest and detention.—(1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the State Government may appoint for the detention of persons ordered by the Courts of such district to be detained:

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise:

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found:

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest:

Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the

judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The State Government may, by notification in the Official Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the State Government in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he may be discharged] if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court may release him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realized or commit him to the civil prison in execution of the decree.

56. Prohibition of arrest or detention of women in execution of decree for money.—*Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.*

xx xx xx

58. Detention and release.—*(1) Every person detained in the civil prison in execution of a decree shall be so detained,—*

- (a) where the decree is for the payment of a sum of money exceeding five thousand rupees, for a period not exceeding three months, and,*
- (b) where the decree is for the payment of a sum of money exceeding two thousand rupees, but not exceeding five thousand rupees, for a period not exceeding six weeks.*

Provided that he shall be released from such detention before the expiration of the said period of detention –

- (i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or*
- (ii) on the decree against him being otherwise fully satisfied, or*
- (iii) on the request of the person on whose application he has been so detained, or*
- (iv) on the omission by the person, on whose application he has been so detained, to pay subsistence allowance:*

Provided also, that he shall not be released from such detention under clause (ii) or clause (iii), without the order of the Court.

(1A) For the removal of doubts, it is hereby declared that no order for detention of the judgment-debtor in civil prison in execution of a decree for

the payment of money shall be made, where the total amount of the decree does not exceed two thousand rupees.

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

RULES OF ORDER XXI

“10. Application for execution.—Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

11. Oral application.—(1) Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court.

(2) Written application.—Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely:—

- (a) the number of the suit;*
- (b) the names of the parties;*
- (c) the date of the decree;*
- (d) whether any appeal has been preferred from the decree;*
- (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;*
- (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;*
- (g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;*
- (h) the amount of the costs (if any) awarded;*
- (i) the name of the person against whom execution of the decree is sought; and*
- (j) the mode in which the assistance of the Court is required whether,—*
 - (i) by the delivery of any property specifically decreed;*
 - (ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;]*
 - (iii) by the arrest and detention in prison of any person;*
 - (iv) by the appointment of a receiver;*
 - (v) otherwise, as the nature of the relief granted may require.*

(3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

11A. Application for arrest to state grounds.—Where an application is made for the arrest and detention in prison of the judgment-debtor, it shall

state, or be accompanied by an affidavit stating, the grounds on which arrest is applied for.

12. Application for attachment of movable property not in judgment-debtor's possession.—Where an application is made for the attachment of any movable property belonging to a judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

xx xx xx

17. Procedure on receiving application for execution of decree.—(1) On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with; and, if they have not been complied with, the Court shall allow the defect to be remedied then and there or within a time to be fixed by it.

(1A). If the defect is not so remedied, the Court shall reject the application:

Provided that where, in the opinion of the Court, there is some inaccuracy as to the amount referred to in clauses (g) and (h) of sub-rule (2) of rule 11, the Court shall, instead of rejecting the application, decide provisionally (without prejudice to the right of the parties to have the amount finally decided in the course of the proceedings) the amount and make an order for the execution of the decree for the amount so provisionally decided.

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(3) Every amendment made under this rule shall be signed or initialled by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

xx xx xx

30. Decree for payment of money.—Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.”

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7.2. A cumulative reading of statutory provisions *supra*, shows that the Court which passed the decree is entitled to execute the decree. As would be seen, section 38 of the CPC provides that a decree may be executed either by the court which passed it or by the court to which it is sent for execution. The provisions of Clause (j)(iii) of Rule 11(2) and Rule 11A *ibid* read together also show that where the application for execution of the decree is by arrest and detention in prison of any person, the Court shall, subject to certain provisions thereafter contained, order execution of the decree according to the nature of the application. There seems nothing express or implied in these provisions prohibiting the Court which passed the decree from executing it by arrest and detention in prison of any person outside its own local limits of jurisdiction. In other words, the power of the Court while executing its own decree, by arrest and detention in prison of the JD, is not circumscribed or confined to the limits of its own territorial jurisdiction, nor is it lost, excluded or taken away if such person is or goes outside its own local limits of jurisdiction. A contrary view as canvassed by learned Senior counsel for the petitioners would give an unfair advantage to an unscrupulous judgment debtor to delay, frustrate and defeat the execution of decree by his arrest and detention in prison and cause undue harassment to the innocent decree holder. It would amount to putting premium on the unscrupulous and clever means and methods of the JD, making mockery of law and leading to absurd and unjust results. Case in hand is ample illustration thereof. A money decree is obtained against the JD residing at Faridabad in Haryana. In execution proceedings, it has remained unsatisfied. Upon learning that the executing Court at Faridabad which passed the decree was likely to execute it by his arrest and detention in prison, the JD shifts to Delhi. When the decree holder gets the execution transferred to Delhi, the JD moves to NOIDA (in Uttar Pradesh). Again, when the decree holder gets the execution transferred to NOIDA, the JD shifts back to Faridabad. In this way, the JD will succeed in his unscrupulous tactics by delaying, frustrating and defeating the execution of decree by his arrest and detention in prison and the innocent decree holder chasing the JD will be just running

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from pillar to post, suffering undue harassment and remain deprived of the fruits of the decree passed in his favour.

7.3. As against the above stated position, learned senior counsel for the petitioners has heavily relied upon the provisions of section 39(4) and clause (b) of Rule 6 Order XXI of CPC and contended that since the JD-petitioners are residing/working at Mumbai outside the local jurisdiction of learned executing Court at Faridabad, therefore, it was/is not authorized to execute the decree against them or their property outside its own local limits of jurisdiction. In my opinion, the contention is not tenable. For appreciating the contention in proper perspective, Section 39 and Rule 6 of Order XXI CPC are reproduced below:

SECTIONS

“39. Transfer of decree.—(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court of competent jurisdiction,—

- (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or*
- (b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or*
- (c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or*
- (d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.*

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

(3) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.

(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.”

RULE OF ORDER XXI

“6. Procedure where Court desires that its own decree shall be executed by another Court.—The Court sending a decree for execution shall send—

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and

(c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.”

7.4. As already observed, Section 38 of the CPC provides, in so many words, that a decree may be executed either by the court which passed it or by the court to which it is sent for execution. Merely because the court which passed a decree has also the option to send it to another Court for execution does not seem to mean that it is bound to send its own decree to another court for execution. An option available to the court which passed decree to send it to another Court for execution ought not to be treated as a compulsion. In my opinion, the power and authority of the Court to execute its own decree is not diluted or taken away simply because it has also the option to send its decree to another Court for execution.

7.5. As against this, section 39 *ibid* shows that firstly, it is only an enabling provision for Court to send its decree for execution to another court of competent jurisdiction in the given contingencies. I have observed/opined above that merely because the court which passed a decree has also the option to send it to another Court for execution does not seem to mean that it is bound to send it to another court for execution and that the power and authority of the Court to execute its own decree is not diluted or taken away. Secondly, such an option to invoke this provision for sending the decree for execution to another court of competent jurisdiction is exercisable on the application of the decree holder. In the present case, the application/ objection petition has been moved by the JD for sending the execution petition to Bombay and the decree holder is in fact vehemently opposing the same.

7.6. Sub section (4) *supra* heavily relied upon by the learned senior counsel for the petitioners only states that nothing in this section shall be deemed to authorize the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction. This provision by itself neither prohibits nor does it take away the authority of the Court to execute its own decree under the aforesaid other provisions of law. For the reasons stated earlier, I have already opined that the court can also execute its own decree for payment of money against a JD outside the local limits of its own territorial jurisdiction, including his arrest and detention in civil prison. The contention to the contrary canvassed by the learned senior counsel for the petitioners is, therefore, held not tenable.

8. Let us assume for a moment, as contended by the learned senior counsel appearing for the petitioners, that executing Court had no territorial jurisdiction to entertain the execution petition and it should have, therefore, sent the decree to a competent jurisdictional court at Bombay where the bank account is situated and the JDs are actually residing and carrying on their business. Even then, the petition is liable to be dismissed for the reasons as discussed in succeeding paragraphs.

8.1. Section 21(2) of the CPC clearly mandates that no objection as to the competence of the executing court with reference to the local limits of its jurisdiction shall be allowed by any Appellate Court or Revisional Court unless such objection was taken in the executing court at the earliest possible opportunity and unless there has been a consequent failure of justice. Further, the proviso below section 115(1) CPC pertaining to Revision mandates that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of suit or other proceeding except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings. The text and context of the proviso *ibid* shows that it is mandatory in character. Both of these prohibitions are also attracted in the instant case, each one of which even alone bars interference with the impugned order by this Court in Revisional Court jurisdiction.

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8.2. Decree holder /respondent herein had filed the execution petition on 13.07.2018 in the court which passed the judgment and decree and where the petitioners had already caused appearance and contested the trial without raising any issue *qua* the jurisdiction, and in any case, even if raised, it was overruled vide judgment in the suit. Be that as it may, warrant of attachment of the petitioner's bank account No. 06622100000077 in Kotak Mahindra Bank was issued on 09.08.2018. The account was attached, which had only a paltry amount of Rs. 1,560/- as the credit balance. Notice was then issued on 14.09.2018 to the JD-petitioners to appear on 04.10.2018 and show cause why they should not be committed to civil prison for not obeying the decree. Despite direction to appear on 04.10.2018, JD-petitioners failed to appear. Instead, they filed reply through counsel to the show cause notice. Learned executing court heard arguments. It observed that the JDs had taken the same grounds against the execution application which had been discussed in the judgment regarding supply of sub standard material and concealment of facts. The learned executing court found that the reply was unsatisfactory. Accordingly, it passed order dated 04.10.2018 for issue of conditional warrant of arrest of JD for recovery of the decretal amount. JD-petitioners challenged the said order by filing CR No. 8035-2018 in this Court. In the said petition, the JDs did not raise the question of jurisdiction of the executing court. CR No. 8035-2018 was dismissed vide order dated 07.02.2019 passed by a co-ordinate bench of this Court.

8.3. It would be seen that no objection was raised by the JDs against the territorial jurisdiction of the executing court at the time of their first appearance in the execution proceedings or at the time of passing of the order for attachment of their bank account. Again, after the attachment of the bank account, when notice was issued on 14.09.2018 to them to appear on 04.10.2018 and show cause why they should not be committed to civil prison for not obeying the decree, no such objection was raised. The JD filed reply to the said show cause notice. Order dated 04.10.2018 was passed by the executing court observing that the JDs had taken the same grounds which had been discussed in the judgment regarding supply of sub standard material and concealment of facts and directing issuance of conditional warrant of arrest. Obviously, in their reply

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to the show cause notice dated 14.09.2018 the JDs had not raised any question before the executing court about its jurisdiction to execute the decree. Still further in their CR No. 8035-2018 filed in this Court against executing court's order dated 04.10.2018 for issue of conditional warrant of arrest, the JDs did not raise the question of jurisdiction of the executing court. CR No. 8035-2018 was dismissed vide order dated 07.02.2019 passed by a co-ordinate bench of this Court. As stated in the petition, in the meanwhile, the JDs raised an objection before the executing court about its territorial jurisdiction by filing application under section 39(4) read with section 47 CPC. Neither that application/objection petition has been produced on record nor the date of its filing has been disclosed. The said application/objection petition was dismissed by the learned executing court on 01.12.2018 (Annexure P-8). In these facts and circumstances, it cannot be said that objection was taken by the petitioners herein in the executing court at the earliest possible opportunity as to its competence with reference to the local limits of its jurisdiction.

8.4. Secondly, it cannot be said at all that there has been any failure of justice consequent to the exercise of jurisdiction by the executing court. The object of execution proceedings was/is to satisfy the decree so that the decree holder reaps the fruit of his success in the suit and securing the decree. Here, the decree was passed against the petitioners on 03.05.2018 for the recovery of Rs. 1,18,10,572/- with costs (Rs. 5,07,903/-) and interest @ 6% per annum from the date of filing the suit (23.02.2017 per judgment Annexure P-3) till realization. At the time of filing the execution application Annexure P-4 on 13.07.2018, the gross amount payable was approximately Rs.1,33,65,545/- comprising of principal Rs.1,23,18,475/- + approximate interest Rs.10,47,070. One of JD/petitioners was earlier arrested and kept in civil prison for a few days after which he paid Rs. 25 lakhs out of the decretal amount. The JD petitioners were/are defaulters and have failed to pay the remaining decretal amount so far. The exercise of jurisdiction by the executing court was/is intended to satisfy the legitimate claim of the decree holders to recover the decretal amount from the JDs, who failed to pay the same. And this is what was sought to be achieved by the proceedings of

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the learned Executing court. By no stretch of imagination can it be said that the exercise of jurisdiction by the executing court has resulted in failure of justice.

8.5. If at all, as averred in the petitioner's application (Annexure P-1) that the execution petition had been filed by the decree holder in the court having no territorial jurisdiction to execute the decree, even then the court would send/ transfer the decree through proper channel for execution to another court to the court having territorial jurisdiction to execute it. In any case, it still would not dismiss the execution petition for want of territorial jurisdiction to execute the decree. On the decree being sent to another court, the transferee Court would pick up the thread from where it was left by the transferor court and proceed further for the arrest and detention in prison of the JD-petitioners in execution of the decree against them for recovery of money. Mere transfer of the execution proceedings to the Court at Bombay, as prayed herein, would not result in the final disposal of the proceedings for the arrest and detention in prison of the JD-petitioners in execution of the decree. Thus the position would remain the same even if the impugned order was to be varied by this Court in present revision petition and as prayed, the execution petition/ proceedings were to be transferred to a Court at Bombay. It follows, thus, that in the given circumstances, the proviso to section 115 *ibid* is also attracted to the instant case and this Court is barred from varying or reversing the impugned order passed by the learned Executing Court. The petition is, therefore, liable to be dismissed on this ground alone.

9. In **Mohit Bhargava v. Bharat Bhushan Bhargava and others**¹ the immovable property sought to be sold was outside the territorial jurisdiction of executing Court. In **Narinder Singh v. Palwinder Singh**² decided by a co-ordinate bench of this Court, also the executing Court had attached and sold immovable property situated beyond its territorial jurisdiction. In **Kumari Renuka Batra v. M/s Grindlays Bank Ltd., and others**³, a co-ordinate bench of this Court had set aside the order passed by the executing court at Amritsar (Punjab) for attachment of money of the JD

¹ 2007(2) RCR (Civil) 843

² CR No. 1869-2012 2018 AIR CC 836

³ 1980 AIR 146

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in the custody of the Executive Engineer, All India Institute of Medical Sciences, New Delhi. As already noted, in the prevailing computerized and centralized banking system, the bank account of the JD can also be operated at and money in this account can be paid from its Faridabad branch which is within the territorial jurisdiction of executing Court. Obviously, such facility of computerized and centralized banking system was not available within the territorial jurisdiction of executing Court at Amritsar for recovery of the money of the JD in the custody of the Executive Engineer, All India Institute of Medical Sciences, New Delhi. This case does not bear any analogy with the present case. In **Sukhbir Kaur v. Kartar Singh**⁴, the decree was passed by a Court at Ludhiana (Punjab) in regard to the immovable and movable property and the person of the defendant which were both at Karnal (Haryana) beyond the jurisdiction of the court at Ludhiana. Both the learned counsel for the parties were *ad-idem* that the judgment of the trial court be set aside and the matter be remanded back to the learned executing court to decide afresh while taking into consideration section 39(4) of the CPC. Accordingly, on the consent of the parties, a co-ordinate bench of this Court had set aside the impugned order passed by the executing court at Ludhiana dismissing the application of the JD under section 39(4) CPC and remanded the case back to the executing court to decide afresh while taking into consideration section 39(4) of the CPC and also to opine about another aspect of the case namely an adoption deed. The judgment *ibid* was not passed on merits. None of the judgments cited by learned senior counsel for JD-petitioners is applicable to the facts of the present case or otherwise be of any help to them.

10. It is also pertinent to note that the learned trial Court's judgment dated 03.05.2018 (Annexure P-3) shows that the suit had been filed for recovery of the unpaid price of goods supplied by the plaintiff in commercial and business dealings. The plaintiff had though claimed interest @ 24% per annum, but the learned trial Court allowed interest only @ 6% per annum. If the JDs were to borrow the amount from a bank or other private source, naturally they would have to pay much higher rate of

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interest than simple interest @ 6%. It appears that interest @ 6% allowed by the learned trial Court being considerably lower than the market rate, is the main reason and incentive for the JDs, for causing maximum delay in the payment of the huge decretal amount of Rs. 1,18,10,572/- with costs, hold it back and continue to gainfully utilize the money for their own business and derive wrongful gain at the cost of the decree-holder. The instant petition also seems actuated by dishonest and mala fide intention of the petitioners to further delay the payment of decretal amount as much as possible.

11. As an upshot of the above discussion, I am of the opinion that the revision petition is devoid of any merit. Accordingly, the same is dismissed with compensatory costs of Rs. 1,00,000/- to be paid by the petitioners to the respondent decree holder, for unnecessarily dragging the latter into the instant frivolous proceedings.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 03, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No