

CR-5712 of 2023 (O&M)

2023:PHHC:129511

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

CR-5712 of 2023 (O&M)
Date of decision: 03.10.2023

Shahid and another

.....Petitioners

vs.

Pawan Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Naveen Gupta, Advocate,
for the petitioners.

NAMIT KUMAR, J.

1. Challenge in the present petition is to the order dated 03.08.2023 (Annexure P-4) passed by learned Civil Judge (Sr. Divn.), Ambala, whereby conditional warrants of arrest have been issued against the petitioners and to the order dated 28.08.2023 (Annexure P-7) whereby application dated 16.08.2023, filed by the petitioners, for recalling the conditional warrants of arrest, has been dismissed.

2. The facts necessary for disposal of the present case are to the effect that the respondent filed a suit for recovery of Rs.20 lakh against the petitioners. Vide judgment and decree dated 25.09.2019 passed by Civil Judge (Junior Division), Ambala, the said suit was decreed with costs. In pursuance of the aforesaid judgment and decree dated 25.09.2019, the respondent-decree holder filed execution application against the petitioners, with a prayer that warrant of attachment of movable and immovable properties of the petitioners be issued as stock worth more than Rs.20 lakh is lying in the shop being run by the petitioners. During

pendency of the execution application, the respondent moved an application for issuance of conditional warrants of arrest qua the petitioners, on the ground that they are likely to dispose of the goods/materials to deprive him of the decretal amount. Vide impugned order dated 03.08.2023 (Annexure P-4), the said application was allowed and conditional warrants of arrest of the petitioner had been issued. Hence, the present revision.

3. Learned counsel for the petitioners contended that the impugned order dated 03.08.2023 (Annexure P-4) is totally illegal and non-speaking as neither any opportunity of hearing was given to the petitioners nor any show cause notice in terms of Order 21 Rule 37 CPC was issued to them. He further contended that the Executing Court did not record finding that there is no other possible way to satisfy the decree except by way of issuance of warrants of arrest of the petitioners. In support of his contentions, learned counsel relied upon judgments rendered by Hon'ble the Supreme Court in ***Jolly George Varghese and another v. The Bank of Cochin' (1980) 2 Supreme Court Cases 360*** and ***Gangadhar Narayan Nayak alias Gangadhar v. State of Karnataka and others (2022) 12 Supreme Court Cases 72***.

4. I have heard the learned counsel for the petitioners and perused the case file.

5. A perusal of the record would show that vide judgment and decree dated 25.09.2019 passed by Civil Judge (Junior Division), Ambala, the suit for recovery filed by the respondent was decreed. However till date, the petitioners have not preferred to file an appeal against the judgment and decree dated 25.09.2019. However, the respondent-decree

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holder preferred an appeal claiming interest on the decretal amount, which has been decided. As such, the judgment and decree dated 25.09.2019 has attained finality. It is the case of the respondent-decree holder that in pursuance of the aforesaid judgment and decree dated 25.09.2019, the petitioners have not paid even a single penny to him.

6. The Hon'ble Supreme Court in ***Satyawati v. Rajinder Singh and another MANU/SC/0569/2013: 2013 (7) Scale 371*** commented on the plight of a decree holder in India and observed as under: -

“2. In relation to the difficulties faced by a decree holder in execution of the decree, in 1872, the Privy Council had observed that

“..... the difficulties of a litigant in India begin when he has obtained a Decree....”.

3. Even today, in 2013, the position has not been improved and still the decree holder faces the same problem which was being faced in the past. We are concerned with the case of the appellant-plaintiff who had succeeded in Civil Appeal No.89 of 1993 in the Court of District Judge, Faridabad on 19th January, 1996. Decree was drawn in pursuance of the aforestated judgment but till today, the appellant-plaintiff is not in a position to get fruits of his success.”

7. In the present case, plight of the respondent is even worse as he has been litigating since 2014 and undergoing the whirlwind of law in getting the fruits of order/judgment passed in 2019 by the Court of first instance, which attained finality.

8. The Executing Court, while passing the impugned order dated 03.08.2023, has observed as under:

*“Arguments heard. Case file perused.
Admittedly, against judgment and decree dated*

25.09.2019, passed by the Court of Madam Gurdeep Kaur, the then, Civil Judge (Junior Division), Ambala, the appeal was filed by the DH for claiming interest on the decretal amount in the Appellate Court, which the Court has allowed to him and now after that decision of appeal Court in favour of DH, it cannot be said that the judgment and decree has not attained finality. Moreover, till date JD has himself never bothered to challenge the judgment and decree of the Court wherein he was directed to pay Rs.7,20,000/- to DH. So, now before the Executing Court, the defendant/JD cannot be allowed to challenge this decree on the ground of fraud because if, he is apprehending any fraud, then, judgment of the Civil Court must be challenged before the Appellate Court, by pleading the same and by leading the cogent evidence. It was burdened upon JD to prove the fraud which he is now pleading before the Executing Court. This Court being executing Court cannot go beyond the decree and have to execute it as per the terms of judgment and decree. Therefore, the objections filed by JD against the execution, are without any merits and hereby dismissed.

At this stage, an application for arrest and conditional warrant of arrest of JD have been filed by DH. In view of the facts stated therein, the same is hereby allowed. Let, conditional warrant of arrest of JD be issued for the date i.e. 11.08.2023 through SHO Parao.”

9. The very purpose of issuance of show cause notice to the judgment debtor/petitioners is to satisfy the decree. However in spite of availing sufficient opportunities to show their intention to satisfy the decree, the petitioners have not paid even a single penny to the respondent.

The Executing Court, vide order dated 28.08.2023, has rightly observed

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that Order 21 Rule 37 CPC itself provides a provision to do away with the condition to issue the show cause notice when the Court is satisfied by affidavit or otherwise that with the object or effect of delaying the execution of decree, the judgment debtor is likely to abscond or leave the local limits of the jurisdiction of the Court. Furthermore, the affidavit filed by the respondent is also sufficient to show his apprehension that the petitioner-judgment debtors can leave the local jurisdiction of the Court to avoid the decree. The conduct of the petitioners does not seem to be above board. It appears that the petitioners are deliberately not making the payment of decretal amount even after dismissal of the objections filed by them. The judgments cited by the learned counsel for the petitioners, are not applicable to the present case having distinguishable facts.

10. In view of the above, this Court does not find any merit in the present revision.

11. Dismissed.

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

(NAMIT KUMAR)

JUDGE

03.10.2023

R.S.

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No