

CR-6046-2023 with
CR-6828-2023

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision:- 29.11.2023

(1) CR-6046-2023

Jaswant Singh

...Petitioner

Versus

State Bank of India and others

...Respondents

(2) CR-6828-2023

Sukhjinder Kaur

... Petitioner

Versus

State Bank of India and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Abhinav Kalia, Advocate
for the petitioner.

Mr. Akshay Jain, Advocate
for the respondents.

AMARJOT BHATTI, J.

1. The petitioner(s) – Jaswant Singh in CR-6046-2023 and Sukhjinder Kaur in CR-6828-2023 have filed the present civil revisions under Article 227 of the Constitution of India for setting aside the impugned orders dated 31.07.2023 and 27.09.2023 passed by the learned Civil Judge (Senior Division), Ambala in execution application vide which their warrants of arrest have been issued against the provisions and settled

proposition of law. Both these civil revisions have been filed against the

CR-6046-2023 with
CR-6828-2023

-2-

same impugned orders dated 31.07.2023 and 27.09.2023, therefore, the civil revisions are taken up together for disposal.

2. The facts of the case are that the respondent No.1-State Bank of India had filed suit for recovery of Rs.4,84,748/- on account of loan raised by Talwinder Singh and Jaswant Singh by offering collateral security of their land measuring 04 kanal 10 marla being 90/1907 share out of total land measuring 95 kanal 07 marla as per jamabandi for the year 2001-02 by executing various documents. The said suit filed by the plaintiff-Bank was decreed vide judgment and decree dated 24.07.2018 (Annexure P-2) and on the basis of this decree execution application has been filed. During the pendency of the case, Talwinder Singh expired. Sukhjinder Kaur one of the petitioner is the legal heir of Talwinder Singh whereas Jaswant Singh was arrayed as defendant No.2 in the civil suit. The learned counsel for both the petitioners have challenged the impugned order dated 31.07.2023 vide which the conditional warrants of arrest of judgment debtors have been issued through the concerned Deputy Superintendent of Police and apart from this the warrants of sale regarding the property of judgment debtor No. 1(a) have been issued. The copy of order dated 31.07.2023 is Annexure P-1. Thereafter, vide order dated 27.09.2023 again conditional warrants of arrest have been issued by directing the Deputy Superintendent of Police to appear in person in case of non service of conditional warrants of arrest.

The learned counsel for the petitioners have relied upon the authority cited in ***1980 AIR(Supreme Court) 470 in case titled as “Jolly George Varghese and another vs. The Bank of Cochin”*** and it is argued that the arrest and detention of the judgment debtors is in violation of

CR-6046-2023 with
CR-6828-2023

-3-

Article 21 of the Constitution of India especially when the judgment debtors have no means to pay. It is argued that the learned Executing Court has not passed any speaking order from where it could be inferred that there was no other way to execute the said money decree. It is prayed that the impugned orders dated 31.07.2023 and 27.09.2023 (Annexure P-1) are without any justification and the same may kindly be set aside.

3. On the other hand, learned counsel representing the Bank pointed out that in the case in hand decree was passed on 24.07.2018 and there was no positive step on the part of judgment debtors to satisfy the said decree. Therefore, the learned Executing Court had to pass the orders regarding sale of the property belonging to judgment debtor No.1(a) and their conditional warrants of arrest to secure the payment of decretal amount. Therefore, both the civil revisions preferred by the petitioners are without merits.

4. I have considered the arguments advanced before me and have gone through the record carefully. The copy of judgment and decree in favour of respondent-Bank dated 24.07.2018 is Annexure P-2. The Executing Court is trying to execute the decree against the judgment debtors. One of the judgment debtor- Talwinder Singh has expired and his wife Sukhjinder Kaur has been impleaded as legal heir. The perusal of order dated 31.07.2023 indicates that the Executing Court has issued warrants of sale regarding the property which was offered as collateral security with the bank. At the same time the Executing Court has also issued conditional warrants of arrest against both the petitioners. Therefore, the Executing Court is passing both the orders simultaneously.

There is no doubt that the judgment and decree in favour of the Bank has

CR-6046-2023 with
CR-6828-2023

-4-

to be executed. Once the warrants of sale regarding the property which was already in the hands of Bank were issued there was no necessity to simultaneously issue conditional warrants of arrest regarding both the petitioners. In case the decree is not satisfied with the sale of property regarding which the warrants have been issued or for another reason there is inability to satisfy the decree then only the Executing Court is justified to issue conditional warrants of arrest by following the procedure laid down under Order 21 Rule 37 of CPC.

Therefore in view of the aforesaid factual position, the civil revisions preferred by the petitioners are partly accepted with the direction to firstly make efforts to satisfy the execution of decree by sale of property which is in the hands of the Bank regarding which warrants of sale have been issued and for the time being, the order passed by the Executing Court issuing conditional warrants of arrest pertaining to Jaswant Singh and Sukhjinder Kaur (legal heir of Talwinder Singh) is set aside.

Accordingly the civil revisions preferred by both the petitioners are disposed of.

Pending application(s), if any, also stand disposed off.

Photocopy of this order be placed on the connected file.

29.11.2023

Sunil Devi

(AMARJOT BHATTI)
JUDGE

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