



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

120

CR-1564 of 2024 (O&M)

Decided on: 28.05.2024

Hakam Singh

...Petitioner

Versus**Darshan Singh**

...Respondent

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. J. K. Singla, Advocate and
Ms. Suman Rani, Advocate
for the petitioner.

Mr. Munish Garg, Advocate
for the respondent.

RITU TAGORE, J.

1. Mr. Munish Garg, Advocate appears on behalf of respondent and files Power of Attorney, which is taken on record, subject to just exceptions.

2. This revision petition is against the order dated 06.02.2024 passed in Execution Application No.77 of 2023 titled as 'Darshan Singh Vs. Hakam Singh' pending in the Court of learned Civil Judge (Junior Division), Barnala whereby learned Executing Court dismissed the objections of the petitioner/judgment debtor.

3. Learned counsel for the petitioner submits that learned Executing Court at Barnala while exercising the powers as a Transferee Court could not have entertained and tried the second execution application



No.77 of 2023 without following the basic procedure prescribed under Section 39 CPC.

4. Learned counsel for the petitioner submits that learned Executing Court at Barnala, while deciding his objections did not address the issue raised by him in paragraph No.3 of objections filed to the execution application (Annexure P-4). It is stated that impugned order is wholly unsustainable in the eyes of law and should be set aside.

5. Contrary to it, learned counsel for the respondent/decreed holder supporting the order, stating that it is valid and the appropriate remedy for the petitioner was to file an appeal. The revision in this regard is not maintainable. Learned counsel further submits that as per proviso to Order 21 Rule 10 CPC, applicable to the State of Punjab the execution can lie within the jurisdiction of the Court where the judgment debtor is residing. In the present case, petitioner/judgment debtor is residing at Barnala and the execution application is therefore maintainable at Barnala. It is stated that the present revision petition is devoid of merits and a prayer is made to dismiss the same.

6. I have heard learned counsel for the parties and have gone through the paper book with their able assistance.

7. It is a matter of record that a decree dated 28.07.2016 (Annexure P-1) was passed by learned Civil Judge (Junior Division) Phul in favour of the respondent/decreed holder and execution was filed before the learned Executing Court at Phul and thereafter, the same was transferred to the Court at Barnala, as properties of judgment debtor were situated in the jurisdiction of Barnala. Thereafter, the decree holder withdrew the execution



application vide order dated 17.02.2023 (Annexure P-2) with permission to file it afresh within period of limitation.

8. It is suffice to say that the respondent/decreed holder, filed a fresh execution application bearing No.77 of 2023 titled 'Darshan Singh vs. Hakam Singh' within the territorial jurisdiction of Barnala against the petitioner, which was objected, while asserting that the execution application could not have been filed at Barnala. Rather, it should have been filed before the Court of original jurisdiction which passed the decree i.e., before learned Civil Judge (Junior Division), Phul. The Court at Barnala can entertain the execution application only after compliance of provisions of Section 39 CPC. Apart from the above objections, the judgment debtor also resisted the maintainability of the execution application, as detailed in paragraph No.3 of objections filed to the execution application (Annexure P-4).

9. Learned Executing Court decided the objections vide impugned order dated 06.02.2024, primarily on the jurisdictional aspect of the Executing Court at Barnala, to entertain the execution application. Learned Executing Court at Barnala after referring to the provisions of Order 21 Rule 10 CPC read with the proviso added to the provision (as applicable to the State of Punjab) concluded that Court has the jurisdiction to entertain the execution application at the place where judgment debtor resides, if judgment debtor has left the jurisdiction of the original Court that passed the decree. Consequently, learned Executing Court at Barnala dismissed the objections. Here, it is explicit that while deciding the objections, learned Executing Court at Barnala did not address the other objections as raised in paragraph No.3 of the objections filed to the execution application (Annexure P-4).



10. At this stage it is apt to go through the provisions of Order 21 Rule 10 which read as under:-

*“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.*

Proviso added to order XXI rule 10 as applicable to State of Punjab, reads as under:-

Provided that if the judgment-debtor has left the jurisdiction of the Court which pass the decree, or of the Court to which the decree has been sent, the holder of the decree may apply to the Court within whose jurisdiction the judgment-debtor is, or to the officer appointed in the behalf, to order immediate execution on the production of the decree and of an affidavit of non-satisfaction by the holder of the decree pending the receipt of an order of transfer under Section 39”.

11. It is not disputed by petitioner/judgment debtor that he is resident of Barnala, so is also mentioned by him in his objections filed to the execution application (Annexure P-4). Perusal of the impugned order when tested in the light of provisions of Order 21 Rule 10 read with proviso as applicable, is perfectly justified in so far as the entertainability of the execution application by the Courts at Barnala is concerned. In view of the above factual and legal provisions, learned Executing Court at Barnala has the jurisdiction to entertain the execution application in question, filed directly before it. Hence, Section 39 CPC was not required to be followed.



12. Nonetheless, the learned Executing Court, failed to address the other objections as pleaded and asserted by the petitioner/judgment debtor, in his objections to execution application (Annexure P-4), while deciding the same. To the considered opinion of this Court, learned Executing Court, erred in not dealing with the other objections raised by judgment debtor as mentioned in paragraph No.3 of the objections to execution application (Annexure P-4) before dismissing above application in entirety. The learned Executing Court thereby, failed to exercise the jurisdiction vested in it, warranting interference in the revisional jurisdiction of this Court.

13. For the reasons mentioned above, impugned order dated 06.02.2024 is partly set aside with direction to the learned Executing Court to decide the objections taken in paragraph No.3 of the objection to the execution application (Annexure P-4), in accordance with law.

14. Revision petition stands disposed of accordingly.

15. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

28.05.2024

Rimpal

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