



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.2309 of 2024

DATE OF DECISION: 19.04.2024

Vikas Kumar Gupta

.....Petitioner

VERSUS

Pargat Singh

.....Respondent

CORAM HON'BLE MR. JUSTICE GURBIR SINGH

Present Mr.Munish Kumar Garg and
Mr. Puneet Kapoor, Advocates,
for the petitioner.

GURBIR SINGH, J

1. Challenge in this Civil Revision is to the Order dated 12.03.2024, passed by learned Civil Judge (Junior Division), Safidon, dismissing the application dated 23.02.2024 under Order 38 Rule 5 read with Order 39 Rules 1 & 2 CPC, the same being illegal, unlawful, perverse and against the provisions of law.

2. The brief facts that culled out from the petition are that the plaintiff/petitioner filed a suit for recovery against the defendant/respondent before the learned trial Court wherein an application under Section 38 Rule 5 read with Order 39 Rules 1 and 2 CPC for attachment of the land 312 kanal to the extent of 320/3123 share corresponding to 31 kanals 19 marlas comprised in Khewat No.277 khata no.363 and 364 situated at village Malakpur Tehsil Safidon, District Jind, as per jamabandi for the year 2019-2020 of defendant/respondent **before Judgment and decree** and under Section 39 Rule 1 & 2 CPC read with Section 151 CPC for restraining the defendant from alienating and transferring the suit property in favour of any body till the final realization of the amount in question was dismissed.

3. It is further submitted that the above noted suit was pending before the Hon'ble Court and decree of money was likely to be passed in favour of the plaintiff/petitioner. The defendant/respondent had got the smell of the present suit and he wanted to avoid the repayment of borrowed amount and the execution of the



money decree likely to be passed and was adamant and threatening to alienate and transfer his above land in favour of others which action might cause great loss and special injury and the judgment and the decree passed will be in vain. Thus, the land of the defendant / respondent is liable to be attached for due performance of the judgment and decree likely to be passed in favour of plaintiff. Defendant/respondent was proceeded against exparte. After hearing the submissions of the plaintiff/petitioner and going through the file, the learned trial Court dismissed the application.

4. Learned counsel for the plaintiff/petitioner submits that he restricts the submissions with regard to order passed qua Order 38 Rule 5 CPC and not with regard to order passed under Order 39 Rules 1 and 2 CPC for which, the appeal is maintainable but the revision is maintainable against the order passed qua Order 38 Rule 5 CPC.

5. I have heard the submissions of the learned counsel for the petitioner.

6. In the application, petitioner has pleaded that in order to avoid repayment of the borrowed amount, the respondent is threatening to transfer the above said land in favour of some other person. Para no.3 of the above application is as under:-

“3. That now the defendant has got the smell of the present suit and now he want to avoid the repayment of borrowed amount and the execution of the money decree likely to be passed by the Hon'ble court in favour of applicant/plaintiff and the defendant is also adamant & threatening to alienate and transfer his above land in favour of some others, which action of the defendant is uncalled and unwarranted by law and in case he succeed in doing so then the plaintiff is bound to suffer great loss and special injury and the judgment and decree likely to be passed.”

7. It is well settled law that property of defendant cannot be attached in every recovery suit and there should be existence of very strong case in favour of plaintiff before invoking the provision of Order 38 Rule 5 CPC. In order to get such kind of relief from the Court, the applicant has to satisfy the Court that defendant/respondent is going to dispose of whole or part of his property or remove the whole or any part of it from the local limit of jurisdiction of Court. Mere apprehension of plaintiff regarding alienation of the property by the



defendant/respondent can not be a ground to grant attachment of property under Order 38 Rule 5 CPC, which is reproduced as under:-

“5. Where defendant may be called upon to furnish security for production of property.—

(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court, the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

1[(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void.

8. The law with regard to the provisions of Order 38 Rule 5 of the CPC has been settled by the Supreme Court judgment in **Raman Tech. & Process Engg. Co. & Anr. v. Solanki Traders, (2008) 2 SCC 302,** as below:-

"5. The power under Order 38, Rule 5 CPC is a drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It should be used sparingly and strictly in accordance with the Rule. The purpose of Order 38, Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilise the provisions of Order 38, Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs by obtaining orders of



attachment before judgment and forcing the defendants for out-of-court settlements under threat of attachment.

6. A defendant is not debarred from dealing with his property merely because a suit is filed or about to be filed against him. Shifting of business from one premises to another premises or removal of machinery to another premises by itself is not a ground for granting attachment before judgment. A plaintiff should show, prima facie, that his claim is bona fide and valid and also satisfy the court that the defendant is about to remove or dispose of the whole or part of his property, with the intention of obstructing or delaying the execution of any decree that may be passed against him, before power is exercised under Order 38, Rule 5 CPC. Courts should also keep in view the principles relating to grant of attachment before judgment. (See Premraj Mundra v. Md. Manech Gazi [AIR 1951 Calcutta 156] for a clear summary of the principles.)"

9. Since, there is no material on record to come to the conclusion that defendant/respondent is going to remove his property. Learned trial Court by relying upon the law laid down in Harvinder Singh v. Sawan Singh and another 2008(3) RCR (Civil) 543 (P&H) has held that mere apprehension of the plaintiff/petitioner regarding alienating and transferring of the property by the defendant/respondent cannot be a ground for attachment of the property before judgment and decree and power under Order 38 Rule 5 CPC are drastic in nature that can be exercised in extraordinary circumstances.

10. No valid ground is made out to interfere with the impugned order dated 12.03.2024.

11. The petition being without any merit is, hereby, dismissed.

19.04.2024
mamta

(GURBIR SINGH)
JUDGE

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