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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(123)

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Date of decision: - 14.08.2024

Guriqbal Singh

....Petitioner

Versus

Prem Chand through LRs and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Vikas Kumar Gupta, Advocate,
for the petitioner.

VIKAS BAHL, J. (ORAL)

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 18.07.2024 (Annexure P-11) passed in Execution No.03/2018 whereby warrant of arrest have been issued against the petitioner.

2. The saying that problems of a litigant start after he has obtained a decree in his favour is clearly exemplified by the facts and circumstances of the present case. It is not in dispute that on 13.11.2017, the suit of respondent No.1 for specific performance was decreed in the alternate and the petitioner, who was judgment debtor No.1, was directed to make the payment of Rs.3,09,000/- + interest @ 9% per annum from 25.05.2011 in addition to other expenses. Although, the said judgment and decree has not been produced on record, but the said fact has been



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admitted before this Court and is also *prima facie* apparent from a perusal of the execution application dated 09.01.2018 filed by respondent No.1. In the execution proceedings, an amount of Rs.4,99,900/- was sought to be recovered which consisted of the original amount of Rs.3,09,000/- along with 9% interest per annum, costs of the suit etc. as on 09.01.2018. All the zimni orders in the said execution proceedings have not been annexed along with the present petition but a perusal of the order dated 10.11.2021 (Annexure P-2) would show that respondent No.1 had filed an application under Order 21 Rule 37 CPC for arrest and detention in civil prison of the judgment debtors. A perusal of the order would further show that the present petitioner had not paid any amount till 10.11.2021 and the properties for which the warrants of attachment were issued, were objected by the petitioner and his family members, as had been reported by the Bailiff. The learned Civil Judge (Jr. Division), Rajpura, had observed that the list of movable properties of the judgment debtor was given on affidavit and although, the warrants of attachment issued qua them were unexecuted with the report that the wife of judgment debtor No.1 had objected to the same and in the said circumstances, the police help could have been sought. It was further observed that although both the modes for execution of decree are available to the decree holder but in the first instance, warrants of attachment of the articles mentioned in the list furnished by the decree holder should be issued and on failure of its execution, a more coercive method would be adopted to recover the decreed amount. The relevant portion of the said order dated 10.11.2021



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is reproduced herein below: -

“4. I have heard the learned counsel for the parties and perused the case file and this court is of the considered opinion that present application deserves to be dismissed for the reasons hereinafter mention: Order 21 Rule 30 of Code of Civil Procedure provide that decree for payment of money may be executed by the detention in Civil prison of JD or by the attachment and sale of property or both.

xxx xxx xxx

In the considered opinion of the court, no doubt, both modes for execution of decree are available to decree holder, but, first, let warrants of attachment of the articles mentioned in the list furnished by the decree holder be issued and on failure of its execution, the more coercive method shall be adopted to recover the decreed amount.

6. With these observations, the instant application is disposed of.

*Pronounced in Open Court on
10.11.2021”*

3. The said order has been accepted by the petitioner as no challenge has been made to the same. Although, all the subsequent zimni orders have also not been annexed in its entirety but a perusal of the order dated 07.11.2023 (Annexure P-3) would show that third party objections were filed by objector Binay Pal Singh, who is the son of the present petitioner, to further prolong the execution and to deprive the respondent No.1/decreed holder of the fruits of the decree. From a perusal of the said order, it is apparent that the attachment of the moveable and immovable property, including articles, was objected to by the son of respondent No.1 by stating that the articles had been gifted to the objector by the parents of his wife on their marriage. Even with respect to the house in question in which the present petitioner was residing it was stated that the



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same was registered in the name of the son and his wife and it was observed that the same could not be attached. However, for the purpose of execution of the decree, a conditional warrant of arrest of judgment debtor No.1 was issued. The relevant portion of the said order dated 07.11.2023 (Annexure P-3) is reproduced as under: -

“ As such, in order to execute the Decree passed against JD No.1, let conditional warrant of arrest of JD No.1 be issued at Plot bearing Khasra No. 185/ 189, situated at Badala Naya Shahar, H. No. 188, Tehsil Kharar, District SAS Nagar.

With these observations, the third party objections are allowed partly and disposed off accordingly.

Date of Order : 07.11.2023”

4. The said order has also not been challenged by the petitioner. A perusal of zimni order dated 13.03.2024 would show that the petitioner was arrested by the police and was produced in the Court but an application was filed by the petitioner for granting time and prayed that he be not sent to civil imprisonment. A statement was made before the Court that he admitted his liability and further undertook to pay the outstanding amount and thus, for the purpose of recording of statement, the matter was adjourned to 14.03.2024. On 14.03.2024 (Annexure P-5), the petitioner appeared and again sought time and the matter was adjourned to 28.03.2024. On 28.03.2024 (Annexure P-6), the case was again adjourned to 09.04.2024 at the request of the petitioner. On 09.04.2024 (Annexure P-7), the petitioner appeared and suffered a statement that he would make the payment to the decree holder by 15.05.2024 and the matter was again adjourned to 09.05.2024. The order



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dated 09.04.2024 is reproduced herein below: -

*“Present: Ms. Sitara Devi proxy for Sh. Satnam Singh
Advocate counsel for DH.
Sh. Rohitansh Kumar proxy for Sh. Kulvinder
Singh Bhatti Advocate counsel for JD no. 1.
JD no. 2 exparte vide order dated 07.11.2023.
JD no. 3 exparte vide order dated 31.08.2021.*

***JD Guriqbal Singh appeared and suffered statement that he
will make the payment to DH in the next month dated 15.05.2024.***

***In view of the aforesaid statement, case is adjourned to
09.05.2024 for making payment as well as further proceedings.***

Date of order: 09.04.2024”

5. On 09.05.2024, the matter was adjourned to 16.05.2024 and the petitioner was granted time till 15.05.2024 to pay the decreetal amount specifically providing that if the petitioner fails to make the payment, then, fresh conditional warrants of arrest shall be issued against the judgment debtor. The relevant portion of the order dated 09.05.2024 is reproduced as under: -

“Considering the statement suffered on the last date of hearing he is granted time for 15.05.2024 to pay the decreetal amount failing which fresh conditional warrants of arrest shall be issued against the JD Guriqbal Singh. Now, the case is adjourned to 16.05.2024 for making payment.

Date of order: 09.05.2024.”

6. On 16.05.2024, again at the request of the petitioner, one final opportunity was given to the judgment debtor to make the payment and it was observed that in case of non-compliance, the Court would proceed further in accordance with law. Another adjournment was sought

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on 01.07.2024 and the matter was adjourned to 18.07.2024 without any payment having been made. It would be relevant to note that none of the zimni orders, the details of which has been given above, have been challenged, at any stage or even in the present revision petition. On 18.07.2024, neither the petitioner appeared nor made the payment in spite of the undertaking given by him and the Court had observed that the judgment debtor was purposely delaying the matter and left with no other option, the Court issued warrants of arrest of judgment debtor for 09.08.2024

7. This Court during the course of the hearing had put it to the counsel for the petitioner as to whether the petitioner is now ready to deposit the decretal amount, which was decreed way back in the year 2017. However, the counsel for the petitioner has submitted that the petitioner is not ready to deposit the said amount. In the said circumstances, the impugned order dated 18.07.2024 is absolutely in accordance with law and there is no reason for this Court to interfere with the said order in exercise of its power under Article 227 of the Constitution of India. It is the duty of the Court to see that the judgment and decree of the Courts are implemented. It is apparent from the facts of the case that the petitioner has played hide and seek with the Court and has even violated his undertaking calling for stringent action against the petitioner.

8. Keeping in view the above-said facts and circumstances, this Court is of the opinion that the order dated 18.07.2024 passed by the

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learned Civil Judge (Jr. Division), Rajpura, is legal and does not call for any interference and the present civil revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

August 14, 2024

naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes