

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4894-2023
Date of Decision: 14.03.2024

M/S A.A TRADING COMPANY AND ANR PETITIONERS
VS
M/S. UNITED RICE MILLS RESPONDENT

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Anil Kumar Garg, Advocate for the petitioners.
Mr. Mohan Singla, Advocate for the respondent.

GURBIR SINGH, J.

1. Challenge in this petition is to the orders dated 02.05.2023 and 18.05.2023 passed by learned Additional Civil Judge (Senior Division) Tohana/Executing Court.
2. Brief facts that are necessary for the disposal of this petition are that respondent filed suit for recovery which was decreed on 24.11.2020 against the petitioners. The respondent filed the execution petition in which notice was issued to the judgment debtors for 02.05.2023. On the said date, notice issued against JD was not received back either served or unserved. An application for issuance of conditional warrant of JD was filed and conditional warrant was issued against the JD through SHO concerned. On the next date of hearing, petitioner No.2 was produced in custody by the police who made a statement that the wife of petitioner No.2 was proprietor of petitioner No.1 i.e. M/s. A.A.Trading Company and Anr. He further made a statement that he along with his wife would settle all the disputes and there was no immovable property in the name of his wife except saving bank

accounts, one in the name of wife and one in the name of M/s. A.A.Trading Company and Anr and wife is the owner of motor-cycle. Petitioner No.2 was released from custody. The case was adjourned to 05.07.2023 for making payment of decretal amount. On the said date, petitioner No.2 moved objections. The learned Executing Court has held that JD is intentionally delaying the proceedings and the proprietor of JD was also not appearing to satisfy the judgment and decree. The concerned Bank Manager was asked to attach the bank accounts. It is further ordered that objections would not be considered till appearance of JD/proprietor who is wife of objector.

3. Learned counsel for the petitioners has argued that no notice was issued as per Order 21 Rule 37 CPC against his detention in the prison for non-satisfaction of the decree and thereafter, no notice was issued as to why he be kept in the civil prison for not obeying the decree. Petitioner No.2 is not proprietor of petitioner No.1 concern. Wife of petitioner No.2 is not party in the proceedings so, Court has wrongly passed the order directing petitioner No.2 to produce his wife in the Executing Court. The statement of petitioner No.2 was recorded when he was in custody. The Court cannot say that objection would be considered only after appearance of his wife in the execution petition.

4. Learned counsel for the respondent has placed on file some documents, which are taken on record. He has further argued that rice was supplied to M/s. A.A.Trading Company-petitioner No.1. He has placed on the file copy of the tax invoices and goods receipts. He has further argued that legal notice was issued before filing of the suit on 16.04.2018. On instructions from petitioner No.2, the reply was filed, so petitioner No.2 was

himself representing him as proprietor of petitioner No.1. Now, petitioner No.2 cannot escape liability by saying that his wife is the proprietor.

5. I have heard submissions made by learned counsel for both the parties.

6. The order dated 02.05.2023 is as under:

“Notice issued against JD not received back either served or unserved. An application for issuance of conditional warrant of JD filed vide which it is mentioned that no details of property of JD and requested that conditional warrant be issued. Heard. Let, conditional warrant in the sum of Rs.8,81,292/- be issued against the JD for 18.5.2023 through SHO concerned. The Executing official is directed to release the JD on the spot, if he makes the payment and the amount so collected from the JD be deposited in the Court. A note be given on the conditional warrant that in case of non-execution, the executing official shall appear in person in the Court on the date fixed to explain the circumstances.”

7. On 18.05.2023, the following order was passed:

“The JD Nusrat Imam is in custody as produced by police on conditional warrants of arrest. The JD has suffered a statement recorded separately that proprietor of M/s A.A.Trading is my wife Farhin Imam. He along with his wife has decided that they will settled all the transaction dispute between M/s A.A.Trading and M/s United Rice within 40 days. He further stated that there is no immovable property in the name of his wife and saving account no.680701546820 is in the name of his wife in ICICI Bank Ajmer Branch Station Road, Ajmer and one account no.680705500105 is in the name of M/s A.A.Trading Company and my wife is also owner of motor-cycle bearing registration no.RJ01-SC2037. JD Nusrat Imam is released from custody. Now the case is adjourned to 5.7.2023 for making payment.”

8. The passing of order of conditional warrant of arrest without giving notice to the JD is in violation of the provisions of Order 21 Rule 37 CPC. As per Order 21 Rule 37 CPC, the Court is bound to issue notice to the JD calling upon him to appear in the Court for showing cause against his

detention in civil prison. Thereafter, after giving opportunity of showing cause why he should not be committed to the civil prison, as per provisions of Order 21 Rule 40 CPC, JD can be sent to the civil prison. In the case in hand, no such show cause notice was issued. Petitioner No.2 was arrested and after recording statement, he was released. So order of issuing of conditional warrant of arrest dated 02.05.2023 is against law. Similarly, order dated 18.05.2023 is not sustainable in the eyes of law. When objections were filed, then it was the duty of the Executing Court to dispose of the objections first before proceeding further. The Executing Court cannot force a person who has filed objection to execution to produce another person including his family member before the Executing Court. The wife of petitioner No.2 is neither JD nor impleaded nor any application was moved to proceed against her. The Executing Court acted in an overzealous manner by forcing petitioner No.2 that objections would not be considered till appearance of JD/proprietor wife of the objector.

9. Thus, the impugned orders mentioned above are against law and are hereby set aside. The Executing Court is directed to first decide the objections filed by the petitioner No.2 and then, proceed further in accordance with law.

10. The parties are directed to appear before Executing Court on 02.04.2024.

11. The present petition stands disposed of. Pending application, if any, shall also stand disposed of.

14.03.2024

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(GURBIR SINGH)

JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>