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

CR-6794-2023 (O&M)

Date of decision : 30.01.2025

RAJPAL

....Petitioner

Versus

MOHAN SINGH KOMAL

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Ms. Mehak Bedi, Advocate
for the petitioner.

Mr. Jagjit Singh, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

Present revision petition is directed against order dated 5th of October, 2023 passed by the Executing Court.

2. Petitioner is facing execution of a decree dated 18.01.2011 passed in Civil Suit No.62 of 15.06.2007 whereby the petitioner has been held liable to pay an amount of Rs.4,74,091/-. The petitioner/judgment debtor approached the Executing Court claiming that the decree stands satisfied. The said fact was denied by the decree-holder.

3. Counsel for the petitioner submits that the JD has paid the decretal amount by way of cheques. The same got encashed by the DH. Nothing remains to be recovered by execution of the decree. However, the aforesaid fact has been totally ignored by the Executing Court while



dismissing the application filed by the judgment debtor/petitioner. After notice of motion when decree-holder appeared, specific stand was taken that no amount, as claimed by judgment-debtor vide cheque No.047602, was ever transferred to the account of decree-holder. Decree-holder was directed to file specific affidavit.

4. Para No.7 of the affidavit filed by decree-holder reads as under :

“7. That the deponent is having account No. 2325110060050263 in the Ujjivan Small Finance Bank Limited, Kapurthala in the account the amount of Rs.2,16,000/- is deposited on 15.11.2022 vide cheque No.047602. It is clarified that the said amount was received by deponent is borrowed money by the petitioner from the deponent and he has repaid the amount. Statement of the account is annexed as Annexure R-5.”

5. In the considered opinion of this Court, once judgment debtor *prima facie* was able to show that the amount in satisfaction of the decree, stands transferred to the account of decree-holder, the least the Executing Court could have done was to hold inquiry w.r.t. the assertion made by judgment debtor instead of proceeding with execution of decree by way of attachment and sale of property. Order XXI CPC, is complete Code. The Executing Court before proceeding with attachment of property, is required to ascertain the amount to be recovered from the judgment debtor.

6. In view of above, this Court finds that the impugned order deserves to be set aside. Executing Court shall first hold inquiry as to

8. Pending application, if any, shall also stands disposed off.

(Pankaj Jain)
Judge

Whether reportable : Yes/No