

(1990) 05 P&H CK 0057
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2801 of 1987

Col. Ajaib Singh	Vs	APPELLANT
Punjab National Bank and Others		RESPONDENT

Date of Decision : 29-05-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 37

Citation : (1991) 99 PLR 231

Hon'ble Judges : Naresh Chander Jain, J

Bench : Single Bench

Advocate : T.S. Doabia, for the Appellant; S.K. Longue and K.S. Bakshi, for the Respondent

Final Decision : Allowed

Judgement

Naresh Chander Jain, J.—This revision petition has been filed primarily against the issuance of a warrant of arrest in execution. The petitioner happens to be a guarantor of the main judgment-debtors Nos. 1 and 2 against whom a decree for a sum of approximately Rs. 3,00,000 was passed. The petitioner has filed objections before the executing court which were pending decision when the warrant of arrest was issued by the executing court on September 10, 1987. In the objection petition, as the reading of the grounds of revision makes it clear, the following objections have been taken :

- "1. That the applicant was a guarantor in the above-mentioned case and a decree was passed against all the defendants.
2. That although judgment-debtors Nos. 1 and 2 have movable and immovable property which can satisfy the claim of the decree-holder, yet the execution proceedings have been filed against the applicant.
3. That it has come to the knowledge of the applicant/judgment-debtor that the decree-holder has applied for attachment of the residential house of the applicant/judgment-debtor.

4. That the residential house sought to be attached is the only residential house which belongs to the applicant/judgment-debtor and that he is in self-occupation of the same.

5. That, u/s 60 of the Civil Procedure Code, the residential house, of the judgment-debtor/applicant is exempt from attachment and as such the orders of attachment passed by this hon"ble court are liable to be recalled."

2. It has been argued by Mr. T.S. Doabia, learned counsel for the petitioner-guarantor, that the petitioner is only a guarantor of the judgment-debtors who have mortgaged the property with the bank and that till the decree-holder proceeds against the mortgaged property in the first instance, the proceedings against the guarantor are not competent. Learned counsel has cited Union Bank of India Vs. Manku Narayana, , in which it was held that where the decree is a composite one personally against the principal debtor and the guarantor and also against the mortgaged property, the decree-holder has to proceed against the mortgaged property first and then proceed against the guarantor. There cannot be any dispute with the proposition of law laid down in Union Bank of India Vs. Manku Narayana, . However, since no finding has been given on this point, it will be for the executing court in the first instance to decide this point. Before this court, the issuance of warrant of arrest has been challenged. The warrant of arrest is liable to be quashed, in the considered view of this court, on the short ground that the petitioner has not been heard before ordering his arrest. It has been laid down in Order 21, Rule 37 of the CPC that notice should be issued before ordering the detention of the judgment debtor in civil prison until and unless a finding is recorded to the effect that the judgment-debtor, with intent to delay and obstruct the execution of the decree, is likely to abscond from the local limits of the jurisdiction of the court. No such finding has been recorded. In view thereof, the warrant of arrest could not have been issued by the executing court.

3. In the light of the aforementioned observations, the revision petition is allowed. The executing court is directed to decide the question raised before this court and after passing an order on the objection petition, proceed against the petitioner in accordance with the mandatory provisions relating to the imprisonment of the judgment-debtor. No costs.