
(2019) 09 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 437 Of 2018

Harbhaj Sharma

APPELLANT

Vs

Shriram Transport Finance Co. Ltd. & Anr

RESPONDENT

Date of Decision : 02-09-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 21 Rule 37, Order 21 Rule 11
Constitution Of India, 1950 — Article 227

Citation : (2019) 09 SHI CK 0002

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : G.R. Palsra, Ashwani Kaundal

Final Decision : Disposed Off

Judgement

Chander Bhusan Barowalia, J

1. The present petition is maintained by the petitioner under Article 227 of the Constitution of India, against the order dated 05.09.2018, 20.4.2018 and 12.6.2018, passed by the learned Additional District Judge, Kullu, District Kullu, H.P. in Execution Petition No.34/2017 and 61/2017, with a prayer to set aside/quash the impugned orders by dismissing the execution petition of respondent No.1.

2. Briefly stating the facts giving rise to the present petition are that respondent No.1 filed arbitration case against the petitioner and proforma respondent at Chandigarh and the learned Arbitrator allowed the arbitration case on 02.09.2013 and ordered that the petitioner and proforma respondent are liable to pay a sum of Rs.3,43,482/- along with cost of Rs.2500/ -. It has been alleged that the award was passed ex-parte, as the petitioner was not served in the arbitration case. The respondent No.1 filed Execution Petition bearing Ex. Pet. No.34/2017 before the learned Additional District Judge, Kullu. Further it has been averred that during the pendency of such petition, respondent No.1 filed

application under Order 21 Rule 37 read with Section 151 CPC, for the arrest and detention of the petitioner and proforma-respondent and the same was allowed on 20.4.2018. The learned Trial Court ordered issuing of warrant of arrest against the petitioner and proforma respondent vide orders dated 20.4.2018 as well as 12.6.2018 and 5.9.2018.

3. It has been alleged that the impugned orders are against law and facts on record, which have been passed ignoring the true facts of the case, because the petitioner has deposited some amount i.e. Rs.35,000/- on 29.08.2018, Rs.15,000/- on 19.3.2018, Rs.10,000/- on 28.4.2018 and Rs.11,000/- on 04.12.2017, hence, it has been prayed that the impugned orders are liable to be set aside.

4. It has been alleged that depositing of the aforementioned amounts is well within the knowledge of respondent No.1 and this fact was concealed by respondent No.1, before the learned Trial Court. It has been averred that the petitioner filed an application before the learned Trial Court apprising the factum of depositing the aforesaid amount, but the application was not taken on record by the learned Court for the reasons best known to it. Even, respondent No.1 has not apprised the learned Trial Court about such application for one time settlement, as the petitioner was ready to pay Rs.1,75,000/- as full and final payment to respondent No.1. Hence, it is averred that this important aspect of the matter will certainly make the execution petition infructuous.

5. That though the learned Arbitrator has no jurisdiction at Chandigarh and the award dated 02.09.2013 has been passed ex-parte, but since the petitioner has already paid the aforesaid amount to the respondent No.1 and is ready and willing to settle the matter forever. However, the authorized agent of respondent No.1 is not apprising the true facts to respondent No.1.

6. It has been contended that the application under Order 21 Rule 37 read with Section 151 of the Code of Civil Procedure has been wrongly allowed by the learned Trial Court, because the petitioner is depositing the decretal amount time and again and his vehicle has met with an accident and there is total loss of the same and the petitioner is facing great hardship in returning the loan amount in one installment because he cannot file claim case of his vehicle, as the documents of the vehicle were destroyed during the time of accident because of the vehicle in question could not be traced out from the place of accident.

7. Further, it has been alleged that before ordering arrest and detention of the petitioner, the movable and immovable properties of the petitioner is required to be attached and sold and in this case, the learned Trial Court has wrongly adopted coercive method for the recovery of the decretal amount, which is not permissible under law. Such procedure has been prescribed under Order 21 Rule 11 C.P.C. for the recovery of the decretal amount. Even on the face of record, the execution petition is time barred and is not tenable, hence, the impugned orders are liable to be set aside and quashed as per facts and circumstances of

the case.

8. I have heard the learned counsel for the parties and have gone through the record.

9. At the very outset, it is seen that as far as the order passed by the learned Court below is concerned, it seems that the order was passed by it for the arrest of the Judgment Debtors, as they had neither chosen to appear nor came forward to file any reply. In these circumstances, this Court finds that when the petitioner has not appeared before the Court below as a Judgment Debtor nor has filed any reply, he can be dealt in accordance with law. However, this Court at the same point of time, finds that the Court below should have at first issued warrants of attachment and sale of the property, if the property is not available for the satisfaction of the amount only then, the warrant would have been issued.

10. In these circumstances, the present petition is allowed and it is ordered that the Court below will firstly issue the warrants of attachment and sale of the movable property and, thereafter, immovable property of the petitioner and after that take other coercive methods.

11. The result of the above discussion is that the order of the Court below ordering the arrest of the J.Ds is quashed and it is ordered that the Court below, at the first instance, shall attach and sale the property of the petitioner for the recovery of the due amount and, thereafter, take coercive steps, if required, in accordance with law. Accordingly, the present petition is disposed of.

12. The parties are directed to appear before the Court below on 27th September, 2019. Pending application(s), if any, also stand disposed of.