

(2001) 08 P&H CK 0201

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Revision No. 1585 of 2001 (O and M)

Iqbal Singh

APPELLANT

Vs

Punjab Pesticides, Patti

RESPONDENT

Date of Decision: Aug. 21, 2001**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 38 Rule 5, Order 39 Rule 1, Order 39 Rule 2, 151

Citation: (2002) 1 CivCC 210 : (2001) 4 RCR(Civil) 649**Hon'ble Judges:** R.C. Kathuria, J**Bench:** Single Bench**Advocate:** B.S. Jaswal, for the Appellant; B.R. Mahajan, for the Respondent**Final Decision:** Allowed

Judgement

R.C. Kathuria, J.

Plaintiff-petitioner Iqbal Singh has preferred this revision petition against the order dated February 24, 2001 passed by the Civil Judge (Junior Division), Patti, whereby on an application filed by the defendant-respondents in their counter claim seeking recovery of Rs. 65,000/- along with interest from the plaintiff-petitioner, he (plaintiff-petitioner) was asked to show cause why he should not furnish security in the sum of Rs. 65,000/-.

2. Plaintiff-petitioner was running a shop in the name and style of Guru Ram Dass Khedi Store, Patti, District Amritsar. He used to purchase pesticides from the defendant-respondents during the period from January 1, 1997 to January 31, 1999. A large number of transactions for supply of pesticides had taken place between them. The plaintiff-petitioner had been making the payments from time to time to the defendant-respondents against the supply of pesticides to him. During the period in question, as the original bills were not sent to the plaintiff, a request was made by him to the defendants to supply the same and also to render the accounts

so that any amount due from either of the party could be settled. It was also case of the plaintiff that he had paid advance money to the defendants and he claimed the balance amount due to him. The defendants not only failed to furnish the necessary details, but also denied to render the accounts. The defendants also tried to recover the amount from the plaintiff with the help of police and his signatures were obtained on some agreement. The suit was contested by the defendants. In reply, they admitted that the plaintiff had purchased pesticides from them on February 20, 1998 and May 19, 1998 of the value of Rs. 57,000/- and Rs. 23,890/-, respectively, out of which payment of Rs. 19,540/- was made and the balance amount of Rs. 61,350/- along with interest was still recoverable from him. Thus, they put up a counter claim of Rs. 65,000/- along with costs and future interest against the plaintiff.

3. On the above pleadings of the parties, issues were settled and the case was posted for evidence of the plaintiff-petitioner for March 20, 2001. On February 23, 2001, the defendant-respondents filed an application under Order 38 Rule 5 and Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") praying for conditional attachment of land measuring 11 Marlas belonging to the plaintiff. It was averred in the application that Manjit Kaur, co-sharer, had sold land measuring 11 Marlas out of the land measuring 3 Kanals 16 Marlas situated in Village Chuslewar, tehsil Patti, District Amritsar, details of which were mentioned in the application, to Resham Singh son of Hardip Singh. It was further pleaded in the application that said Resham Singh had also sold land measuring 11 Marlas to Iqbal Singh, plaintiff-petitioner, for which mutation No. 2842 had been sanctioned in his name. On the basis of these averments; it was pleaded by the defendant-respondents that the plaintiff-petitioner had the intention to dispose of his entire property including the land mentioned above with the sole motive to avoid payment of the amount of Rs. 65,000/- along with interest. Notice of the application was given to the plaintiff-petitioner for February 24, 2001 who contested the same and filed reply on that date. After hearing counsel for both the parties, the trial Judge passed the impugned order on February 24, 2001.

4. I have heard the learned counsel for the parties.

5. The learned counsel for the petitioner-plaintiff has submitted before me that the learned trial Judge has totally overlooked the requirements of Order 38 Rule 5 of the Code when he called upon the petitioner to show causes as to why he should not be asked to furnish security in the sum of Rs. 65,000/- and for the said purpose the case was posted for hearing for March 20, 2001. Support was sought by him from the principle laid down in *New Shree Durga Vasira Bhandar v. Tarlok Nath and Co.*, 1990 Civil Court Cases 187 (Allahabad), *Onkar Mat Mittal v. State Bank of Patiala*, 1992(1) RRR 45 and *Rajinder Singh v. Mahender Singh*, 1999(4) RCR 309 (P&H) : 1999(4) ICC 526.

6. It has been laid down in the above-mentioned cases that passing of an order under Order 38 Rule 5 of the Code is an extraordinary remedy and before a plaintiff can succeed he has to give material particulars, source of information and grounds to prove the allegations made in the application. The Court would not be justified in issuing an order for attachment before judgment, or for security, merely because it thinks that no harm would be done thereby or that the defendants would not be prejudiced. A mere allegation that the defendant was selling off his properties is not sufficient to invoke the above said provisions.

7. The learned counsel for the respondent-defendants has justified the order of the trial Judge for the reasons recorded therein. It is necessary to notice the order dated February 24, 2001. It reads as under :-

"Reply filed. Arguments heard. The application has been partly allowed. Conditional warrant of attachment of land bearing Killa No. 89/21/2 situated in Village Chuslewar, tehsil Patti, according to jamabandi for the year 1994-95 be issued for attaching this property. Notice in form No. 5, appendix "D" be issued to the plaintiff to show cause why he should not furnish the security in the sum of Rs. 65,000/-. Now file be put up on 20.3.2001 for plaintiffs evidence and for furnishing security."

A reading of the above order leaves no manner of doubt that the trial Judge has not adverted to any of the requirements of Order 38 Rule 5 of the Code noticed in the above-mentioned cases. There is no indication whatsoever in the order as to on what basis the Court was persuaded to come to the conclusion that the petitioner was out to alienate the property. The facts stated in the application filed by the respondents though referred to the transactions effected by Manjit Kaur, Resham Singh and the petitioner-plaintiff Iqbal Singh, but these were not taken notice of in the order. The learned counsel for the respondents stated that no final order has been passed by the trial Judge and only a show cause notice has been issued calling upon the plaintiff to furnish security and no prejudice has resulted to the plaintiff on this account. There is absolutely no merit in the submission made. The parameters laid down in the above-mentioned cases cannot be overlooked even at the stage when preliminary order is passed calling upon the opposite party to show cause as to why he should not furnish the security in the sum of Rs. 65,000/-, for which prayer was made from the side of the respondents. Manifestly, the order passed by the trial Judge does not fulfil the requirements of law and cannot be sustained.

8. For the aforesaid reasons, this revision petition is allowed and the order dated February 24, 2001 passed by the Civil Judge (Junior Division), Patti, is set aside. The parties, through their counsel, are directed to appear before the trial Court on September 19, 2001.

9. Revision allowed.