
(2012) 07 P&H CK 0313

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 7317 of 2010

Didar Singh @ Dara
Singh

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision: July 23, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 27, Order 21 Rule 37, 151, 51
- Constitution of India, 1950 - Article 227

Citation: (2013) 169 PLR 859 : (2013) 1 RCR(Civil) 588

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: Surinder Garg, for the Appellant; S.S. Pathania, for the Respondent

Final Decision: Allowed

Judgement

L.N. Mittal, J.

Judgment debtor Didar Singh alias Dara Singh by filing this revision petition under Article 227 of the Constitution of India has challenged order dated 8.10.2010, Annexure P/2 passed by the executing court i.e. learned Additional Civil Judge (Senior Division), Fazilka thereby ordering issuance of conditional arrest warrant against the judgment debtor on application Annexure P/1 moved by respondent decree-holder State Bank of India u/s 51 read with Order 21 Rule 37 and section 151 of the CPC (in short, CPC). I have heard learned counsel for the parties and perused the case file.

2. Counsel for the petitioner contended that no notice of application Annexure P/1 was issued to the JD-petitioner nor any opportunity of hearing was given before passing the impugned order which is, therefore, unsustainable.

3. I have carefully considered the aforesaid contention which merits acceptance. Impugned order passed by the executing court is reproduced as under:-

Present:- Sh. J.P. Dhawan, Branch Manager in person on behalf of DH Bank.

DH has filed an application u/s 51 read with Order 21 Rule 37 and Section 151 CPC. Heard. In view of the reasons mentioned in the application, conditional warrant against the JD is ordered to be issued for 20.12.2010.

4. Application Annexure P/1 was moved on 8.10.2010 and impugned order was passed on the same day without issuing notice of the application to the JD and without granting him opportunity of hearing. Section 51 CPC provides that where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons to be recorded in writing, is satisfied as to the conditions mentioned in the aforesaid provision. Thus, it was mandatory for the executing court to have given show cause notice to the JD against his proposed detention in prison. However, executing court passed the impugned order without giving any such opportunity to the JD. The impugned order is thus completely perverse and illegal and suffers from jurisdictional error.

5. In addition to the aforesaid, even Order 21 Rule 37 CPC stipulates that the court shall instead of issuing a warrant for arrest of judgment debtor issue a notice calling upon him to appear before the court and to show cause why he should not be committed to the civil prison. Thus, both u/s 51 as well as under Order 21 Rule 27 CPC, it was mandatory for the executing court to have required the JD to show cause against his proposed detention but no such opportunity to show cause was given to the JD. No notice of the application Annexure P/1 was issued to him.

6. For the reasons aforesaid, the instant revision petition is allowed. Impugned order Annexure P/2 passed by the executing court is set aside. The executing court is directed to decide application Annexure P/1 moved by the DH/respondent afresh in accordance with law. Parties are directed to appear before the executing court on 17.8.2012.