



Surjan Singh vs. Jawahar Lal

CMPMO No. 275/2024

21.6.2024 Present: Mr. K. B. Khajuria, Advocate, for the petitioner.

CMP No. 9540/2024

The petitioner has deposited Rs. 1,95,000/- in the registry of this Court and undertakes to deposit the remaining amount of Rs.1,00,000/- within six weeks. Accordingly the application is allowed and disposed of.

CMPMO No. 275/2024

Aggrieved by the the order of learned executing court, dated 4.7.2023, whereby the executing Court, after dispensing with the requirement of issuance of notice to the judgment debtor, directed the coercive steps to be taken against the judgment debtor (petitioner herein) to realize the decretal amount within 15 days.

2 This order shocked the conscience of the Court when the matter was placed before it on 24.5.2024 and the following order came to be passed:-

"It is not only shocking but appalling to note the manner in which learned Senior Civil Judge, Kinnaur at Reckong Peo has dealt with execution petition by not even caring and bothering to issue notice to the judgment debtor and straightway directed the decree holder to take coercive steps as would be evident from the order dated 4.7.2023. The then Senior Civil Judge, Kinnaur is directed to furnish his explanation as to on what basis and under what provision of law, he has passed the order impugned herein so as to reach before this court well before the next date of hearing.

List on 14.6.2024. In the meanwhile, further proceedings in execution petition No.284/2023 are ordered to be stayed subject to petitioner's depositing the entire decretal amount."

3 In compliance to the aforesaid order, learned Judicial Magistrate has filed his reply, relevant portion whereof reads as under:-

In reference to letter No.HHC/ Judl.CMPMO/ 275/2024 titled as "SURJAN Singh vs. JAWAHAR LAL", at the very outset, the undersigned may tender it's UNCONDITIONAL APOLOGY for inconvenience caused due to inadvertent act or omission on part of the undersigned against which explanation is sought.

However, as asked, the undersigned may humbly submit that just to assure strict compliance of the mandate of Hon'ble Apex Court in Shub Karan Bubna @ Shub Karan Prasad Bubna vs Sita Saran Bubna 2009 AIR SCW 6541, Rahul S. Shah Vs. Jitender Kumar Gandhi (2021) 6 SCC 418, & Pradeep Mehra Vs. Harijivan J. Jethwa 2023 LL (SC) 936, where Hon'ble Apex Court, while reminding the executing court that since execution is nothing but continuation of suit and thus by exhausting remedy like u/O, 21, R.22 CPC etc, and without waiting for reminder by DH, it needs to make all genuine endeavours to bring the execution petition to a logical conclusion within 6 months, the undersigned, (who was having facility of only one steno, and was the only officer stationed at Reckongpeo, and was burdened with huge number of cases), has devised the method of making short orders for the sake of brevity and also to avoid repetition of the caveats, as otherwise provided in great detail in the relevant FORMATS for warrant of attachment, by simultaneously giving training as well as clear instruction to Civil Alhmad and Bailiff Recovery Tehsildar, (through Formats) to the effect that once the DH provides the exact detail and extent of property as required to be attached sufficient for realisation of decretal amount, within 15

days, only then to issue WARRANT OF ATTACHMENT of MOVABLE PROPERTY, in the first instance, & (in absence of the same), of IMMOVABLE one, strictly as per format.

The Civil Alhmad was further instructed to take affidavit along with list of property or jamabandi, on record from DH, if not filed earlier with execution petition, to avoid inadvertent violation of Section 60 CPC, &/or to assure arrest and attachment of immovable property, only as last resort.

The DH(s) through their counsel, in such nature of petition, are always advised to exhaust remedy under Order 21 Rule 41 CPC, in case it has no knowledge about the detail of the property.

The undersigned may reemphasize the reasons for devising such methodology, as per the FORMAT FORM Nos. 16, 23, 23 to 29 of APPENDIX E relating to U/O 21, R.53/54/64/66 CPC, 1908 are axiomatic and self speaking and thus, assure that no prejudice be caused to JD, even if his attendance is dispensed with, as per mandate of Order 21 Rule 22 CPC.

Needless to say, that the aforesaid FORMATS doubly assures that JD may avoid the attachment by settling the terms even on the spot or by payment etc., strictly as per law.

Last but not the least, the undersigned humbly concede that huge workload or lack of sufficient infrastructure including lack of well trained staff, since cannot be made an excuse to not pass more elaborate orders, ergo, the undersigned, while parting with the explanation, once again tender it's utmost sincere & UNCONDITIONAL APOLOGY and beg for KIND MERCY of Hon'ble Registry as well as Hon'ble HC, with joint folded hands, for inadvertent and bona fide errors & omissions in ZIMINI ORDERS, with further assurance not to avoid such mistake in future".

4 At the outset, it needs to be observed that it is on very rare occasion(s) that this court questions the authority

and the wisdom of the trial court(s) or executing court(s) and only goes into the legality or illegality of its order(s). It is only when such a glaring and shocking incidence comes to the notice of the court that explanation is sought for.

5 It needs to be observed that howsoever well intended the order of court may be, the same is essentially required to be passed within the parameters of law.

6 Section 51 of the Code of Civil Procedure when read along with other provisions as contained in order 21 makes it abundantly clear that a show cause notice to the judgment debtor is mandatory before initiating any coercive steps and enforcing a decree for payment of money is no exception.

7 Undoubtedly, there has to be an expeditious disposal of the execution petition, but, as observed above, the mandatory provisions of law cannot be overlooked or thrown to the winds.

8 It goes without saying that for a Judge to pass such a wanton order ignorant of the rudimentary principles of law; is not only highly improper but in violation of the fundamental rights of the citizens conferred by Article 21 of the Constitution of India, which seeks to tenaciously protect his liberty. Such rashness shows abject lack of probity, sensitivity, humanism, understanding, detachment and maintaining judicial discipline, the last being the uppermost consideration.

9 Even the excuse of everyday rush and hurry of court business or an oversight cannot save such a perverse order. No Judge ought to have passed such a terrifying order, the judicial impropriety of which disturbs the conscience of this court. It brings the judicial process to infamy in public and the Bar if it were made extensively viral, which would shake the confidence of the people in the institution which dispenses justice as the guardian of law and to which they look upon as their saviour. The public reposes blind faith and implicit trust in the courts of law that they will get from them justice according to law and nothing less, despite all odds and travails they may face before knocking at its door or being called in.

10 Nonetheless, I deem it appropriate to leave it here or else it may cause embarrassment to not only the concerned Judicial Officer but the institution at large, which may ultimately affect the career prospects of the concerned Judicial Officer.

11 Issue dasti notice for the service of the respondent returnable for 5.7.2024, on taking steps within two days.

12 Interim order to continue.

(Tarlok Singh Chauhan)
Judge

21.6.2024
(pankaj)