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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CR-2692-2021 (O&M)  
Date of Decision: 17.09.2025**

**M/s Sachdeva and Sons Industries Pvt. Ltd.**

**...Petitioner**

**VERSUS**

**M/s NRC Industries Ltd. and others**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

**Present:** Mr.Amit Jain, Sr. Advocate with  
Mr. Parit Aggarwal, Advocate  
for the petitioner.

Mr.Amit Jhanji, Sr. Advocate with  
Mr. Viraj Gandhi, Advocate  
for respondents No.1 and 2.

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**HARKESH MANUJA, J. (ORAL)**

By way of present revision petition, challenge has been laid to an order dated 15.01.2020 passed by the Court of learned Civil Judge (Senior Division), Amritsar; whereby an application under Order 38 Rule 5, preferred at the instance of plaintiffs / respondents No.1 and 2 was allowed and a direction was issued to attach the property of petitioner/ defendant No.5.

2. Briefly stating, respondents No.1 and 2 being plaintiffs filed a suit for recovery against respondents No.3 to 5, herein, being defendants 1 to 3; having impleaded respondent No.4 as defendant No.4 and the petitioner being defendant No.5. The suit was filed for



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recovery of Rs.6,71,28,7568/- with Rs.5 crores as principal amount and the remaining towards interest. In short, it was pleaded that defendants No.1 to 3 initially approached defendant No.4 Bank for grant of financial assistance and in lieu thereof, defendant No.5 deposited its 07 title deeds pertaining to different properties situated in Village Chabbha, Tehsil and District Amritsar, as security. For convenience, the details thereof are as under:-

<b>S.NO.</b>	<b>DEED NO.</b>	<b>DATE</b>	<b>AREA</b>
1.	4607	10.07.1974	7 K 10 M
2.	9283	07.03.1973	16K 1M
3.	1270	28.04.1975	4K 2M
4.	2724	23.07.1976	8K
5.	9282	07.03.1973	7K 10M
6.	3788	07.09.1979	14K 8M
7.	558	29.04.1977	12K 13M
	<b>TOTAL</b>		<b>68k 8M</b>

It was further pleaded that, later, under a mutual agreement between the parties, financial assistance to the tune of Rs.5 crores was granted in favour of defendants No.1 to 3 by the plaintiffs and the title deeds belonging to defendant No.5 were handed over by defendant No.4 to the plaintiffs. It was also pleaded that the cheques issued towards discharge of the said loan facility got dishonoured and in the complaints preferred under Section 138 of the



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Negotiable Instruments Act, 1881, for short 'the Act', defendants No.1 to 3 were declared proclaimed offenders.

3. During pendency of the suit, plaintiffs filed an application under Order 38 Rule 5 CPC with a prayer for attachment of the properties owned by defendant No.5 in terms of 07 titled deeds; expressing their apprehension that defendant No.5 in connivance with other defendants was trying to dispose of said properties situated in Village Chabbha, Tehsil and District Amritsar.

4. The aforesaid application was opposed at the instance of defendant No.5/ petitioner. The learned trial Court vide its order dated 15.01.2020 allowed the application filed at the instance of plaintiffs and directed the attachment of aforementioned properties. Hence the present revision petition.

5. Learned counsel for the petitioner submits that the learned trial Court while passing the order dated 15.01.2020 exceeded its jurisdiction. He contends that before passing the order of attachment of the properties, the learned trial Court was to first adjudicate upon, as to whether the petitioner/ defendant No.5 could be called upon to furnish adequate security against the amount sought to be recovered in the suit. He further points out that in the application, no details were mentioned to support the apprehension expressed by the plaintiffs about alienation of the properties by the petitioner and thus prays that the impugned order was liable to be set aside.



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6. On the other hand, learned Senior counsel appearing on behalf of respondents No.1 and 2 submits that the apprehension of the plaintiffs/ respondents No.1 and 2 was fully substantiated from the fact that the cheques issued by defendants No.1 to 3 towards discharge of the loan liability were dishonoured and in the proceedings under Section 138 of the Act, they were declared proclaimed offenders. Learned Senior Counsel thus contends that the attachment of the property was rightly ordered by the learned trial Court so as to safeguard the interest of the plaintiffs against the financial assistance extended to defendants No.1 to 3 and as such the impugned order calls for no interference.

7. I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made on behalf of the petitioner/ defendant No.5.

8. Before delving into the merits of the case in hand, it may be essential to minutely go through the provisions of Order 38 Rule 5 CPC as well as para 3 of the application, which are extracted hereunder:-

***“Order 38 Rule 5: Where defendant may be called upon to furnish security for production of property.***

***(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,-***



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(a) *is about to dispose of the whole or any part of his property, or*

(b) *is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,*

*the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.*

(2) *The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof.*

(3) *The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.*

(4) *If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void.”*

**“PARA 3 OF THE APPLICATION:**

3. *That a huge amount is sought to be recovered from the defendants as per the details mentioned in the plaint. That however defendant No.5 in connivance with the other defendants is trying to dispose of by selling the property with the malafide intent to obstruct and delay the execution of decree which is likely to be passed by this Hon'ble Court against it. That the title deeds of the said property have already been deposited by the defendant No.5 as security of the loan advanced to defendants No.1 to 3 i.e. title deed*



*No.4607 qua the area of 7 kanal 10 marlas dated 10.07.1974, title deed No.9283 qua the area of 16 kanal 1 marla dated 07.03.1973, title deed No 1270 qua the area of 4 kanal 2 marla dated 28.04.1975, title deed No. 2724 qua the area of 8 kanal dated 23.07.1976, title deed No.9282 qua the area of 7 kanal 10 marlas dated 07.03 1973, title deed No. 3788 qua the area of 14 kanal 8 marla dated 07.09.1979, title deed No.558 qua the area of 12 kanal 13 marlas dated 29.04.1977 situated at village Chabbha, Tehsil and District Amritsar.”*

In short, perusal of Order 38 Rule 5 CPC clearly reflects that the order of attachment of property has to mandatorily preceded by an order directing the defendant No.5 to furnish security at the first instance.

9. In the present case, no such order directing defendant No.5/ petitioner to furnish security towards the amount sought to be recovered in the suit was ever passed in terms of Order 38 Rule 5 (1) (b) CPC before passing the order of attachment of subject property in exercise of powers under Order 38 Rule 5 (4) thereof, the impugned order was unsustainable in law.

10. Be that as it may, from the contents of the application preferred at the instance of plaintiffs/ respondents No.1 and 2 under Order 38 Rule 5 CPC, it could not be even *prima facie* found that in what manner the petitioner/ defendant No.5 was trying to dispose of the property forming part of the aforementioned title deeds. The



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apprehension expressed by plaintiffs/ respondents No.1 and 2 was nowhere substantiated as even the basic minimum facts in this regard were not even pleaded in the application. No date or month besides any source even based on *hearsay* knowledge about the petitioner/ defendant No.5 about to alienate the subject property was pleaded in the application.

11. Furthermore, a perusal of the impugned order shows that even the satisfaction recorded by the Court about defendant No.5/ petitioner going to sell the subject property is not based on any material on record. Moreover, the learned trial Court even failed to record its satisfaction that the petitioner/ defendant No.5 intended to obstruct or delay the execution of any decree that may be passed against it. Before exercising power under this rule, the Court needs to be satisfied *prima facie* that there is a reasonable chance of a decree being passed in the suit against the defendants. The power under Order 38 Rule 5 CPC is a drastic and extraordinary power as such, should not be exercised mechanically but be used sparingly and strictly in accordance with the Rule.

12. As per the discussion made hereinabove, in the given facts, the impugned order does not comply with the mandate of Order 38 Rule 5 CPC. Accordingly, the revision petition is allowed. Order dated 15.01.2020 passed by the learned Civil Judge (Senior Division), Amritsar allowing the application filed by the plaintiffs/



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respondents No.1 and 2 under Order 38 Rule 5 CPC is hereby set aside.

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

17.09.2025  
**sanjay**

**( HARKESH MANUJA )  
JUDGE**

Whether speaking/reasoned ?	Yes/No
Whether Reportable ?	Yes/No