

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

116

CR-813-2025

Date of Decision: 07.02.2025

M/s Charanji Lal Raj Kumar Commission Agent Petitioner

Versus

Mohinder Singh Respondent

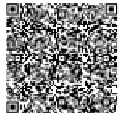
CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Yagsimant Attri, Advocate for the petitioner.

NIDHI GUPTA, J. (ORAL)

Prayer in this revision petition filed under Article 227 of the Constitution of India, is for setting aside the orders dated (i) 13.11.2024 (Annexure P-5); (ii) 04.12.2024 (Annexure P-7) and (iii) 09.12.2024 (Annexure P-8) passed by the learned Additional Civil Judge (Senior Division), Kaithal.

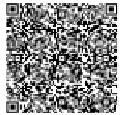
It is the case of the petitioner/plaintiff/Decree-Holder that the sole respondent/defendant/Judgment-Debtor had taken a loan of ₹7,32,000/- along with agreed *pendente lite and future* interest @ 18% per annum from the petitioner on dated 15.05.2012. As, the respondent had failed to repay the loan, the petitioner filed a suit for recovery of ₹7,32,000/- against the respondent along with interest thereupon. Vide judgment and decree dated 30.01.2018 (Annexure P-1), the said suit was decreed along with *pendente lite and future* interest @ 8% per annum on the principal amount of ₹6,00,000/-. Being aggrieved, the respondent had filed an appeal against the aforesaid judgment and decree Annexure P-1 which is pending adjudication before the Ist Appellate Court, however, no



stay was granted. Accordingly, the petitioner-Decree Holder had filed an Execution Petition (Annexure P-2) in which the respondent had filed objections (Annexure P-3). In the meantime vide Vasika No. 3781/1 dated 03.10.2012, the respondent-defendant had executed a release deed in favour of his wife and son, without receiving any consideration.

It is the case of the petitioner that the said transfer is fraudulent in nature. Accordingly, he filed an application praying for issuance of warrants of sale qua the said property. In the said application, vide order dated 15.02.2024 (Annexure P-4), the learned Executing Court, had stayed the execution of the sale of the property transferred by the respondent-JD in favour of his wife and son. However, subsequently, the said application of the petitioner was dismissed by the learned Executing Court vide order dated 13.11.2024 (Annexure P-5), on the ground that the transfer had been made by the respondent on 03.10.2012 which was prior to filing of the suit by the petitioner on 06.08.2013. The learned Executing Court had observed that therefore, it is not a fraudulent transfer and the same is not hit by the principle of *Lis-Pendens*. Thereafter, the petitioner had filed another application (Annexure P-6) for review of the order that 13.11.2024, which was also dismissed vide order dated 04.12.2024 (Annexure P-7). Subsequently, vide impugned order dated 09.12.2024 (Annexure P-8), the Execution petition itself has been dismissed for want of prosecution as, the petitioner had failed to produce copy of the list of properties of the respondent/Judgment-Debtor.

Learned counsel for the petitioner relies upon a judgment of this Court in **CR-2504-1985, ‘Waryam Singh @ Baryam Singh vs. Rameshwar Dass and others’**, decided on 02.03.1989, to contend that as



per Section 53 of the Transfer of Property Act, 1882 (for short-‘the Act’), in case, it is found that the transfer of immovable property has been made by the Judgment-Debtor with an intent to defeat or delay the creditors of the transferor shall be voidable at the option of the creditor. It is contended that Section 52 of Act comes into play after the filing of the suit whereas Section 53 of the Act would be operative prior to filing of the suit.

No other argument has been raised by learned counsel for the petitioner.

I have heard learned counsel for the appellant and perused the case file in great detail.

Keeping in view the entire facts and circumstances of the case as canvassed above, as also the legal submissions of the petitioner, the impugned order dated 09.12.2024 (Annexure P-8) is hereby set aside. It is directed that the petitioner-Decree Holder be granted one effective opportunity to file the list of property of the respondent-Judgment Debtor, if any before the learned Executing Court; however, subject to costs of ₹20,000/- to be deposited by the petitioner in the “Poor Patients’ Welfare Fund of the Post Graduate Institute of Medical Education and Research (PGIMER), Chandigarh”, within two weeks from today.

The instant revision petition stands **disposed of**, accordingly.

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

07.02.2025
rishu

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No