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

CR-5665-2025

Date of decision: 25.08.2025

SANDEEP

..Petitioner

Versus

MUNAWWAR JAMAL

..Respondent

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Ms. Ravisha Singh, Advocate
for the petitioner.

SUDEEPTI SHARMA, J. (Oral)

1. The present petition has been filed for setting aside impugned order dated 12.08.2025 passed in Civil Suit No.1278 of 2024, titled as “Sandeep Vs. Munawwar Jamwal”, whereby, application moved by the petitioner for seeking creation of charge over amount of Rs.1,50,000/-, which is directed to be paid to decree holder Anil Kumar in execution proceedings pending before learned Civil Judge (Junior Division), Karnal, pursuant to the judgment and decree dated 08.12.2018 passed in favour of the decree holder Anil Kumar.

2. Learned counsel for the petitioner contends that the petitioner filed civil suit in which the present application was filed and the same is wrongly dismissed. She further contends that the Court can always create a charge over the property under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 (in short CPC).

3. I have heard learned counsel for the petitioner and have gone through the file of this case with her able assistance.



4. The case of the petitioner is that petitioner instituted the civil suit against respondent for recovery of amount of Rs.5,50,000/- along with costs and interest on the ground that respondent cheated the petitioner by entering into agreement to sell dated 27.09.2023 for shop No.123, Sector 8, Karnal qua which respondent was directed to execute sale deed in favour of decree holder/Anil Kumar vide judgment and decree dated 08.12.2018 passed by learned Civil Judge (Junior Division) Karnal in another suit filed by Anil Kumar-decree holder.

5. Learned counsel for the petitioner has relied upon Order XXXVIII Rule 5 of the CPC, which reads as under:-

“Order XXXVIII

1. xx xx xx xx xx xx

2. xx xx xx xx xx xx

3. xx xx xx xx xx xx

4. xx xx xx xx xx xx

5. Where defendant may be called upon to furnish security for production 5. 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,-

(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.”

6. The above referred to Order XXXVIII Rule 5 of CPC would not be applicable in case of the petitioner since in the present case, admittedly, the decree is already passed in favour of Anil Kumar and execution proceedings are pending before learned Civil Judge (Junior Division) Karnal and the respondent is judgment debtor.

7. Further Order XXXVIII Rule 5 of CPC nowhere reads that the trial Court in pending recovery suit has power to create charge over the amount payable in execution proceedings in another case. Admittedly, the charge of amount of Rs.1,50,000/-, which the petitioner is asking for the creation of, pertains to execution of decree dated 08.12.2018 between decree holder Anil Kumar and judgment debtor Munawwar Jamal i.e. respondent herein, which (execution) proceedings are pending before learned Civil Judge (Junior Division) Karnal. The petitioner is not party to the said execution.

8. In view of the above, learned Civil Judge (Junior Division) Chandigarh has rightly observed in order dated 12.08.2025 that she has no jurisdiction to create a charge over the decretal amount payable in



independent execution proceedings pending before a competent Court at Karnal.

9. In view of the same, order dated 12.08.2025 requires no interference and the same is upheld. Accordingly, the present petition is ***dismissed*** being devoid of merits.

10. Pending miscellaneous applications, if any, are also disposed of.

August 25th, 2025

Ayub

**(SUDEEPTI SHARMA)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*