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

CR-5552-2022 (O&M)

Date of decision : 13.02.2025

Kulwant Rai

..... Petitioner

versus

Malkit Singh

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Sunny K.Singla, Advocate
for the petitioner.

Mr. Abhinav Goel, Advocate (Amicus Curiae)
for the respondent.

PANKAJ JAIN, J. (ORAL)

1 At the outset, the High Court Legal Services Committee, Chandigarh is directed to release fee to the Amicus Curiae as per schedule.

2 Instant revision petition is directed against order dated 28.10.2022 (Annexure P-5) passed by Executing Court.

3 The grievance of the petitioner is that without issuance of show cause notice conditional warrants of arrest have been issued against JD.

4 Petitioner is a JD, who is facing execution having suffered decree dated 14.11.2014 (Annexure P-1) whereby recovery suit has been decreed against him in the following terms :-

“This suit is coming on this 14th day of November, 2014 before me (Parminder Kaur, P.C.S. Addl. Civil Judge (Senior Division) Malerkotla for final disposal in the presence of Sh.Rajesh Rikhi, Adv. counsel for

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plaintiff and Sh.Liaqat Ali, Adv. Counsel for the defendant, it is ordered that the suit of the plaintiff is partly decreed with costs for the recovery of Rs.19,00,000/- along-with interest @ Rs.9% p.a from 4.4.2006 i.e. the date of cheque till the date of filing of suit and future interest @ Rs.6% p.a. from the date of filing the suit till actual realization.”

5 In execution application, vide impugned order conditional warrants have been issued against the petitioner. The challenge to the order is for want of show cause notice.

6 Amicus Curiae has brought to the notice of this Court that in fact during the pendency of the Civil suit which was instituted on 02.04.2009 wife of the petitioner-JD, Manjit Kaur sold the properties by way of sale deed dated 22.04.2009 to one Rekha Rani and thereafter, Rekha Rani further sold the same to one Gurdial Singh vide sale deed dated 19.03.2010. Gurdial Singh filed objection to the execution of the decree after the property was attached. He submits that Manjit Kaur received this property from the petitioner-JD only vide transfer deed dated 12.03.2008. He thus submits that the petitioner-JD is trying hard to defeat the decree holder in connivance with his wife and thus, the Executing Court has rightly proceeded against him.

7 Having heard learned counsel for the parties and after carefully going through records of the case, this Court finds that the only objection is with respect to show cause notice having not been served prior to issuance of conditional warrants. A perusal of the provisions as contained under Order 21 Rule 37 CPC reveal that the Court prior to issuance of warrants of arrest



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of JD, was required to issue notice calling upon him to appear before the Court and to show cause why he could not be committed to civil proceedings.

8 Keeping in view the aforesaid mandate of law, impugned order dated 28.10.2022 is hereby modified. The same be read as show cause notice. The petitioner shall respond to the same by appearing before the Executing Court on the next date of hearing i.e. 09.04.2025 and show cause as to why he should not be sent to the civil prison.

9 With the aforesaid modification, the present revision petition is disposed off.

13.02.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No