

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No. : 36 of 2026

Decided on : 07th October, 2026

Mohan Singh Thakur

...Petitioner

Versus

Ram Chand

...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?¹

For the petitioner : Mr. Amrick Singh, Advocate.

For the respondent : Mr. Inderjeet Singh Narwal, Advocate.

Virender Singh, Judge (Oral)

Petitioner Mohan Singh Thakur, has filed the present petition under Section 115 of the Code of Civil Procedure (hereinafter referred to as 'the CPC'), against the order dated 17.01.2026, passed by the Court of learned Senior Civil Judge, Mandi (hereinafter referred to as 'the executing Court'), in Execution Petition No.04 of 2023, whereby the learned executing Court has ordered to issue the warrant of

¹ *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

arrest against the petitioner, who is Judgment Debtor, before the learned executing Court.

2. As per the pleadings, respondent Ram Chand (hereinafter referred to as the Decree Holder'), has filed Civil Suit No.12027 of 2013, for recovery of Rs.54,40,000/-. The said suit was partly decreed, by passing the decree for recovery of Rs.40,00,000/- against the petitioner-JD with interest.

3. Against the said order, appeal was filed before the learned District Judge, Chandigarh, and the judgment and decree passed by the learned trial Court was upheld. Thereafter, RSA No.2812 of 2024, is stated to be pending before the High Court of Punjab and Harayana, at Chandigarh.

4. Subsequently, execution has been filed, which has been transferred to the learned executing Court. During the execution proceedings, the property of the JD was attached and warrant of attachment was issued against him on 31.05.2025. Thereafter, on 15.09.2025, proclamation of sale was ordered to be issued, in pursuance of which, Tehsildar Balh, submitted a report dated 25.11.2025, stating that the

auction could not be conducted, as, no bidder accepted the price fixed by the Court. Thereafter, the learned executing Court has passed the following order on 17.01.2026:-

“ Case file taken up today for proper order.

Warrant of sale received back unexecuted. I am satisfied that decree cannot be executed by ordinary means. DH is directed to deposit subsistence allowance for arrest and detention of JD @ ₹180/- per day and thereafter, warrant of arrest be issued against the JD returnable for 17.04.2026.”

6. Aggrieved from the said order, the present petition has been filed before this Court.

7. Order dated 17.01.2026, passed by the learned executing Court, is totally silent about any resistance shown by the JD in the sale of the attached land. Merely, receiving back of the warrant of sale unexecuted, would not give any occasion to the learned executing Court to take harsh steps to issue warrant of arrest against the JD by directing the DH to deposit the subsistence allowance @ Rs.180/- per day, for arrest and detention of JD.

8. The procedure, as prescribed, under Order 21 CPC, has not been adhered to, by the learned executing Court,

as before passing the order, which is impugned herein, the learned executing Court is bound to record the findings, qua the fact that despite having sufficient means, the JD is not paying the amount.

9. In this regard, it is apt for this Court to rely upon the provisions of Order 21 Rule 37 of the CPC, which are reproduced, as under :-

Order 21

xxx xxx xxx

“37. Discretionary power to permit judgment-debtor to show cause against detention in prison.—(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court 1 shall, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so

requires, issue a warrant for the arrest of the judgment-debtor.

10. The provisions of Order 21 Rule 37 of the CPC, have elaborately been discussed by the Hon'ble Supreme Court in ***Jolly George Varghese & Another versus The Bank of Cochin, (1980) 2 Supreme Court Cases 360.*** Relevant paragraphs 10 and 11 of the judgment, are reproduced, as under:-

“10. Equally meaningful is the import of Article 21 of the Constitution in the context of imprisonment for non-payment of debts. The high value of human dignity and the worth of the human person enshrined in Article 21, read with Arts. 14 and 19, obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence. Maneka Gandhi's case as developed further in Sunil Batra v. Delhi Administration, Sita Ram & Ors. v. State of U.P. and Sunil Batra v. Delhi Administration lays down the proposition. It is too obvious to need elaboration that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is appalling. To be poor, in this land of daridra Narayana, is no crime and to 'recover' debts by the procedure of putting one in prison is too flagrantly violative of Article 21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness. Unreasonableness and unfairness in such a procedure is inferable from Article 11 of the Covenant. But this is

precisely the interpretation we have put on the Proviso to s. 51 C.P.C. and the lethal blow of Article 21 cannot strike down the provision, as now interpreted.

11. The words which hurt are "or has had since the date of the decree, the means to pay the amount of the decree". This implies, superficially read, that if at any time after the passing of an old decree the judgment-debtor had come by some resources and had not discharged the decree, he could be detained in prison even though at that later point of time he was found to be penniless. This is not a sound position apart from being inhuman going by the standards of Article 11 (of the Covenant) and Article 21 (of the Constitution). The simple default to discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or recalcitrant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it. The provision emphasises the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and straitened circumstances will play prominently. We would have, by this construction, saved law with justice, harmonised Section 51 with the Covenant and the Constitution."

11. Even otherwise, this Court in ***Civil Revision No.123 of 2010***, titled as ***Ashok Kumar versus Social Mutual Benefits Company Ltd.***, has elaborately discussed the provisions of Order 21 Rule 37 of the CPC.

12. On the other hand, learned counsel appearing for the decree holder has relied upon the decisions of Hon'ble Supreme Court in ***Rahul S Shah versus Jinendra Kumar Gandhi & Others, (2021) 6 SCC 418***, as well as, the decision of this Court in ***CMPMO Nos.408 of 2024***, titled as ***Sumit Khanna & another versus Kanchan Sunil Adani & Others***.

13. With due respect to the law laid down by the Hon'ble Supreme Court, as well as, by a coordinate Bench of this Court, in the afore-stated cases, the same are not applicable to the facts and circumstances of the present case, as, the mandatory provisions of Order 21 of the CPC, cannot be ignored.

14. Moreover, in the present case, the learned trial Court has not recorded any fault against the JD, in the order dated 17.01.2026, and the warrant has been issued solely on the ground that the warrant of sale has been received back unexecuted.

15. Considering the above facts, the order dated 17.01.2026, does not stand in the judicial scrutiny by this Court. Consequently, the present petition is allowed and the order dated 17.01.2026, passed by the learned executing Court is set aside and the matter is remanded back to the learned executing Court to proceed further as per law; especially, in view of the order dated 15.09.2025, passed by the learned executing Court.

Pending applications, if any, shall also stand disposed of.

October 07, 2026*(ps)*

(Virender Singh)
Judge