

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.320 of 2026

Date of decision:16.09.2026

Mohan Lal

...Petitioner

Versus

Ram Chand

...Respondent.

Coram:

The Hon’ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?¹

For the petitioner: Mr. B.L. Soni and Mr. Nitin Soni,
Advocates.

For the respondent: None.

Romesh Verma, Judge (oral):

The instant petition has been filed against the order passed by the learned Senior Civil Judge, Kullu, in Execution Petition No. 115 of 2023, titled as *Ram Chand vs. Mohan Lal*, dated 15.05.2026.

2. The facts, as emerge in the present case, are that the respondent/decreed holder filed a suit for recovery against the present JD/petitioner in the Court of the learned Senior Civil Judge, Kullu, District Kullu, on 05.06.2018.

3. The said suit was decreed *ex parte* by the learned trial court on 19.07.2023, whereby the suit filed by the decree holder for a

Whether reporters of Local Papers may be allowed to see the judgment?

sum of Rs.1,50,000/-, along with interest at the rate of 9% per annum from the date of filing of the suit till its realization, was decreed in favour of the decree holder/respondent and against the present petitioner/judgment debtor.

4. The decree holder, in pursuance to decree passed by the learned trial court, filed an application for the execution and enforcement of the decree under the provisions of Order 21 Rule 11 of the Code of Civil Procedure. In the said application, it was prayed that the application be allowed and the judgment debtor be directed to pay Rs.2,25,959/- along with costs and interest to the decree holder.

5. To the said execution, the present petitioner/JD filed objections, and those objections came to be dismissed on 10.10.2025. Thereafter on 12.12.2025, Presiding Officer was on casual leave. On 24.3.26, it was observed that list of movable property of JD was already filed and the warrant of recovery was issued and report was called for 15.05.2026. The learned court below on 15.05.2026 ordered that as per report of Bailiff no property exists in the name of JD, in view of the same let warrant of arrest be issued. The Petitioner feeling aggrieved by order dated 15.05.2026 has approached this Court.

6. It is contended by Sh. B.L. Soni Learned counsel for the petitioner that the impugned order is erroneous and liable to be quashed and set aside. He submits that the learned court below has not complied the provision of Order 21 Rule 11-A of CPC. Therefore,

after accepting the present petition the impugned order is liable to quashed and set aside.

7. Learned counsel for the petitioner has drawn the attention of this Court and submitted that, as per the mandate of the Hon'ble Apex Court, the provisions of Order 21 Rule 11-A of CPC are mandatory, and in the present case, no such application has been filed by the decree holder. In the absence of an application accompanied by an affidavit, the impugned order which was passed without jurisdiction could not have been passed by the learned trial court and is thus liable to be quashed and set aside.

8. The Hon'ble Apex Court, in ***Civil Appeal No.2248 of 2025***, titled as ***Bhudev Mallick Alias Bhudeb Mallick & another vs. Ranajit Ghoshal & others***, decided on 17.01.2025, while interpreting the provisions of Order 21 Rule 11-A, has reiterated that where an application is made for the arrest and detention of the judgment debtor, it must be accompanied by an affidavit specifying the grounds on which the arrest is sought. Rule 11-A of Order 21 is in conformity with the substantive provisions of the proviso to Section 51 of the CPC. Stating of grounds or filing an affidavit is essential. The provision is thus mandatory and unless complied with, no arrest or detention of the judgment debtor can be ordered.

9. The same is the situation in the present case. The record nowhere suggests that any application under Order 21 Rule 11-A of

CPC came to be filed by the decree holder. Therefore, in view of the dictum of law laid down by the Hon'ble Apex Court in *Bhudev Mallick's case (supra)* read in conjunction with the provisions of Section 51 of the CPC, this Court is of the considered opinion that the impugned order passed by the learned trial court does not stand the judicial scrutiny of this Court and the same is liable to be quashed and set aside.

10. It is made clear that though the impugned order has been set aside for non-compliance of Order 21 Rule 11-A of CPC, but the decree holder shall be at liberty to avail the appropriate remedy in accordance with law for the execution of decree. The observation as made are only for the purpose of adjunction of the present case and the same shall have no bearing on the merits of the execution petition.

11. With these observations, the present petition stands disposed of along with pending application(s), if any.

(Romesh Verma)
Judge

16th September, 2026.
(vt)