



2026:DHC:5835-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **EFA (COMM) 4/2026 & CM APPL.7432/2026**

SAMSHAD

.....APPELLANT

Through: Mr. Bahar Uddin Barqi, Sr. Adv.
With Mr. Maroof Ahmad, Adv.

Versus

KEWAL RAM DASWANI

..... RESPONDENT

Through: Mr. Tarun Gahlot and Mr. Rohit
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT (ORAL)

% 21.07.2026

VINOD KUMAR, J.

1. The present appeal is directed against an order dated 23.12.2025 passed by learned District Judge, Commercial Court-13, Central District, Tis Hazari Courts, Delhi (hereafter as 'Executing Court') in Execution (Comm.) 456/25 whereby, the Executing Court issued arrest warrants against the appellant/judgment-debtor.
2. In course of execution of the money part of decree, the Executing Court passed the impugned order, which is reproduced as under:

"As per mediation report, the matter remained unsettled as parties did not participate or refused/declined to participate in proceedings.

Signature Not Verified

Signed By: PRAKASH KUMAR VAS
Signing Date: 23.07.2026
17:41:09

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Affidavit by JD about his assets stands now filed on record and it is found stated therein that he has no movable or immovable assets. Earlier, warrants of attachment issued against him at his residential address were also received back with report that no attachable articles of JD were found available in his house. However, the said report suggests that two floors of the residential property of JD are on rent.

The objections of JD are already on record and Ld. Counsel for DH submits that he has not to file any reply thereto and hence, arguments on the same have been heard straightaway.

It has been observed that all the points or objections raised by JD in his reply to this execution petition filed by DH stand already considered and rejected by this court while passing the judgment in suit between parties, in pursuance of which the decree under execution has been filed and none of the said grounds is relevant or worth being considered as a genuine objection of the JD to execution of the said decree.

Hence, the objections filed by JD are being dismissed being devoid of merits. Since it appears to this court that JD is intentionally and unreasonably avoiding to discharge his liability to pay the decretal amount, let his arrest warrants through the SHO of local area of his residence be issued on taking steps by DH within 7 working days from today.

List the matter now on 21.01.2026 for report”

3. Learned Counsel for the appellant has invited Court’s attention to Section 51 of the Code of Civil Procedure, 1908 (in short ‘CPC’) and submits that it mandates the Executing Court to grant an opportunity of showing cause to the judgment-debtor before issuing arrest warrants against him. He submits that the Executing Court, without issuing a show cause notice to judgment-debtor i.e. the appellant and thereby failing to follow the due procedure of law, has violated the spirit of Section 51 of the CPC alongside Rules 37 and 40 of Order XXI of the CPC.



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4. Learned Counsel for the appellant has relied upon two judgments of this High Court viz. ***M/S Cell Page Communication v. Vijay Shankar Pandey*** reported in **2022 SCC OnLine Del 3421** and as ***Nizam Sheikh v. Alimuddin*** reported in **2025 SCC OnLine Del 2226** in his support and accordingly prays that the impugned order may be set aside.
5. Opposing the submissions of learned Counsel for the appellant, learned Counsel for the respondent argues that the appellant/judgment-debtor had adopted all tactics to avoid payment of the decretal amount to the respondent/decreed-holder. However, he was unable to convince us on the issue of compliance of requirements of Section 51 of the CPC. Learned Counsel for the respondent fairly conceded that no show cause notice as per Section 51 or the Order XXI Rule 37 of the CPC was issued to the appellant/judgment-debtor.
6. The same issue came before one of us (C.Hari Shankar, J.) hearing the matter as a Single Judge in ***Cell Page Communication (supra)***, which has been cited by learned Counsel for the appellant. As this judgment not only reproduces Section 51 as well as Rule 37 and 40 of Order XXI CPC but also discusses the complete exposition of law on arrest and detention to civil imprisonment, we would like to reproduce it extensively as under:

“21. Section 51 of the CPC and Rules 37 and 40 of Order XXI of the CPC read thus:

Section 51

51. Powers of Court to enforce execution.—Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—



- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale or by the sale without attachment of any property;
- (c) by arrest and detention in prison [for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;
- (d) by appointing a receiver; or
- (e) in such other manner as the nature of the relief granted may require.

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied—

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation. —In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.



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Rules 37 and 40 of Order XXI of the CPC

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.

40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.—(1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of section 51 and to the other provisions of this Code, make an order for the detention of the judgment debtor in the civil prison and



shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) *A judgment-debtor released under this rule may be re-arrested.*

(5) *When the Court does not make an order of detention under sub-rule (3) it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.*

22. *Arrest and detention in prison is one of the modes by which Section 51 permits the executing court to enforce execution of a decree. This power is, however, expressly subject to the proviso to Section 51. It is well settled that a proviso is in the nature of an exception to the main provision. The proviso to Section 51 applies exclusively to a situation in which the decree under execution is a money decree, as in the present case. In such a case, there is an absolute proscription – as is reflected by the use of the words “shall not be ordered” – against execution of a money decree by detention in prison unless the protocol envisaged by the proviso is scrupulously followed. This protocol may be set out thus:*

(i) *The executing court is required, in the first instance, to grant, to the judgment debtor, an opportunity to show cause as to why he be not committed to prison.*

(ii) *Consequent on receipt of response from the judgment debtor to the said show cause notice, the Court has to be satisfied that one or more of the exigencies envisaged by Clauses (a) to (c) of the proviso exist. Clause (a) envisages the judgment debtor being likely to abscond or to leave the local limits of the jurisdiction of the Court or dishonestly transferring, concealing or removing any part of his property or committing any other bad faith in relation to his property, with the object or effect of obstructing or delaying the execution of the decree. Clause*



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(b) envisages a situation in which the judgment debtor, despite being possessed of the means to pay the amount of the decree or a substantial part thereof, refuses or neglects to do so. Clause (c) contemplates a situation in which the decree is for a sum for which the judgment debtor was bound to account in a fiduciary capacity.

(iv) It is only after issuing a notice to the judgment debtor to show cause against committal in prison, and the court is satisfied that one or more of these exigencies applies, that execution of the decree by detention in prison can be ordered.

23. Clearly, therefore, Section 51 prescribes a very rigid protocol before enforcing execution of a simplicitor money decree by detention of the judgment debtor in prison. This protocol is mandatory and non-negotiable.

24. Order XXI Rule 37 is, in a manner of speaking, a provision supplemental to Section 51 of the CPC and geared at facilitating the implementation thereof. Order XXI Rule 37 also applies where the execution application seeks execution of a money decree. The provision starts with the non-obstante clause, indicating that it prevails over other Rules in the CPC.

25. Order XXI Rule 37(1) provides that, in the case of an application for execution of a money decree, instead of issuing warrants of arrest of the judgment debtor, the Court shall – thereby indicating the provision to be mandatory – issue of notice to the judgment debtor calling upon him to appear before the Court on a specified date and show cause as to why he be not committed to the civil prison. The proviso to Order XXI Rule 37 relaxes this requirement “if the Court is satisfied, by affidavit or otherwise, and that the object and 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”.

26. It is obvious that insofar as the proviso to Order XXI Rule 37(1) compromises the liberty of the judgment debtor, it has to be subjected to a strict construction. It can apply, therefore, only where the Court, for clear and cogent reasons, satisfies itself that the judgment debtor is likely to abscond or leave the jurisdiction of the Court with the object or effect of delaying the execution of the decree.



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27. It is only where appearance is not made in response to the notice issued Order XXI Rule 37(1) that Order XXI Rule 37(2) empowers the Court to issue a warrant for arrest of the judgment debtor.

28. Order XXI Rule 40 envisages yet a further protocol, where a judgment debtor appears before the executing court in obedience to the notice issued under Order XXI Rule 37. Where notice is issued under Order XXI Rule 37(1) and in response thereto, the judgment debtor appears before the executing court, the court cannot straightaway direct him to be detained in civil prison, even where he is in default of execution of the decree. The Court is required to (i) hear the decree holder, (ii) take all such evidence as may be produced by the decree holder in support of his execution application and thereafter (iii) provide, to the judgment debtor, an opportunity to show cause as to why he be not committed to the civil prison. The exercise that Order XXI Rule 40(1) envisages is an inquisitorial exercise, as is apparent from the opening words of Order XXI Rule 40(2), which provides for detention, of the judgment debtor, in the custody of an officer of the Court, pending conclusion of the inquiry under Order XXI Rule 40(1). It is only after this inquisitorial exercise is carried out under Order XXI Rule 40(3), that the Court may direct detention of the judgment debtor in civil prison.

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32. The arrest of any citizen compromises his right to life and personal liberty, which are the most sanctified of the fundamental rights under Part III of the Constitution of India. Liberty is a sanctified preambular constitutional goal. Adherence, to any procedure which affects the liberty of the citizen, has to be strict and scrupulous.”

7. A Division Bench of this court was also faced with this very question in **Mohiet Anand v Parul Anand**, reported in **2024 SCC OnLine Del 1968**. The Division Bench summarized the entire law as under:



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“27. It is gleaned from a bare perusal of the above provisions that Section 51 of CPC, 1908, prescribes four main modes of execution:

- i. By delivery of property specifically decreed;
- ii. By attachment and sale of property;
- iii. Detention in prison in execution of a money decree; or
- iv. Appointment of Receiver.

28. **Proviso to Section 51** prescribes twin test to be satisfied before any person can be ordered to be detained in civil imprisonment; viz, firstly, there is an opportunity is given to Show Cause to the Judgment Debtor to explain as to why he should not be committed to prison. Secondly, it is after the Court arrives at a satisfaction which is to be recorded in writing, that the Judgment Debtor has since the date of decree, means to pay the amount or substantial part thereof and refuses or neglects to pay the same or that he is likely to transfer his money or is likely to abscond, that detention of the judgment debtor can be directed.

29. **Rule 37 of Order XXI, CPC** explains the procedure to be followed for arrest. It states that the process be commenced on an application being filed by the decree Holder for arrest of the Judgement Debtor and a Notice be issued to show cause why he should not be detained in civil imprisonment though warrants of arrest may be issued to secure his presence where the Court is satisfied by an affidavit or otherwise, that there is likelihood of his absconding or leaving the jurisdiction of the Court with an object to delay the execution and to avoid the compliance of the Orders. The warrants for arrest issued under Rule 37(2) is only to ensure the appearance of judgement debtor to undergo the mandatory inquiry under Rule 40 CPC. In such a case, it is necessary for the Court to record its reasons, for a nonspeaking order is as good as an arbitrary and draconian action against a person depriving him of his fundamental right to liberty contrary to the due process of law. This mandatory provision ensures the preservation of an individual's right to liberty, enshrined in Article 21 of our Constitution, by following the principle of natural justice and audi alteram partem as MAT.APP. (F.C.) 172/2022 Page 12 of 20 observed by the High Court of Punjab and Haryana in the case of Rajesh Arora (Supra).

30. **Rule 40 of Order XXI, CPC** further provides for the procedure for holding the mandatory inquiry before



remanding the person to prison. On securing the presence of the judgement debtor under Rule 37 before the court, all such evidence be taken by the court as may be produced by decree holder in support of his application for execution. Thereafter, the judgement debtor shall also be given of showing cause why he should not be committed to the civil prison. While the enquiry is underway, the judgement debtor may either be released on furnishing of a security or be arrested but this duration shall not be more than 15 days. Once the enquiry is concluded, then too, before ordering the imprisonment, the Court shall give an opportunity to satisfy the decree on his furnishing a security, before finally directing the Civil imprisonment. Sub-rule 3 of Rule 40 subjects the Court's power of detaining the judgment-debtor in civil prison to the provisions of Section 51. **Therefore, the Court cannot order detention unless it is satisfied that any of the three conditions in the Proviso to Section 51, exist.**

31. The detailed procedure as prescribed in the aforesaid rules makes it abundantly clear that a person's personal liberty cannot be curtailed only on the asking of the decree holder but arrest is to be resorted to only after scrupulous adherence to the procedure when faced with the recalcitrant attitude of the judgement debtor."

8. It must be kept in mind that the purpose and objective of the aforesaid provisions of Civil Procedure Code have a philosophical and Constitutional basis. This was amply elaborated by a judgment of the Supreme Court authored by Justice V.R. Krishna Iyer in **Jolly George Varghese and Another v The Bank of Cochin (1980) 2 SCC 360**, which also discussed the impact of Article 11 of the International Covenant on Civil and Political Rights as well as 54th Report of the Central Law Commission. It would be of benefit to reproduce the relevant paragraphs of the judgment:

"This litigation has secured special leave from us because it involves a profound issue of constitutional and international law and offers a challenge to the nascent champions of human rights in India whose politicised pre-



occupation has forsaken the civil debtor whose personal liberty is imperilled by the judicial process itself, thanks to Section 51 (Proviso) and Order 21, Rule 37 of Civil Procedure Code. Here is an appeal by judgement-debtors-the appellants-whose personal freedom is in peril because a court warrant for arrest and detention in the civil prison is chasing them for non-payment of an amount due to a bank- the respondent, which has ripened into a decree and has not yet been discharged. Is such deprivation of liberty illegal?

2. From the perspective of international law the question posed is whether it is right to enforce a contractual liability by imprisoning a debtor in the teeth of Article 11 of the International Covenant on Civil and Political Rights. The Article reads:

“No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation. (Emphasis added)”

An apercu of Article 21 of the Constitution suggests the question whether it is fair procedure to deprive a person of his personal liberty merely because he has not discharged his contractual liability in the face of the constitutional protection of life and liberty as expanded by a chain of ruling of this Court beginning with Maneka Gandhi's case. Article 21 reads:

“21. Protection of life and personal liberty.-No person shall be deprived of his life or personal liberty except according to procedure established by law.”

A third, though humdrum, question is as to whether, in this case, s. 51 has been complied with in its enlightened signification. This turns on the humane meaning of the provision.

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6. Right at the beginning, we may take up the bearing of Article 11 on the law that is to be applied by an Indian Court when there is a specific provision in the Civil Procedure Code, authorising detention for non-payment of a decree debt. The Covenant bans imprisonment merely for not discharging a decree debt. Unless there be some other vice or mens rea apart from failure to foot the decree, international law frowns on holding the debtor's person in civil prison, as hostage by the court. India is now a signatory to this Covenant and Article 51 (c) of the



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Constitution obligates the State to "foster respect for international law and treaty obligations in the dealings of organised peoples with one another". Even so, until the municipal law is changed to accommodate the Covenant what binds the court is the former, not the latter. A. H. Robertson in "Human Rights-in National and International Law" rightly points out that international conventional law must go through the process of transformation into the municipal law before the international treaty can become an internal law.

"From the national point of view the national rules alone count.. With regard to interpretation, however, it is a principle generally recognised in national legal system that, in the event of doubt, the national rule is to be interpreted in accordance with the State's international obligations."

The position has been spelt out correctly in a Kerala ruling on the same point. In that case, a judgment-debtor was sought to be detained under Order 21, Rule 37 C.P.C. although he was seventy and had spent away on his illness the means he once had to pay off the decree. The observations there made are apposite and may bear exception:

"The last argument which consumed most of the time of the long arguments of learned counsel for the appellant is that the International Covenants on Civil and Political Rights are part of the law of the land and have to be respected by the Municipal Courts. Article 11, which I have extracted earlier, grants immunity from imprisonment to indigent but honest judgment-debtors."

The march of civilization has been a story of progressive subordination of property rights to personal freedom; and a by-product of this subordination finds noble expression in the declaration that "No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation." This revolutionary change in the regard for the human person is spanned by the possible shock that a resuscitated Shylock would suffer if a modern Daniel were to come to judgment when the former asks the pound of flesh from Antonio's bosom according to the tenor of the bond, by flatly refusing the mayhem on the debtor, because the inability of an impecunious oblige shall not imperil his liberty or person under the new dispensation proclaimed by the Universal Declaration of Human



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Rights. Viewed in this progressive perspective we may examine whether there is any conflict between Section 51 CPC and Article 11 of the International Covenants quoted above. As already indicated by me, this latter provision only interdicts imprisonment if that is sought solely on the ground of inability to fulfil the obligation. Section 51 also declares that if the debtor has no means to pay he cannot be arrested and detained. If he has and still refuses or neglects to honour his obligation or if he commits acts of bad faith, he incurs the liability to imprisonment under Section 51 of the Code, but this does not violate the mandate of Article 11. However, if he once had the means but now has not or if he has money now on which there are other pressing claims, it is violative of the spirit of Article 11 to arrest and confine him in jail so as to coerce him into payment.....

The judgment dealt with the effect of international law and the enforceability of such law at the instance of individuals within the State, and observed:

“The remedy for breaches of International Law in general is not to be found in the law courts of the State because International Law per se or proprio vigore has not the force or authority of civil law, till under its inspirational impact actual legislation is undertaken. I agree that the Declaration of Human Rights merely sets a common standard of achievement for all peoples and all nations but cannot create a binding set of rules. Member States may seek, through appropriate agencies, to initiate action when these basic rights are violated; but individual citizens cannot complain about their breach in the municipal courts even if the country concerned has adopted the covenants and ratified the operational protocol. The individual cannot come to Court but may complain to the Human Rights Committee, which, in turn, will set in motion other procedures. In short, the basic human rights enshrined in the International Covenants above referred to, may at best inform judicial institutions and inspire legislative action within member-States; but apart from such deep reverence, remedial action at the instance of an aggrieved individual is beyond the area of judicial authority.”

While considering the international impact of international covenants on municipal law, the decision concluded:



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“Indeed the construction I have adopted of Section 51, CPC has the flavour of Article 11 of the Human Rights Covenants. Counsel for the appellant insisted that law and justice must be on speaking terms-by justice he meant, in the present case that a debtor unable to pay must not be detained in civil prison. But my interpretation does put law and justice on speaking terms. Counsel for the respondent did argue that International Law is the vanishing point of jurisprudence is itself vanishing in a world where humanity is moving steadily, though slowly, towards a world order, led by that intensely active, although yet ineffectual body, the United Nations Organisation. Its resolutions and covenants mirror the conscience of mankind and insominate, within the member States, progressive legislation; but till this last step of actual enactment of law takes place, the citizen in a world of sovereign States, has only inchoate rights in the domestic Courts under these international covenants.”

While dealing with the impact of the Dicean rule of law on positive law, Hood Phillips wrote-and this is all that the Covenant means now for Indian courts administering municipal law:

“The significance of this kind of doctrine for the English lawyer is that it finds expression in three ways. First, it influences legislators. The substantive law at any given time may approximate to the "rule of law", but this only at the will of Parliament. Secondly, its principles provide canons of interpretation which express the individualistic attitude of English courts and of those courts which have followed the English tradition. They give an indication of how the law will be applied and legislation interpreted. English courts lean in favour of the liberty of the citizen, especially of his person: they interpret strictly statutes which purport to diminish that liberty, and presume that Parliament does not intend to restrict private rights in the absence of clear words to the contrary.”

7. *The positive commitment of the States Parties ignites legislative action at home but does not automatically make the Covenant an enforceable part of the corpus juris of India.*

8. *Indeed, the Central Law Commission, in its Fifty Fourth Report, did cognise the Covenant, while dealing with Section 51 C.P.C.:*



“The question to be considered is, whether this mode of execution should be retained on the statute book, particularly in view of the provision in the International Covenant on Civil and Political Rights prohibiting imprisonment for a mere non-performance of contract.”

The Law Commission, in its unanimous report, quoted the key passages from the Kerala ruling referred to above and endorsed its ratio. 'We agree with this view' said the Law Commission and adopting that meaning as the correct one did not recommend further change on this facet of the Section. It is important to notice that, interpretationally speaking, the Law Commission accepted the dynamics of the changed circumstances of the debtor:

“However, if he once had the means but now has not, or if he has money now on which there are other pressing claims, it is violative of the spirit of Article 11 to arrest and confine him in jail so as to coerce him into payment.”

This is reiterated by the Commission:

Imprisonment is not to be ordered merely because, like Shylock, the creditor says:

"I crave the law, the penalty and forfeit of my bond."

The law does recognise the principle that "Mercy is reasonable in the time of affliction, as clouds of rain in the time of drought."

9. We concur with the Law Commission in its construction of s. 51 C.P.C. It follows that quondam affluence and current indigence without intervening dishonesty or bad faith in liquidating his liability can be consistent with Art. 11 of the Covenant, because then no detention is permissible under s. 51, C.P.C.

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, sauced law with justice, harmonised Section 51 with the Covenant and the Constitution."

9. The importance of following a fair and due process of law for curtailing liberty of a person is so much that in **Subrata Roy Sahara v Union of India and Others, 2014 SCC OnLine SC 425**, the Supreme Court of India, although was exercising powers under Article 142 of the Constitution of India, did not ignore the rigors of Section 51 of CPC. As an example, we





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(i)	Investments	6430	36,021
(ii)	Cash/Current assets, etc.	15,937	20,297
SHICL			
(i)	Investments	1865	5498
	Cash/Current assets, etc.	6027	7682
	Total	30,259	69,498

The market value of the assets acknowledged by the two Companies would have undoubtedly appreciated further from the figures depicted in 2011. During the course of hearing before this Court, on several occasions it was undertaken by the contemnors that they would dispose off the unencumbered immovable properties owned by the Sahara Group to comply with the orders dated 31-8-2012 and 5-12-2012. In this background it may also be mentioned that the official website of Sahara India indicates the net worth of the Sahara Group as Rs 68,174 crores. According to the above website, the Sahara Group has a land bank of approximately 36,631 acres, and the market value of the Group assets/potential earning is to the tune of Rs 1,52,518 crores. It is also not a matter of dispute that the Sahara Group owns premium hotels in London (the Grosvenor House) and in New York (the New York Plaza). The above hotels, according to the Sahara Group are valued at over several thousand crores of rupees. Be that as it may, after the passing of the orders dated 31-8-2012 and 5-12-2012, no payment has been made by the two Companies concerned. The last deposit of Rs 5120 crores was made on 5-12-2012. It is, therefore apparent that in spite of their means to pay, the two Companies have refused and neglected to pay the amount due in its entirety (or even a substantial part thereof). Another postulated precondition for ordering the arrest and detention of a judgment-debtor, for the execution of a money decree, was therefore clearly made out before the impugned order dated 4-3-2014 was passed.

85. We are prima facie satisfied that yet another precondition contemplated in the proviso to Section 51 CPC was also made out. The reason for expressing the instant view is that no clear responses were ever given by the two Companies. The position remained the same whether those answers were sought by SEBI (WTM), or SAT, or even by this Court. When SIRECL was required to disclose the manner in which it had made payments by way of redemption to the OFCDs holders, the following sources were disclosed:



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		Rupees (in crores)
1.	Sahara Credit Coop. Society Ltd.	13,366.18
2.	Sahara India Commercial Corpn. Ltd.	4384.00
3.	Sahara Q Shop	2258.32
4.	Ket6ak City Homes Ltd.	19.43
5.	Kirit City Homes Ltd.	44.05

Likewise, when similar information about redemptions was sought from SHICL, the following sources were disclosed:

		Rupees (in crores)
1.	SICCL	2479.00
2.	Sahara Q Shop	2411.90

86. At the cost of repetition we may record, that when asked the manner in which the Companies had forwarded the abovementioned payments to the two Companies, the response was that the above amounts were never released, but were transferred to Sahara India (Firm) for disbursement. When details of the above transactions were sought, the Court was informed that the above transactions were made by way of cash, and the requirement of the Court to show banking transactions was unfair. When asked how the two Companies had collected the cash funds, which were paid to Sahara India (Firm), the response was that the two Companies which had collected the funds had collected the same by way of cash. When asked how disbursements were made to the investors, the response was that about 95% of the payments made to the investors were also made by way of cash. To demonstrate the receipt and payment of the funds by way of cash, the learned Senior Counsel representing the contemnors (including the petitioner herein) invited our attention to the books of accounts (only general ledger entries) to demonstrate proof of the transactions under reference. Details in this behalf have been recorded by us under Heading IX: "A few words about the defence of redemption of OFCDs offered by the two Companies"-see paras 138-155 at pp. 602 et seq. The above explanation may seem to be acceptable to the contemnors, but our view is quite the converse. It is not possible for us to accept that the funds amounting to thousands of crores were transacted by way of cash. We would therefore, on



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the face of it, reject the above explanation tendered on behalf of the two Companies. It is necessary to notice that one of the preconditions contemplated under the proviso to Section 51 postulates, that if the judgment-debtor dishonestly transfers, conceals or removes any part of his property, or commits any act of bad faith in relation to his property, the executing court concerned can enforce a money decree, by way of arrest and detention. Since a farcical explanation was tendered by the two Companies in respect of receipt, payment and transfer of thousands of crores of rupees by way of cash, without reference to any banking transactions whatsoever, it was legitimate to infer dishonest transfers, as well as, bad faith, on behalf of the contemnors. Therefore, for yet another reason, it was open for this Court to order arrest and detention of the contemnors (including the present petitioner) for enforcement of the directions issued by this Court on 31-8-2012 and 5-12-2012.

87. The four preceding paragraphs clearly demonstrate that three different conditions contemplated in the proviso to Section 51 CPC, were satisfied before we ordered the arrest and detention of the contemnors for enforcement of the orders passed by this Court. Satisfaction of any one of the conditions, expressed in the foregoing four paragraphs, would have been, sufficient to order the arrest and detention of the petitioner under Section 51 CPC. Our instant determination should not be understood to mean that Section 51 CPC is applicable to the facts and circumstances of this case. The instant determination should only be understood to mean that the parameters laid down in Section 51 CPC stood fully satisfied before the arrest and detention order dated 4-3-2014 was passed.”

10. It is also settled that, when the statute prescribes a particular manner of doing an act, that act must be done in that manner or not at all, all other manners of doing the act being necessarily forbidden. (**Taylor v. Taylor**, (1875) 1 Ch D 426, 431; **Nazir Ahmed v. King-Emperor**, LR 63 IA 372; **State of Uttar Pradesh v. Singhara Singh and Others**, 1963 SCC OnLine SC 23). If, therefore, the proviso to Section 51 of the CPC requires issuance of a show cause notice before deciding to proceed to



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the extreme step of arrest, no arrest can be directed without putting the judgment-debtor to show cause. Failure to grant such opportunity would *ipso facto* invalidate the warrants of arrest.

11. On perusal of the relevant provisions and the case law discussed above, it is clear that the Executing Court before issuance of arrest warrants is required to grant the judgment-debtor an opportunity to show cause as to why he be not committed to prison.
12. It is necessary to mention that no material exists to suggest that the appellant/judgment-debtor was not participating in the proceeding. Admittedly, no application was moved by the decree-holder under Rule 11A and 37 of Order XXI CPC for arrest and detention to civil imprisonment of the judgement-debtor before the Executing Court. Also no show cause notice was issued to the judgment-debtor in accordance with requirements of Section 51 of the CPC.
13. As the Executing Court has not followed said procedure, the impugned order is set aside to the extent of issuance of warrants of arrest.
14. However, nothing stated herein shall prevent the respondent/decreed-holder from moving an application before the Executing Court under Rule 11A read with Rule 37 of Order XXI of the CPC specifically pleading the facts and grounds, alongwith affidavit, to satisfy the Executing Court that the judgment-debtor is covered under the Proviso to Section 51 of the CPC. In case the respondent/decreed-holder files such application, the Executing Court shall afford the judgment-



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debtor/appellant an opportunity to show cause why he should not be committed to prison. Thereafter, the Executing Court, if satisfied after due inquiries, may proceed in accordance with law.

15. Accordingly, the appeal is allowed.

16. The appeal along with pending application(s) is disposed of.

VINOD KUMAR, J.

C.HARI SHANKAR, J.

JULY 21, 2026/vb