

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.1036 of 2015.
Decided on:-16.2.2015.

Balhar Singh.Petitioner.

Versus

Sham Lal.Respondent.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Argued by:- Ms. Monika Jalota, Advocate
for the petitioner.

Dr. Bharat Bhushan Parsoon, J.

This revision petition, invoking supervisory jurisdiction of this Court under Article 227 of the Constitution of India, is directed against order dated 17.11.2014 (Annexure P-2) passed by the Executing Court in execution of the decree dated 22.10.2008 (Annexure P-1) whereby the judgment-debtor (for short, the JD), petitioner herein, has been sent to civil imprisonment for non-payment of the decretal amount.

2. It is claimed that simple default is not enough and there must be some element of bad faith beyond mere indifference of the JD to pay the decretal amount. Support has been sought from ***Jolly George Verghese and another Versus The Bank of Cochin 1980(2) Supreme Court Reports 913.*** In the cited authority, the decree-holder/bank in execution of the decree had obtained warrant of arrest and detention in civil imprisonment of the JDs in

terms of Section 51 and Order XXI Rule 37 CPC. It was found by the Hon'ble Apex Court that even on an earlier occasion, there had been a similar warrant of arrest in execution of the same decree and the decree-holder had already proceeded against the properties of the JDs and in consequence thereof, all immovable properties of the JDs had been attached for the purpose of sale in discharge of the decree. Even a Receiver had been appointed by the Executing Court to manage the properties under attachment. Despite this, the court had issued a warrant of arrest against the JDs. It was in these circumstances that the Hon'ble Apex Court had intervened and had observed that a simple default to discharge the debts is not enough. In the present case, circumstances are entirely different.

3. Decree is dated 22.10.2008 and in pursuance to conditional warrant of arrest, during execution proceedings of the said decree, the JD had appeared and had made a statement on 23.3.2014 seeking time to make the payment to the decree-holder in the court itself. He was given time and the matter was adjourned for making payment by the JD. The JD did not honour his commitment resulting in issuance of fresh conditional warrant of arrest against him. This time, plea taken by him was that he had no immovable and movable property to pay. Even today, it is claimed that he is not in a position to pay the entire amount straightway.

4. If an application for payment of the decretal amount in installments is made by the JD, petitioner herein, before the Executing Court, the same would be considered on the same day so that agony of the petitioner-JD is not prolonged even for another day.

5. Liberty is granted to the petitioner-JD to make an application before the Executing Court which would be decided by the said court, as already mentioned on the same day, without being influenced by impugned

order dated 17.11.2014 under revision.

6. Disposed of with above observations.

February 16, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes