

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

CR No.2107 of 2012 (O&M)

Date of decision : 02.11.2015

Mohinder Pal

...Petitioner

Versus

Mohinder Kaur and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Akshay Rana, Advocate for the petitioner.

Mr. T.S. Chauhan, Advocate for respondents.

AMIT RAWAL, J. (Oral)

Challenge in the present petition is to the impugned order, whereby the petitioner has been ordered to be arrested/detention for civil imprisonment on account of non-payment of decretal amount.

Mr. Akshay Rana, learned counsel appearing on behalf of petitioner-judgment debtor submits, that there are only three conditions under which the judgment debtor can be arrested:-

1. As to whether he is likely to abscond or leave the legal jurisdiction of the Court.

2. After the institution of the suit, when the decree was passed, dishonestly transferred or concealed any part of the property or committed any other Act.
3. Had since date of decree, the means to pay the amount but refuses or neglects to pay the same.

In support of his contention, he has relied upon judgment rendered by this Court in *Neelam Gautam Vs. Balwinderjit Singh @ Bikramjit @ Happy*, 2004 (3) R.C.R. (Civil) 519 and as well as *Pritam Singh Vs. M/s S.B. Saini Brothers*, 1987 R.R.R. 384.

Mr. T.S. Chauhan, learned counsel appearing on behalf of respondents submits, that petitioner-judgment debtor is habitual offender as he has intentionally not made the payment of the decretal amount of ₹1,25,000/- and further submits that father of the petitioner had illegally transferred the property to his sons, therefore, it is a device to avoid the payment of decretal amount, much less, attachment.

I have heard learned counsel for parties and appraised the paper book.

Provision of Order 21 Rule 37 is clear and unambiguous. There is no doubt that in case, the judgment debtor as fails to make the payment of decretal amount upon receipt of the summons, the trial Court/Executing Court is required to serve a show cause notice. However, as per proviso, the service of show cause notice can be dispensed with in a case where Court finds that judgment debtor is adopting dilatory tactics.

For the sake of brevity, provision of Order 21 Rule 37 is reproduced hereinbelow:-

“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 shall, instead of issuing a warrant for his arrest, issue a notice calling upon on 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.”

The ratio decidendi culled out in Neelam Gautam (supra) was that in pursuance to the interim order granted by the Court, whereby the judgment debtor had deposited certain amount and thereafter defaulted, the application for arresting him in civil imprisonment, was dismissed. This Court found that since matter was pending before the Higher Court in appeal and, therefore, it would not be a sufficient ground for decree holder to invoke the provision of Order 21 Rule 37, therefore, ratio decidendi culled out in aforementioned judgments is as per incuriam not in rem. As per Pritam Singh's case (supra), this Court while relying upon the provision of Section 51 of Code of Civil Procedure noticed that arrest and detention of

the judgment debtor cannot be ordered, until and unless, the property which has been sold after attachment by public auction and the decretal amount is not realised. The present case is a case of same kind, where there is no such property owned by the judgment debtor.

In many case, money decrees are blatantly flouted and intentionally delayed, there is no regard and respect to the orders of the Court in case judgment debtors are permitted to roam freely with impunity.

I do not wish to interfere with the order impugned in the revision petition, whereby petitioner-judgment debtor has been ordered to be arrested/detention in civil imprisonment.

No ground is made out.

Revision petition is dismissed.

02.11.2015

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**(AMIT RAWAL)
JUDGE**