

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

CR No.4230 of 2015
Date of decision: 10.08.2015

Food Corporation of India

... Petitioner

Versus

Nirvair Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. KK Gupta, Advocate for the petitioner.

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

ARUN PALLI J. (Oral)

Vide order being assailed dated 30.09.2014, passed by Civil Judge (Sr. Division), Patiala, application of the petitioner (decree-holder), under Order 21 Rule 37 of the Civil Procedure Code, praying for arrest of the judgment debtor and his detention in civil prison, has since been rejected.

A decree for a sum of ₹ 21,82,034.14 was granted in favour of the petitioner/decree-holder on 31.01.2005. As no appeal was preferred against the said decree, the same has since attained finality. However, petitioner/decree-holder is yet to realize the decretal amount. During the course of proceedings before the executing court, the judgment debtor was directed to be present in person to verify as to whether he indeed owns any property or other means to satisfy the decree.

JD Nirvair Singh appeared and furnished an affidavit dated 15.05.2014, that he has no moveable or immoveable property in his name and he has no source of income and was penniless. The plea which remained uncontroverted, as no counter-affidavit or any evidence to the contrary was brought on record. That being so, the executing court in reference to the decision rendered by the Hon'ble Supreme Court in Jolly George Varghese and another v. The Bank of Cochin, AIR 1980 (SC) 470, concluded that, in these circumstances and, at this stage, judgment debtor could not be sent to civil imprisonment. It would be apposite to refer to the conclusion arrived at and the same reads as thus:

“In the given facts and circumstances where the decree holder itself submits that the JD does not own any other moveable and immoveable property but at the same time has failed to produce on record any material or document to suggest that JD is intentionally delaying execution decree, this court is of the considered opinion that in the absence of any malafides and dishonesty on the part of JD he cannot be send to Civil Imprisonment at this stage and in this regard this court is fortified by the Judgment of Hon'ble Apex Court titled as Jolly George Varghese and another Vs. The Bank of Chochin, AIR 1980 SC-470, abid. Therefore court does not find any merits in the application under Order 21 Rule 37 CPC dated 14.8.2012, the same cannot be accepted and is dismissed accordingly.”

I have heard learned counsel for the petitioner and perused the paper book.

Concededly, in an application moved by the petitioner/decreed-holder, it was maintained that the judgment debtor does not own any other moveable or immoveable property with the attachment and sale of which, the decretal amount could be recovered. The specific affidavit furnished by the judgment debtor on 15.05.2014, before the executing court, that he does not own any moveable or immoveable property and has no source of income remained uncontroverted. Ex facie, nothing was brought on record, least any cogent evidence, to show that the judgment debtor had intentionally evaded or delayed the execution of the decree. That being so, the prayer of the petitioner/decreed-holder to arrest the judgment debtor and to detain in civil imprisonment, at this stage, was rightly rejected. Learned counsel for the petitioner could not point out as to how the conclusion arrived at by the executing court was either contrary to the position on record or was erroneous in law.

That being so, no interference is warranted under Article 227 of the Constitution of India. Petition being devoid of merit is accordingly dismissed, in limine.

August 10, 2015
Rajan

(Arun Palli)
Judge

