ARCHANA ARORA
2015.09.09 10:21
I attest to the accuracy and
authenticity of this document

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5501 of 2015
Date of Decision: September 4, 2015

Shiv Kumar

..... Petitioner

Versus

Satish Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S. P. Soi, Advocate and
Mr. Sahil, Advocate
for the petitioner.

Mr. R. S. Bajaj, Advocate
for the respondent.

****

Amit Rawal, J (Oral)

Learned counsel for the petitioner submits that as per the impugned order the trial court has ordered arrest of the petitioner by invoking the provisions of Order 21 Rule 37 CPC whereas no show cause notice as statutorily contemplated has been issued before issuing the warrant of arrest.

Mr. R. S. Bajaj, learned counsel appearing on behalf of the respondent submits that the application Annexure P-1 itself a notice issued to the petitioner-judgment debtor for recovery of decretal amount, therefore, no separate show cause notice was required to be issued.

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

I am in agreement with the submission of learned

counsel for the petitioner, as per provisions under Order 21 Rule 37 CPC envisage on an application received by the court seeking execution of the money decree, before issuing the warrant of arrest, the trial court was enjoined upon an obligation to issue a show cause notice, in case the judgment debtor does not pay the decretal amount. However, in the instant case, the court has not followed the procedure as envisaged under Order 21 Rule 37 CPC.

In support of his contentions, learned counsel for the petitioner has relied upon the judgment in **Didar Singh @ Dara Singh Vs. State Bank of India 2013 (1) CivCC 743**

Keeping in view the aforementioned facts, the impugned order is set aside. The trial court is directed to comply with the provisions of Order 21 Rule 37 CPC and decide the application in accordance with law within a period of one month from the date of receipt of certified copy of this order.

The impugned order is set aside. The warrant of arrest is directed to be recalled.

The revision petition is accordingly allowed.

(AMIT RAWAL)
JUDGE

September 4, 2015
archana