

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

CR No. 6678 of 2013 (O&M)
Date of decision: July 7, 2015

Shyam Sunder

...Petitioner

Versus

New India Assurance Company Limited

...Respondent

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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

Present: Mr. SS Kharb, Advocate,
for the petitioner.

Mr. D.K. Parjapati, Advocate, for
Mr. RS Mandan, Advocate,
for the respondent

K. KANNAN, J. (Oral)

1. The order passed directing arrest of the petitioner ought to be set aside as the court that passed the order was error in holding that a plea of no means is an irrelevant point for consideration. On the other hand, it is only the relevant point that executing court shall consider. No decree-holder can seek for arrest without disclosing the proof of means of the judgment-debtor. That court that passes the order of arrest cannot arrest for the mere non-satisfaction of the decree and the arrest. Detention in civil prison is no doubt a manner of execution but before such execution is ordered by the court, it ought to be satisfied:-

(i) that there is no proceeding for insolvency of the

judgment debtor and interim protection has not been granted or security not furnished as directed.

- (ii) that the judgment debtor has the necessary means to satisfy the decree but he is deliberately not paying the same.

Such appraisal is bound to be made by the executing court by allowing the respective parties to offer either through an affidavit or in any manner that the court thinks necessary for adjudicating on the means.

2. The impugned order is set aside and the matter is remitted to the executing court again for fresh consideration allowing for an opportunity to the parties in the manner referred to above and pass an order in accordance with law.

July 7, 2015
prem

(K.KANNAN)
JUDGE