

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 449 of 2016

Date of decision : January 25, 2016

Karnail Singh

..... Petitioner

Versus

Shagan Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. H. S. Jakhal, 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?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

Learned counsel for the petitioner-judgment debtor submits that provisions of Order 21 Rule 37 CPC have not been complied with as straight away in execution application under Order 21 Rule 37 CPC order of arrest has been passed. In support of his contentions, he has relied upon the judgment in **Didar Singh @ Dara Singh Vs. State Bank of India 2013 (1) RCR Civil 588.**

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

The operative part of the order reads thus:-

“It is well settled in law that arrest and detention of the judgment debtor is one of the several modes of the execution to recover the decretal amount. It is for the decree-holder to choose the mode of execution of his decree and it is no part of duty of the Executing Court to lay down or prescribe the mode of execution to be followed by the decree-holder. In Gudiwada Munemma Vs. Jawardhal, 2007 (5) RCR (Civil) 418, the Hon'ble Andhra Pradesh High Court was pleaded to hold as follow:-

Civil Procedure Code, 1908 Order 21 Rule 37, Sections 51 and 58-Execution of decree-Arrest and detention of Judgment debtor who has neglected to pay decretal amount having sufficient means-Arrest and detention in civil prison cannot has alternative remedy of attachment of his properties.

In the backdrop of the given facts and circumstances, I am satisfied that the J.D.has since the date of decree, the means to pay the amount of the decree and has refused and neglected to pay the same. Therefore, I find merit in the application under disposal and it is allowed accordingly.

Let the J.D-Karnail Singh b now summoned through conditional warrant of arrest for dated 8.6.2016.”

I am of the view that the trial court has not complied with provisions of Order 21 Rule 37 CPC in its letter and spirit before forming an opinion of warrant of arrest, show cause notice was required to be served, accordingly the impugned order is hereby set aside with a direction to the trial court to decide the application as per

provisions of Order 21 Rule 37 CPC preferably within a period of one month from the date of receipt of certified copy of this order.

The civil revision stands allowed.

(AMIT RAWAL)
JUDGE

January 25 , 2016
archana