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

**CR-5272-2013**

**Date of Decision : February 23<sup>rd</sup>, 2016**

Ramesh Kumar

.... Petitioner

Versus

The Punjab State Civil Supplies Corporation, Chandigarh  
and others.

.... Respondents

**CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.**

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

Present Mr. Binderjit Singh, Advocate,  
for the petitioner.

Ms. Deepali Puri, Advocate,  
for respondents No.1 and 2.

**SHEKHER DHAWAN, J.**

Present revision petition under Article 227 of the Constitution of India is challenge to the order dated 14.08.2013 [Annexure P/7] passed by Additional Civil Judge [Senior Division], Phul whereby objections filed by the petitioner – Judgment Debtor under Order 21 Rule 37 CPC were dismissed and prayer for recalling of conditional warrants, was declined.

2. Learned counsel for the petitioner mainly submitted that the Executing Court has failed to consider the mandatory provisions of proviso to Section 51 and Rules 37 to 40 of Order XXI CPC. More so, neither any enquiry was conducted nor opportunity of leading evidence was given by

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the Court below. The Executing Court has also ignored the view taken by Hon`ble Supreme Court in **Jolly George Varghese and another Vs. The Bank of Cochin**, AIR 1980 SC 470, wherein the Hon`ble Apex Court observed that no person shall be deprived of his life and liberty except according to the procedure established by law. Therefore, the impugned order is vague. The Judgment Debtor does not own any property and he is unemployed. His services were terminated. More so, he is not absconding from the jurisdiction of the Court. His application to file appeal as an indigent person was accepted by Additional District Judge, Bhatinda vide order dated 8.5.2012 [Annexure P/3], but the Court below has completely ignored all these facts while passing the order under challenge.

3. Learned counsel for the respondents submitted that the present petitioner was proceeded against *ex parte* and he is not satisfying the decree. Public money is to be recovered from the present petitioner and he is willfully avoiding the payment and execution proceedings remained pending for a period of about four years. There is no illegality in the impugned order and the revision petition be dismissed.

4. Having considered the submissions made by learned counsel for the parties and after considering the basic facts that decree has already been passed against the present petitioner and the same remained unsatisfied. The present petitioner had been willfully avoiding execution of the decree and remained away from the Court. The Court below has rightly observed that the present application has been filed only to delay the execution proceedings.

5. As regards the view taken by Hon`ble Supreme Court in **Jolly George Varghese's case [supra]**, as per provisions of Section 51 CPC,

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requirement of law is that in execution of any decree for recovery of money, the Judgment Debtor shall not be ordered to be sent to prison unless the Court is satisfied that he is intentionally obstructing or delaying the execution of the decree. Order XII Rule 37 CPC provides that if the J.D. fails to put in appearance in obedience of the notice, the Executing Court shall issue warrant of arrest of the Judgment Debtor. The Court below in its order dated 14.8.2013 has rightly observed that the Judgment Debtor has been avoiding the execution of the decree for a pretty long time and conditional warrant of arrest has been issued only in accordance with law. More over, the Executing Court has issued conditional warrant of arrest and in case, the payment is made, the warrant of arrest shall automatically become ineffective, but at this stage, the present petitioner being Judgment Debtor cannot avoid the execution of Court decree dated 31.07.2009 by choosing to remain away from the Court and not to satisfy the decree passed by the Court of competent jurisdiction.

6. In view of the above, there are no grounds for setting aside the impugned order and the present revision petition stands dismissed.

**(SHEKHER DHAWAN)**  
**JUDGE**

**February 23<sup>rd</sup>, 2016**  
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