

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

**Civil Revision No.6341 of 2016
Date of Decision: 23.09.2016**

Janak Raj

.....Petitioner

Vs

M/s Des Raj Chander Shekhar & others

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Vivek Chauhan, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 02.08.2016 passed by the Additional Civil Judge (Sr. Divn.) Jalalabad (West) vide which application filed by respondent No.1 under Order 21 Rule 37 read with Section 151 CPC for arrest and detention of judgment-debtor/petitioner in civil prison was allowed.

[2]. Brief facts as gathered from the record are that the judgment-debtor/petitioner was running a rice mill in the name and style of M/s Vikas Rice Mills. A suit for recovery was filed by respondent No.1 against the judgment-debtor on account of some dealings between the parties. The suit was decreed vide

judgment and decree dated 11.08.2011 and the judgment-debtor remained unsuccessful in the appeal as the same was dismissed in default. Thereafter decree-holder filed execution seeking to recover the decretal amount. The property of the judgment-debtor was attached during execution.

[3]. Vide order dated 21.02.2014, the executing Court received the warrant of attachment of the land of the judgment-debtor and the case was fixed for filing application under Order 21 Rule 66 CPC. The decree-holder filed an application under Order 21 Rule 37 CPC for arrest and detention of the judgment-debtor by way of moving an application dated 04.03.2014. The decree-holder claimed that the amount in question cannot be recovered except by adopting coercive method in terms of Order 21 Rule 37 CPC and the provision is optional at the instance of decree-holder that the decree-holder may adopt any course for the satisfaction of the decree.

[4]. The application was contested by the judgment-debtor on the ground that the provision is punitive in nature and the liberty of a person should not be put at stake, particularly when other avenues were open to the decree-holder.

[5]. The executing Court allowed the application vide order dated 13.08.2014 and summoned the judgment-debtor through

conditional warrant of arrest. The said order was challenged by the judgment-debtor in Civil Revision No.5807 of 2014 before this Court. The said revision petition was disposed on 14.09.2015. The concluding part of the order is reproduced hereasunder:-

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

On perusal of the impugned order, it is manifest, that the trial Court has not exercised the powers as envisaged under Order 21 Rule 37 CPC, much less, proviso thereof. It is a matter of fact that in pursuance to the filing of execution application, attachment orders were issued, but instead of resorting to the provisions under Order 21 Rule 66 CPC, the application aforementioned had been moved. The trial Court had not issued any show cause notice, as per the ratio decidendi culled out in Didar Singh's case (supra). Even the proviso would not come to the rescue of the judgment debtor, for the reason, that on 11.08.2014, the application was filed under Order 21 Rule 37 CPC and in pursuance to that, judgment debtor had filed a reply.

In my view, the trial Court ought to have issued a show cause notice, calling upon the judgment debtor with regard to the payment of the decretal amount, failing which, judgment debtor is liable to be arrested, having not done so, I deem it appropriate to set aside the impugned order, by issuing direction to the trial Court to comply with the provisions under Order 21 Rule 37 CPC, in its letter and spirit and passed order thereon.

With the aforesaid directions, the revision petitions stand disposed of.”

[6]. Perusal of the aforesaid order shows that before passing the order dated 13.08.2014, a show cause notice was not issued as per ratio laid down in **Didar Singh @ Dara Singh vs. State Bank of India, 2013(1) RCR (Civil) 588**. On that premise, this Court observed that even, the proviso would not come to the rescue of the judgment-debtor for the reason that on 11.08.2014, the application was filed under Order 21 Rule 37 CPC. In the concluding part of the order, this Court observed that the trial Court ought to have issued a show cause notice, calling upon the judgment-debtor with regard to the payment of decretal amount, failing which the judgment-debtor was liable to be arrested. Since the aforesaid compliance was not made, therefore, this Court deemed it appropriate to set aside the order by issuing direction to the trial Court to comply with the provisions of Order 21 Rule 37 CPC in letter and spirit. Thereafter only a compliance was required to be made by the trial Court under Order 21 Rule 37 CPC.

[7]. Admittedly, a show cause notice was issued. Evidently, witness of the decree-holder has been examined as DHWI namely Davinder Mhan. Witness of judgment-debtor namely Janak Raj has been recorded on 31.05.2016 and he has been

cross-examined on 04.07.2016, wherein he admitted that he wanted to pay the due amount by getting this land auctioned. Value of the land is much more than the debt, however he prayed for time of one year to do the needful in the context of clearing all dues by selling the land. He also stated that he has no other property except the land in question. The rice mill which is in 20 *Kanals* 2 *Marlas* is lying locked.

[8]. Keeping in view the attending circumstances, the trial Court passed the order dated 02.08.2016 on the premise that after reasonable opportunity of hearing to the judgment-debtor, it appears that he is not inclined to pay the amount, rather claimed that he can meet the decree only by selling his property for which about one year is required. The trial Court by relying upon the procedure prescribed under Rule 40 CPC observed that during course of inquiry, it was found that the judgment-debtor is not ready to pay the amount in question and is seeking another one year's time. The intention of the judgment-debtor was not found to be *bona fide*. Trial Court by appreciating specific bar provided under Section 56 CPC, left the judgment-debtor Nos.3 and 4 namely Asha Rani and Sita Rani from being arrested and ordered judgment-debtor No.2 be summoned through conditional warrant of arrest.

[9]. Learned counsel for the petitioner vehemently contended that in view of law laid down in **Jolly George Varghese and Another vs. The Bank of Cochin, AIR 1980 SC 470** arrest and detention of the judgment-debtor in civil imprisonment in execution of decree should be the last resort. The detention in civil imprisonment in the absence of some vice or *mens rea* on the part of the judgment-debtor, would render the provision unconstitutional.

[10]. In the present case, after the order dated 14.09.2015, passed by this Court in Civil Revision No.5807 of 2014, the compliance of Order 21 Rule 37 CPC was made. Statement of parties were recorded. The inquiry revealed that the judgment-debtor was not inclined to pay the decretal amount in one go, rather pleaded that he would sell his land and would pay the amount after one year. The conduct of the judgment-debtor was not considered to be proper and *bona fide* and the impugned order was passed, which in considered opinion of this Court cannot be faulted with. Judgment-debtor cannot be allowed to play hide and seek. However if, the judgment-debtor pays the due amount before the execution of warrant of arrest, the same would not be enforced.

[11]. In view of above, this Court is not inclined to interfere in

the impugned order. The revision petition is accordingly dismissed.

September 23, 2016

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No