

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.6972 of 2016
Date of decision: 23.11.2016

Vijay Kumar **....Petitioner**

V/S

Shriram Transport Finance Company Ltd. & anr. **.....Respondents**

CR No.7455 of 2016

Vikash Kumar **....Petitioner**

V/S

Shri Ram Transport Finance Company Ltd. & anr. **.....Respondents**

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Vivek Khatri, Advocate for the petitioner and for respondent No.2
in CR No.7455 of 2016.

Mr. Mayank Sharma, Advocate for respondent No.1.

Mr.Anoop Singh Sheoran, Advocate for respondent No.2 and for the
petitioner in CR No.7455 of 2016

DARSHAN SINGH, J. (Oral)

This order shall dispose of both the revision petitions captioned above as both these revisions have arisen out of the similar order vide which the petitioners in satisfaction of the decree for recovery of money has been sent to the civil prison by the learned Executing Court on the ground that they had not made the payment.

2. Learned counsel for the petitioners contended that the impugned orders have been passed by the learned Executing Court without deciding the objections moved by Vikash Kumar-petitioner/JD No.1. They further contended that the learned Executing Court has also not complied with mandatory provisions of Order 21 Rules 37 to 40 of the Code of Civil Procedure, 1908.

3. On the other hand, learned counsel for respondent No.1 contended that the order passed by the learned Executing Court is legal as both the petitioners haven't paid the decretal amount even though they were held jointly and severally liable. He further contended that no objections were moved by petitioner-Vijay Kumar in the execution petition. Thus, they have been rightly sent to the civil prison.

4. I have duly considered the aforesaid contentions.

5. The certified copy of the orders passed by the Executing Court shows that petitioner-Vikash Kumar, judgment debtor No.1 has filed the objections before the Executing Court on 3.9.2016. The case was adjourned to 7.9.2016 for arguments on the objection petition. The case was again adjourned to 16.9.2016 for the same purpose i.e. arguments on the objection petition. The case was again adjourned to 22.9.2016 on the request made by the counsel for addressing the arguments on the objection petition. On 22.9.2016, the learned Executing Court has abruptly passed the following order:

“Payment not made. Let conditional warrants of arrest of judgment-debtor No.2 be issued for 27.9.2016. Arguments shall also be heard on the date fixed.”

and thereafter, petitioner-Vijay Kumar was ordered to be sent to civil prison vide impugned order dated 27.9.2016 and similarly, petitioner-Vikash Kumar was also sent to the civil prison vide impugned order dated 7.10.2016 on similar grounds.

6. The aforesaid interim orders show that the drastic step of sending the

petitioners in civil prison has been passed by the learned Executing Court without deciding the objections moved by JD No.1-Vikash Kumar. The learned Executing Court was required to dispose of the objections before taking this drastic step.

7. The order dated 22.9.2016 shows the total non-application of mind by the learned Executing Court for issuance of the conditional warrants. As per the provisions of Order 21 Rule 37 CPC, the Executing Court is required to issue a show cause notice calling upon the JD to appear before the Court on a specified date and to show cause as to why he should not be put into civil prison. This procedure can only be dispensed with if the Court is satisfied by an affidavit or otherwise that with the object or the effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court but in the order dated 22.9.2016, no such findings have been recorded by the learned Executing Court as to how it came to the conclusion for straightway issuing the conditional warrants without issuing any show cause notice to the petitioners. Reference can be made to cases **Vijay Kumar versus Punjab National Bank and others 2000(2)CLJ (H.P.)5** and **M.V. Panduranga Rao versus A. Sattar Khan 2000(2) CivCC 293**.

8. In view of my aforesaid discussion, the impugned orders dated 27.9.2016 and 7.10.2016 passed by the learned Executing Court under challenge in both the revision petitions cannot be sustained in the eye of law. So, the same are hereby set aside. Both the revisions petitions are accordingly allowed.

9. Petitioners-Vijay Kumar and Vikash Kumar are ordered to be set at liberty forthwith. However, the learned Executing Court will be at liberty to pass the fresh order in accordance with law.

10. Registry is directed to communicate this order today itself to the learned trial Court for compliance.

11. A copy of this order be also supplied dasti to learned counsel for the petitioners under the signatures of the Bench Secretary keeping in view the fact that both the petitioners are in custody.

November 23, 2016
ps

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.

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Present: Mr.Anoop Singh Sheoran Advocate for the petitioner.

Mr. Mayank Sharma, Advocate for respondent No.1.

Mr.Vivek Khatri, Advocate for respondent No.2.

DARSHAN SINGH, J. (Oral)

For orders, see CR No.6972 of 2016 titled as “**Vijay Kumar vs. shriram Transport Finance Company Ltd. & anr.**”

November 23, 2016

(DARSHAN SINGH)

ps

JUDGE

Whether speaking/reasoned

: Yes/No.

Whether reportable

: Yes/No.