

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No.1613 of 2005**

S.P. Singh S/o. Jagannath Singh, Aged about 45 years, R/o
Veterinary Hospital Rajpur, Distt. Surguja (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through-Secretary, Panchayat and Gramin Vikas Vibhag, D.K.S. Bhawan, Raipur (CG)
2. Collector, Surguja, District Surguja (CG)
3. Chief Executive Officer, Zila Panchayat, Surguja, Distt. Surguja
4. Budhalal, Aged about 70 years, S/o Ganpat, R/o. Rajpur, Police Station & Tahsil Rajpur, Village Pichawri, District Surguja (CG)
5. Tahsildar (Revenue) Rajpur, Distt. Surguja (CG)

---- Respondents

For Petitioner	:	Mr.Manoj Paranjape, Advocate
For Res.No.1, 2 and 5 :		Mr.Shashank Thakur, Govt. Advocate
For Respondent No.3 :		Mr.Arun Sao, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

12/10/2017

1. By the impugned order dated 5.2.2005, the Labour Court, Ambikapur has directed the petitioner to send to jail under Order 21 Rule 37 of the Code of Civil Procedure for non-payment of award amount.
2. Learned counsel appearing for the petitioner would submit that provisions of Order 21 Rule 37 of the CPC are not applicable as no enquiry under Order 21 Rule 37 of the CPC has been made and straightway directed to be sent to jail, which is unsustainable and bad in law.
3. On the other hand, learned counsel for the respondents support the impugned order.
4. I have heard learned counsel appearing for the parties,

perused the impugned order and other documents appended with the writ petition.

5. The Labour Court, Ambikapur has passed an award on 10.12.2002 and on 5.2.2005, an application for sending the petitioner to civil jail was filed and accepting that application the petitioner has been directed to be sent to civil jail by issuance of warrant.

6. In the matter of **Subhash Chand Jain Vs. Central Bank of India**¹ the High Court of Madhya Pradesh has held that procedure laid down in Order 21 Rule 37 of the CPC has to be followed. It was observed as under:-

“7. From a bare reading of the relevant provisions quoted above, it is evident that when executing Court exercises discretion of issuing show cause against the detention in prison then executing Court has to follow the procedure laid down in clause (1) of Rule 40 of Order 21 which provides that after notice issued under Rule 37; the Court shall proceed to hear the decree holder and to take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison. In the case in hand the executing Court after issuing show cause did not hold any enquiry as contemplated of Clause (1) of Rule 40 of Order 21 nor has complied the conditions laid down in proviso to S. 51 so as to record its reasons after its satisfaction for detaining or sending the judgment-debtor in civil prison.

8. Therefore, the order passed without following the mandatory provisions cannot be sustained and is quashed. The matter now shall go back to the executing Court for holding an enquiry as contemplated by clause (1) of Rule 40 of Order 21 and to record its reasons after its satisfaction as required by proviso to S. 51 of the Code of Civil Procedure. The parties shall appear before the

¹ AIR 1999 MP 195

executing Court on 21-9-1998 of which notice shall not be given to the parties as they have been noticed here. If any of the parties fail to appear, the executing Court shall proceed to decide the application for sending the applicant in prison in accordance with law. It is made clear that the executing Court shall pass the orders within a period of two months from the date of appearance of the parties."

7. Thus, mandatory provision contained in Order 21 Rule 37 of the CPC has not been followed by the Labour Court, Ambikapur while passing the impugned order as no enquiry was done, which is in teeth of judgment rendered by the Madhya Pradesh High Court in **Subhash Chand Jain** (supra), therefore, the impugned order dated 5.2.2005 passed by the Labour Court, Ambikapur is set aside. However, the claimant is entitled to proceed in accordance with law.
8. The writ petition is allowed to the extent indicated hereinabove. A copy of this order be sent to respondent No.3/Chief Executive Officer, Zila Panchayat, Surguja for information and needful action. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-