

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

**CRM-M No.3452 of 2015
Decided on: 10.11.2017**

Santosh Kumar

....Petitioner

Versus

Daya Ram and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Ms. Bhavna Grewal, Advocate
for Mr. S.K. Yadav, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition filed under Section 482 of the Code of Criminal Procedure is for setting-aside the order dated 01.11.2012 (Annexure P6) passed by the Civil Judge (Sr. Division), Narnaul vide which the Civil Court, dismissed the application filed under Order 39 Rule 2-A of the Code of Civil Procedure (in short 'CPC') and the judgment dated 09.12.2014 (Annexure P7) passed by the Additional Sessions Judge, Narnaul, dismissing the criminal revision against the aforesaid order dated 01.11.2012.

Brief facts of the case are that the petitioner as a complainant filed a suit for recovery of Rs.56,100/- against respondent No.1 – Daya Ram (defendant in the suit). Vide decree dated 01.12.2008, the suit was decreed for recovery of an amount of Rs.56,100/- along with an interest @ 6% per annum from the date of institution of the suit till realization of the decretal amount.

The petitioner, as a decree-holder filed an execution application under Order 21 Rule 11 CPC and in that execution petition,

vide order dated 30.12.2009 arrest warrant were issued against respondent No.1 – Daya Ram (Judgement-debtor) and on his appearance before the Court, he was ordered to be sent in civil imprisonment and he was directed to be kept in civil imprisonment till 04.01.2010 with a further direction that he should be produced in the Court on that day. However, the Civil Court while issuing warrants to the jail authorities failed to incorporate the condition that the Judgement-debtor is to be produced before the Civil Court on 04.01.2010. The warrant of committal of JD in civil imprisonment, sent by the Civil Court to Superintendent of Jail, Narnaul reads as under:-

“Whereas Daya Ram son of Sadhu Ram JD has been brought before this Court on 30th December, 2009 in execution of the order passed on 29.11.2009, as he failed to make the payment of recovery, amounting to Rs.56,000/-. Therefore, you are hereby commanded and required to receive the said JD in civil prison and keep him in prison for a period upto 4.1.2010 or until the said amount of Rs.56,000/- is paid by him.”

The Superintendent of Jail, Narnaul, on 04.01.2010 released the respondent – Daya Ram from civil imprisonment. The petitioner filed a contempt petition under Order 39 Rule 2-A CPC with the allegations that the respondents have violated the order of Civil Court dated 30.12.2009 as instead of releasing Daya Ram on 04.1.2010 from civil imprisonment, he was to be produced before the Civil Court for further orders. The Civil Judge (Sr. Division) Narnaul vide impugned order dated 01.11.2012 dismissed the said application filed under Order 39 Rule 2-A CPC holding that though in the order dated 30.12.2009 it was mentioned that the JD – Daya Ram will be produced

before the Civil Court on 04.01.2010, however, in the warrant of committal of JD to civil imprisonment dated 30.12.2009, the Civil Court failed to incorporate the aforesaid direction that the JD will be produced before the Civil Court on 04.01.2010 and in the said warrant, it was only mentioned that the JD be kept in civil imprisonment till 04.01.2010 and, therefore, the jail authorities have not committed any violation of the order. The petitioner, thereafter, filed a criminal revision before the Additional Sessions Judge, Narnaul challenging the order dated 01.11.2012.

At this stage, it may be relevant to note that as per provisions of Order 43 Rule 1-R CPC, an order passed by the Civil Court under Order 39 Rule 2-A CPC, is an appealable order before the District Judge, it seems that this appeal was treated as a criminal revision by the Additional Sessions Judge, Narnaul and on merits, the revision petition was heard and dismissed vide impugned order dated 09.12.2014 upholding the finding recorded by the Civil Court that no violation of the order dated 30.12.2009 is made out.

The present petition under Section 482 Cr.P.C. has been filed challenging the aforesaid order firstly, passed by the Civil Court under Order 39 Rule 2-A CPC and secondly, by the Revisional Court. Though on the face of it, the present petition under Section 482 Cr.P.C will not be maintainable challenging the order passed by the Civil Court under Order 39 Rule 2-A CPC as the revision filed by the petitioner before the Additional Sessions Judge, Narnaul though wrongly mentioned as criminal revision was in fact a civil appeal within the provisions of Order 43 Rule 1-R CPC. However, being an old case, I

have heard the case on merits and find no merit in the same.

The Civil Court vide its order dated 30.12.2009 while issuing a warrant to the jail authorities has directed to keep the respondent – Daya Ram (JD) in civil imprisonment till 04.01.2010 and later on, he was released, therefore, there is no violation of the order passed by the Civil Court as both the Courts below have concurrently held that no intentional violation on the part of the respondent is made out as it was a mistake committed by the Civil Court in not mentioning in the warrant that respondent be produced before the Civil Court.

More so, counsel for the petitioner could not make out a case that once the petitioner as a decree-holder has filed an execution petition based on a money decree in which the respondent – Daya Ram was sent to civil imprisonment as JD and later on released from civil imprisonment, the petitioner can still pursue his remedy in his execution petition before the Civil Court, in accordance with law. Thus, finding no merit, the petition fails and is accordingly dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

10.11.2017
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No