

CR No.2334 of 2018

{1}

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

CR No.2334 of 2018

Date of decision:06.04.2018

Suraj Bhan

... Petitioner

Vs.

M/s Indusland Bank Limited and another

... Respondents

CR No.2335 of 2018

Suraj Bhan

... Petitioner

Vs.

M/s Indusland Bank Limited and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ajay Kumar Kansal, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The petitioner-judgment debtor is aggrieved of the impugned orders dated 07.03.2018 (Annexure P-4) and 27.03.2018 (Annexure P-6), whereby, an application for review of the previous order, i.e., 07.03.2018 has been dismissed.

Learned counsel for the petitioner submitted that in pursuance to the arbitration award dated 01.09.2009, Bank instituted the execution application No.10 of 2014 (Annexure P-1) claiming the decretal amount of ₹13,92,102/- alongwith costs of arbitrator fee. The show cause notices were issued to JD Nos.1 and 2. The objection petition filed by JD No.2 was

dismissed against which revision petition bearing No.5722 of 2017 has been filed which is pending adjudication before this Court, whereby, conditional warrant for arrest was stayed. Vide order dated 25.01.2018, the Executing Court proceeded with the execution application against petitioner-JD No.1. Since he was not appearing, conditional warrant was issued for appearance which was returned back with the report that he was not found at the given address and thus, he was produced in Court on 07.03.2018 and suffered a statement that he has no money to pay.

He further submitted that there was no compliance of the provisions of Section 51 and Order 21 Rule 37 CPC as the Court was required to comply with the ingredients for the satisfaction by giving the reason that he had no sufficient money to pay. In this view of the matter, the trial Court, vide order dated 07.03.2018 (Annexure P-4), sent the petitioner to the civil imprisonment for a period of three months which would expire in June, 2018 but due to clerical mistake, it was recorded upto 04.09.2018. The application for correction of clerical error was moved but the same has already been dismissed. It is in this background of the matter, revision petitions have been filed.

He further submitted that there is glaring violation of the aforementioned provisions of law, therefore, the impugned orders are liable to be set aside, particularly when warrants of arrest qua JD No.2 had already been stayed.

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

For deciding the controversy, it would be apt to reproduce Section 51 and Order 21 Rule 37 CPC which read thus:-

“51.Powers of Court to enforce execution.-

Subject to such conditions and limitations as may be prescribed the Court may, on the application of the decree-holder, order execution of the decree-

(a) by delivery of any property specifically decreed ;

(b) by attachment and sale or by sale without attachment of any property ;

(c) by arrest and detention in prison;[for such period not exceeding the period specified in Sec.58, where arrest and detention is permissible under that Section]

(d) by appointing a receiver ; or

(e) in such other manner as the nature of the relief granted may require :

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court for reasons recorded in writing, is satisfied-

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,-

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

- (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or*
- (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or*
- (c) that the decree is for a sum for which the judgment-debtor was bound in fiduciary capacity to account.*

Explanation.-*In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.”*

37. Discretionary power to permit judgment debtor to show cause against detention in prison.-(1) *Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment debtor who is liable to be arrested in pursuance of the application, the court shall, instead of issuing a warrant for his arrest, issue a notice calling upon on him to appear before the court on a day to be*

specified in the notice and show cause why he should not be committed to the civil prison:

Provided that such notice shall not be necessary if the court is satisfied, by affidavit, or otherwise, that, with the object or 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.

(2) Where appearance is not made in obedience to the notice, the court shall, if the decree holder so requires, issue a warrant for the arrest of the judgment debtor.”

On conjoint reading of the aforementioned provisions, it is evident that person has to be given a show cause notice before sending him in civil prison in not complying with the money decree. The impugned order dated 07.03.2018 reflected the statement of the petitioner that he had no money to pay and the Court also informed JD No.1 whether he wants to be declared as insolvent but was not accepted. It is in that aspect of the matter, the Court had sent JD No.1/petitioner to civil imprisonment for a period of three months. Though the order under challenge does not specify the expression “proviso” that he is likely to be declared as insolvent, therefore, there was no need for the trial Court to go into the inquiry.

There would have been some force in the argument of Mr. Kansal with regard to the review application but the review application (Annexure P-5) was bereft of any ground taken for correction of the same.

In my view, the petitioner had remedy of moving fresh review application for correction of the same as three months would be expired in June, 2018 as the order had been passed on 07.03.2018.

Keeping in view the facts and circumstances of the case, I am of the view that order sending the petitioner to the civil imprisonment is correct but with caveat that the petitioner shall seek correction of the same by moving a fresh review application within a period of one week and thereafter, the Court below shall decide the same as expeditiously as possible preferably within a period of 30 days.

While upholding the order under challenge, revision petitions stand disposed of.

(AMIT RAWAL)
JUDGE

April 06, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No