

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.3136 of 2018

Date of Decision.31.05.2018

Suraj Bhan

.....Petitioner

Vs

M/s IndusInd Bank Ltd. and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Ashwani Talwar, Advocate
for the respondents.

-:-

AMIT RAWAL J.(ORAL)

The present revision petition is directed against the impugned order dated 07.03.2018 (Annexure P-4) whereby the petitioner has been ordered to be sent to civil imprisonment and impugned order dated 02.05.2018 (Annexure P-9) whereby the review application seeking review of the order dated 07.03.2018 has been dismissed.

Mr. Ajay Kumar Kansal, learned counsel appearing on behalf of the petitioner submitted that as per the ex parte award dated 01.09.2009 was passed in favour of the respondent-Bank for a sum of ₹13,91,102/- along with a sum of ₹2000/- and ₹250/-.

The aforementioned award was on account of two loans sanctioned for two trucks and since he failed to pay the loan, the arbitrator passed the arbitration award dated 01.09.2009. An

execution application was filed for execution of the arbitration award wherein the Executing Court issued warrant of arrest. The petitioner appeared through his counsel but did not file the objection. Later on the objection was filed but the same was dismissed on 24.07.2017. However, on the said date, a show case notice under Order 21 Rule 37 CPC was sent to the petitioner-JD at his last address. The Bank has also filed another execution application for seeking recovery of the amount and in view of that matter, the trial Court vide order dated 07.03.2018, ordered for arrest of the petitioner w.e.f. 07.03.2018 to 04.09.2018 i.e. more than 90 days, which is in defiance of the provisions of Section 58 of the Code of Civil Procedure as there is no provision in the Code of Civil Procedure that conviction of civil imprisonment would run concurrently or consecutively, therefore, the orders under challenge are not sustainable.

The impugned orders (Annexure P-4 & P-9) were assailed before this Court in Civil Revision bearing No.2334 & 2335 of 2018 and vide order dated 06.04.2018 passed by this Court in the aforementioned revision petitions, the petitioner was given liberty to file application for review of the impugned orders, which have been dismissed and therefore, the present revision petition.

In pursuance of the notice of motion, Mr. Ashwani Talwar appearing on behalf of the respondents submitted that no doubt a person cannot be detained in civil imprisonment for more than 90 days but in the present case, the petitioner-judgment debtor is defaulter of the award passed by the arbitrator and had delayed execution of the same for almost 9 years. Even he had been declared

proclaimed offender in the criminal proceedings, therefore, the orders under challenge are perfectly legal and justified.

I have heard learned counsel for the parties, appraised the paper book and of the view that the orders under challenge are liable to be modified. Section 58 of the Code of Civil Procedure reads as under:-

58. Detention and release.- (1) *Every person detained in the civil prison in execution of a decree shall be so detained,—*

(a) where the decree is for the payment of a sum of money exceeding 1 [fiye thousand rupees], for a period not exceeding three months, and,

(b) where the decree is for the payment of a sum of money exceeding two thousand rupees, but not exceeding five thousand rupees, for a period not exceeding six weeks:

Provided that he shall be released from such detention before the expiration of the said period of detention—

(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or

(ii) on the decree against him being otherwise fully satisfied, or

(iii) on the request of the person on whose application he has been so detained, or

(iv) on the omission by the person, on whose application he has been so detained, to pay subsistence allowance:

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii), without the order of the court.

(1A) For the removal of doubts, it is hereby declared that no order for detention of the judgment debtor in civil prison in execution of a decree for the payment of money shall be made, where the total amount of the decree does not exceed two thousand rupees.

(2) A judgment debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

On plain and simple reading of the provisions

aforementioned, it is clear that the judgment debtor cannot remain in civil imprisonment for more than 90 days i.e. three months and can be re-arrested in case the judgment and decree is not satisfied. The trial Court has confined him in civil imprisonment w.e.f. 07.03.2018 to 04.09.2018 for a period of six months, for, he had suffered a statement that he never want himself to be declared insolvent and had no means to pay the decretal amount.

There is no provision in the Code of Civil Procedure for running the civil imprisonment consecutively, for, it is only provided under Section 427 Cr.P.C. In view of this matter, the orders under challenge are hereby modified. The civil imprisonment of the petitioner-judgment debtor in the first execution application shall be w.e.f. 07.03.2018 to 06.06.2018 and thereafter his release, he can be re-arrested as per the provisions of the Code aforementioned in other execution proceedings for another three months and so on and so forth, in case the decretal amount is not paid or in the absence of discharge of liability.

With the aforementioned clarification, the impugned orders are modified and the revision petition is disposed of. The order passed by this Court be communicated to the Executing Court for compliance.

(AMIT RAWAL)
JUDGE

May 31, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No