

CR No. 5902 of 2018

Date of decision : 01.10.2018

Kabal Singh

... Petitioner

Versus

Satwant Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE B.S . WALIA.

Present : Mr. Jagdish Manchanda, Advocate, for the petitioner
Mr. J.S. Saneta, Advocate, for the respondent

B.S. WALIA, J. (ORAL)

1. At the time of preliminary hearing, the only point urged by learned counsel for the petitioner was that neither opportunity to file objections to the execution application nor opportunity to file reply to the show cause notice was afforded to the petitioner before ordering his arrest and detention under Order 21 Rule 37 CPC.

2. Learned counsel appearing on behalf of the respondent-plaintiff contends that, in fact, a number of opportunities were granted to the petitioner-judgment debtor to file reply to the show cause notice, issued under Order 21 Rule 37 CPC, requiring him to show cause as to why he be not arrested and sent in civil imprisonment for non payment of decretal amount and interest thereon, in compliance of judgment and decree dated 18.10.2012.

3. On aforementioned submissions being made by learned counsel for the respondent-plaintiff, learned counsel contended that the petitioner-defendant's property had already been attached and on failure of sale of the same in the auction, on account of circumstances not attributable to the petitioner, the arrest and detention of the petitioner could not be ordered. However, afore mentioned plea was not raised by the petitioner before the learned Additional Civil Judge (Senior Division), Pehowa.

4. In the circumstances, the revision petition is disposed of by setting aside the impugned order and granting liberty to the petitioner to move an application within one week of receipt of copy of this order, before the learned Additional Civil Judge (Senior Division), Pehowa to oppose the issuance of warrants of arrest, in the light of decision of Hon'ble the Supreme Court in AIR 1984 SC 470 in the **State of Kerala v. Jolly George Verghese.** In the eventuality of the application being moved within the time as allowed above, learned trial Court to decide the same expeditiously preferably within two weeks thereafter. Further, action to be taken in the matter in accordance with law pursuant to decision of the application to be moved by the petitioner in terms of the liberty granted/expiry of time stipulated hereinabove.

(B.S. WALIA)
JUDGE

1.10.2018
Ashwani

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| 1. Whether speaking/reasoned : | Yes/No. |
| 2. Whether reportable : | Yes/No. |