

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

**CR No.5258 of 2019**

**Date of Decision:18.09.2019**

**YASH VASHIST**

**...Petitioner**

**Versus**

**SANTRA DEVI AND OTHERS**

**..Respondents**

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL**

Present: Mr. Sarvjit Singh Khurana, Advocate  
for the petitioner.

Mr. Mukesh Yadav, Advocate  
for respondent No. 2.

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**DEEPAK SIBAL, J. (ORAL)**

The present petition is directed against the order dated 20.08.2019 passed by the Civil Judge (Senior Division), Rewari (for short-the Executing Court) through which conditional warrants of arrest have been issued against the petitioner.

The only submission raised by learned counsel for the petitioner is that before issuance of the conditional warrants of arrest against the petitioner, the Trial Court has failed to follow the procedure prescribed under Order 21 Rule 37 CPC as also under Section 51 CPC as before issuance of the conditional warrants no notice was issued to the petitioner to show cause as to why he may not be committed to civil prison as also no satisfaction with regard to the issuance of the warrants was recorded.

Learned counsel for respondent No.2 justifies the issuance of

the warrants by submitting that the petitioner has not paid the decretal amount and this is in spite of the fact that there was no stay of the decree by any superior court.

Order 21 Rule 37 CPC reads as under:-

**"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 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."

As per the afore quoted provision if an application is filed before an Executing Court to execute a decree for payment of money by arrest and detention in civil imprisonment of a judgment-debtor, the

Executing Court instead of issuing warrants of arrest of the judgment-debtor shall first issue a notice calling upon him to appear before the Executing Court and show cause as to why he should not be committed to civil imprisonment. On his appearance the Executing Court should seek the judgment-debtor's explanation as to why he has not satisfied the decree against him for payment of money and on consideration of such explanation, if any, proceed to order his detention in civil imprisonment or otherwise. However, if after service of the aforesaid notice, if he fails to appear, the Executing Court should issue warrants for his arrest.

As per the proviso to Order 21 Rule 37 CPC issuance of show cause notice is not a pre requisite on the recording of satisfaction by the Executing Court that issuance of a show cause notice would go against the very object of execution of a money decree effecting in the delay of its execution as also if according to the Executing Court the judgment-debtor was likely to abscond or leave the local limits of the jurisdiction of the Court.

Section 51 CPC, which is also relevant, reads as under:-

**“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 Section 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.”

As per Section 51 CPC, a judgment-debtor can be subjected to civil imprisonment if the Executing Court is satisfied that the judgment-debtor is likely to abscond or leave the local limits of the Court or after the institution of the suit, in which the decree was passed, has dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or that the judgment-debtor, after passing the decree in question, is found to have means to pay the amount of the decree but has intentionally refused or neglected to do the same or that the decree is for a sum for which the judgment-debtor was bound, in fiduciary capacity, to account for.

In the present case, before issuance of warrants of arrest of the petitioner, in terms of the afore quoted provisions, the Executing Court neither issued any show cause notice nor recorded any satisfaction. That being so, the impugned order is liable to be set aside and it is so ordered.

However, liberty is granted to the Executing Court to proceed against the petitioner in accordance with law and to dispose of the execution proceedings expeditiously but not later than three months from the date of receipt of a copy of this order.

The petition is allowed in the above terms.

**(DEEPAK SIBAL)**

**JUDGE**

**September 18, 2019**

*Jyoti-17* Whether speaking/reasoned Yes/No Whether Reportable Yes/No