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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 18.09.2019

+ C.R.P. 178/2018 & CM APPL. 35512/2018 (Early Hearing)

NARAYAN KUAMR

..... Petitioner

versus

KAMAL KISHORE GUPTA

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Sundeep Sehgal, Advocate with petitioner in person.

For the Respondent: Mr. Devinder Singh Khatana with Mr. Sachin Kumar Tokas, Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 06.07.2018 whereby the Executing Court has sentenced the petitioner to undergo simple imprisonment for a period of 30 days because the execution has remained unsatisfied for more than 4 years.

2. Learned counsel for the petitioner submits that the Executing Court has erred in not appreciating the judgment of the Supreme Court in *Jolly George Verghese Vs. The Bank of Cochin*, (1980) 2 SCC 360.

3. Learned counsel further submits that an Order 21 Rule 37 CPC has no application in the facts and of the present case as there is prayer of the decree holder for execution of the decree for the arrest and detention in the present case.

4. Learned counsel further submits that the impugned order was passed on an application under Section 55 CPC. He further contends that prior to exercise of any power under Order 21 Rule 37 CPC, it is mandatory to issue a show cause notice calling upon the judgment debtor to show cause as to why he should be committed to civil prison.

5. Learned counsel submits that no such show cause notice was issued prior to the passing of the impugned order. He further submits that no finding as required by the proviso to Order 21 Rule 37 was also recorded.

6. Learned counsel appearing for the respondent/decreed holder submits that the petitioner has concealed several assets and bank accounts as such an application under Section 55 CPC was moved seeking his arrest and detention.

7. Rule 37 Order 21 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. ”

8. Order 21 Rule 37 CPC makes it obligatory on the part of the Executing Court to issue a show cause notice calling upon the judgment debtor to show cause as to why he should not be committed to the civil prison instead of issuing a warrants. The proviso under Rule 37 stipulates that where the Executing Court is satisfied 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, a notice would not be necessary.

9. Perusal of the impugned order shows that neither a show cause notice was issued in terms of Order 21 Rule 37 CPC nor satisfaction recorded by the Executing Court 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. Accordingly, on that ground alone, the impugned order cannot be sustained.

10. The Supreme Court of India in *Jolly George Varghese v. Bank of Cochin*, (1980) 2 SCC 360 has held *that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is appalling. To be poor, in this land of daridra narayana, is no crime and to recover debts by the procedure of putting one in prison is too flagrantly violative of Article 21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness. Simple default to discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or reculant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it. The provision emphasises the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree.*

11. In view of the above, order of the Executing Court dated 06.07.2018 sentencing the petitioner to undergo simple imprisonment for a period of 30 days because the execution has remained unsatisfied for more than 4 years is not sustainable and is accordingly quashed. The impugned order is accordingly set aside.

12. In case the Executing Court is of the view that powers under Order 21 Rule 37 CPC have to be exercised, an appropriate show cause notice will have to be issued to the petitioner giving an opportunity to respond to the same.

13. In the present case as no show cause notice was issued to the petitioner, no objection has been taken by the petitioner with regard to the applicability of Order 21 Rule 37 CPC; accordingly the said issue is left open.

14. The petition is accordingly disposed of in the above terms.

15. Order *dasti* under signatures of the Court Master.

SEPTEMBER 18, 2019
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SANJEEV SACHDEVA, J