

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

CR-1247-2021 (O&M)

Date of decision : 08.07.2021

Rajwant Kaur and another

...Petitioners

Versus

M/s Bindal Smelting Private Limited and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. R.S. Mamli, Advocate for the petitioners.
(Through Video Conferencing)

VIKAS BAHL, J.

CM-5214-CII-2021

Application is allowed, as prayed for.

CR-1247-2021 (O&M)

The present revision petition has been filed by the Judgment Debtors for setting aside the order dated 10.09.2019 (Annexure P-4) and the order dated 01.03.2021 (Annexure P-5) passed by the learned Civil Judge (Senior Division), Kurukshetra vide which the conditional warrant of arrest was issued against the Judgment Debtors.

The facts giving rise to filing of the present civil revision petition are as mentioned hereinafter. Respondent No.1 filed the suit for recovery of ₹28,10,131/-. Ex parte judgment and decree dated 22.05.2017 (Annexure P-2) was passed in favour of the said respondent and

thereafter, respondent No.1 filed Execution Petition in the year 2017. A copy of the said Execution Petition has been appended alongwith the revision petition as Annexure P-3. Even, as per the case set up in the revision petition, it has been stated that vide order dated 10.09.2019, conditional warrant of arrest was issued against the petitioners/Judgment Debtors.

A perusal of the order dated 10.09.2019 (Annexure P-4) would show that it had been noted in the same that an application under Order 21 Rule 37 and 38 CPC for detention of the Judgment Debtor for recovery of the decretal amount alongwith interest had been filed and on the said application, show cause notice under Order 21 Rule 37 CPC was issued. The petitioners/Judgment Debtors were duly served and even their counsel appeared and filed the power of attorney and sought time to make the payment. However, since, nobody appeared on 10.09.2019, nor any payment was made, nor any reply to the show cause notice was given, accordingly, conditional warrant of arrest was issued against the Judgment Debtors with the direction to the Execution Officer to bring him before the Court unless the aforesaid amount as detailed out in the decree is paid alongwith the interest.

As is apparent from the averments made in the revision petition, another order dated 01.03.2021, which is appended as Annexure P-5 with the revision petition, was passed which is also sought to be challenged in the present revision petition. Perusal of the same would show that the conditional warrants of arrest were issued on several

occasions and were received back unexecuted as was recorded in the orders dated 06.11.2019, 09.12.2019, 07.02.2020, 25.02.2020. It was further recorded that since on many occasions, warrants had been received back unexecuted, thus, it was deemed appropriate to order execution of the said conditional warrant of arrest by the DSP Head Quarter, Kurukshetra.

The said orders are sought to be challenged by the petitioners before this Hon'ble Court. It has been argued by the learned counsel for the petitioners that the Court should first attach the property of the Judgment Debtor and after exhausting the said procedure, should then issue conditional warrant of arrest. It is further stated that the ex parte decree is not in accordance with law. It is also submitted that the petitioners are ready to appear before the learned Courts below but the petitioners apprehend that the petitioners will be arrested. On the basis of the said submissions, it has been prayed that the impugned orders be set aside.

I have heard learned counsel for the petitioners and have perused the paper book and I am of the considered opinion that the present Civil Revision Petition deserves to be dismissed as being meritless.

The old saying that the problem of a man starts after he has a decree in his favour is clearly exemplified by the facts of the present case.

Even as per the case of the petitioners, the decree was passed on 22.05.2017. It is not the case of the petitioners that the said decree has

been set aside or any application for setting aside the said decree has been filed or any appeal against the said decree has been filed. Although, all the orders and the proceedings have not been annexed alongwith the present revision petition but even perusal of the orders, more so Annexures P-4 and P-5 annexed with the present revision petition, would show that in spite of repeated notices/conditional warrants of arrest, the petitioners have neither paid the money nor have complied with the decree. In fact, the petitioners are fully aware about the said proceedings which fact is apparent from the order dated 10.09.2019 wherein, petitioner No.1 who is also wife of petitioner No.2 had appeared and filed power of attorney and had sought time to make the payment. For the last more than two years, the petitioners are playing hide and seek with the Executing Court. The petitioners have not even paid the principal amount till date.

As regards the argument of learned counsel for the petitioners that first the property should be attached and then subsequently conditional warrant of arrest may be issued, it is stated that, firstly, there is nothing in the grounds of the present revision petition to even remotely show as to what all properties the petitioners' possess and what all properties they are ready to get attached and be sold for satisfying the decree. Neither any such property nor its value has been given before this Court also. Moreover, a perusal of the provisions of the Code of Civil Procedure, more so Order 21 Rule 30 CPC and Order 21 Rule 37 CPC, would clearly show that the decree for payment of money may be

executed by detention in civil prison of the Judgment Debtor or by attachment and sale of his property or by both. The said provisions are reproduced hereinbelow:-

“ORDER XXI RULE 30 CPC:-

30. Decree for payment of money.—Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

ORDER XXI RULE 37 CPC:-

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 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.”

Perusal of the facts in the present case would clearly show

that the issuance of conditional warrant of arrest is in accordance with law. As per the provisions of Order 21 Rule 37 CPC, show cause notice is required to be issued to the Judgment Debtors to show cause why he should not be committed to civil prison. As per Sub-Clause 2 of Rule 37 of Order 21, it has been stipulated that 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.

In the present case as is clear from the order dated 10.09.2019 (Annexure P-4), the show cause notice was issued and in fact, the petitioners were both served and petitioner No.1 even appeared and sought time to make payment and thereafter, stopped appearing. Moreover, from the impugned order itself, it is apparent that although the conditional warrant of arrest has been issued, it has been stated that in case the payment is made as per the calculation sheet, then the Judgment Debtor/petitioner No.2 is not to be arrested and it is only in case the payment is not made that he has to be arrested and produced before the Court. Thus, the procedure adopted by the Executing Court for the issuance of conditional warrant of arrest is absolutely legal and in accordance with law. In the present case, apart from the above, the petitioners have not even come forward to state as to what all properties they own or are ready to get the same attached and sold for satisfying the decree nor have they mentioned the value of the same.

As per the provision of Order 21 Rule 30 CPC, both the procedure with respect to attachment and also detention in prison can be

taken against the petitioners/Judgment Debtors either individually or simultaneously. Even in a situation where the amount is partly recovered by attachment and sale, for the recovery of balance amount in any case, the detention in civil prison can be ordered. In the present case, where the petitioners are playing hide and seek with the Executing Court and are not ready to satisfy the decree passed, the issuance of conditional warrants of arrest have been rightly issued by the learned Executing Court.

I find no reason to interfere in the same and thus, the present revision petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

08.07.2021

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No