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

CR-1695-2020 (O&M)
Date of decision : 16.05.2022

Gurpreet Singh and Another

... Petitioner(s)

Versus

Sulakshna Devi

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. L.S. Mann, Advocate for the petitioners.

Mr. Gitish Bhardwaj, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 17.09.2019 (Annexure P-4) whereby the Executing Court has issued conditional arrest/detention warrants against the petitioners without due compliance of the provisions of Order 21 Rule 37 of the Code of Civil Procedure, 1908 (CPC).

Learned counsel for the petitioners would contend that the Executing Court without due compliance of the provisions of Order 21 Rule 37 of CPC has issued conditional arrest/detention warrants of the petitioner-JDs. In support of his arguments, learned counsel for the petitioners has relied upon the judgments of this Court in the case of **Didar Singh @ Dara Singh Vs. State Bank of India [2013 (1) RCR (Civil) 588]** and **Mohinder Singh Vs. M/s Amrik Singh Zora Singh Merchants & Commission**

Agents [CR No.5756 of 2019 decided on 31.10.2019].

Per contra, learned counsel for the respondent would contend that the Court was well within its rights to pass the impugned order inasmuch, as there were chances of the petitioner-JDs absconding.

Heard.

In the present case, on 17.09.2019 the Executing Court had passed the following order :

“At this stage, file has been taken up again. Learned counsel for the DH has filed an application u/o 21 rule 37 CPC for issuing arrest/detention warrants of the JDs. It has been stated in the application that no property of Jds is traceable despite efforts made. All the averments made in the application are supported by an attested affidavit, therefore under these circumstances this court is left with no other legal option except for issuing conditional arrest/detention warrants of Jds which are ordered to be issued through area SHO with the direction that an amount liability of compensation approximately to the tune of Rs.3,70,000/- is outstanding against the respondents which they are bound to pay as per the MACT Award dated 27.04.2018 passed by this court. Therefore, concerned Ahlmad is directed to issued conditional arrest/detention warrants to the Jds through the area SHO if the Jds make the payment of the award under execution, then in that eventuality they be released there and otherwise Jds be arrested and be produced in court to satisfy their legal liability. Report on conditional warrants be submitted in this court on 02.11.2019.”

A perusal of the aforesaid order reveals that there has been no compliance of the provisions of Order 21 Rule 37 and Section 51 of CPC.

Order 21 Rule 37 of CPC read as under:-

“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.”

The provisions of Section 51 of CPC read as under:-

“51. 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 the 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 a fiduciary capacity to account.

Explanation - In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.”

As per the provisions of Section 51 of CPC, it is incumbent on the Executing Court not to proceed in execution of a decree for the payment of money by detention in prison till such time as the JD has been given an opportunity of showing cause as to why he should not be committed to prison. As per provisions of Order 21 Rule 37 of CPC, the Executing Court is required to call upon the JD before passing an order of civil detention. In the present case, the mandatory provisions of law as laid down in Section 51 of CPC and Order 21 Rule 37 of CPC have not been followed.

Argument of learned counsel for the respondent that issuance of show cause notice can be waived off as per the proviso to Order 21 Rule 37 of CPC deserves to be rejected on the ground that the order is totally bereft of any satisfaction of the Court having been recorded to the said effect.

In view of the above, the impugned order dated 17.09.2019 (Annexure P-4) is set aside. The Executing Court shall proceed with the matter in accordance with the provisions of law.

Disposed off accordingly. Pending applications, if any, also stand disposed off.

16.05.2022

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO