

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(120)

Civil Revision No.320 of 2023 (O&M)

Date of Decision: 18.01.2023

Major Singh and another

....Petitioners

VERSUS

M/s Murli Trading Company

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. C.S. Jattana, Advocate
for the petitioners.

VIKAS SURI, J. (Oral)

This Revision Petition has been preferred invoking jurisdiction under Article 227 of the Constitution of India, aggrieved against the order 17.11.2022 (Annexure P-8) passed by the Executing Court whereby it ordered issuance of warrants of arrest of the petitioners (JDs), for their failure to put in appearance despite being served notice of the application under Order 21 Rule 37 of Code of Civil Procedure, 1908 (for short 'the CPC').

At the very outset, learned counsel on instructions, submits that the petitioners seek indulgence of this Court for grant of an opportunity to put in appearance before the proceedings pending before the Executing Court and also to take appropriate steps for setting aside of the *ex parte* decree, as may be permissible in law. It is further submitted that the petitioners have not intentionally avoided submitting to the jurisdiction of the Court, but it was only on account of not having been served in the due manner prescribed by law. The petitioners had no notice of the said proceedings and as such did not come to know of pendency of the proceedings before the trial Court or before the Executing Court.

A perusal of the case file shows that M/s Murli Trading Company (plaintiff-respondent) had filed a suit for recovery of Rs.84,800/- (Rs.71,865/- as principal amount and Rs.12,935/- as interest at the rate of 1% per month

calculated for the period 28.09.2016 to 19.03.2018) on the basis of account books maintained by the plaintiff. In the said proceedings, the defendants (petitioners herein) were proceeded *ex parte* vide order dated 04.09.2018 (Annexure P-1). Accordingly, in the said proceedings an *ex parte* decree was passed on 11.12.2018. In execution of the said decree for a sum of Rs.1,04,100/-, the Executing Court issued notice to the petitioners on an application filed under Order 21 Rule 37 CPC, seeking the judgment debtors to be detained in civil imprisonment.

Learned counsel for the petitioners submits that pursuant to the impugned order, the warrants of arrest have not be executed as yet. Now, the next date before the Executing Court is 10.04.2023 for which fresh warrants are being issued. He undertakes to put in appearance before the Executing Court on the said date, or as may be directed by this Court and their liberty be protected till then, as their intention is not to avoid submitting before the jurisdiction of the Executing Court, but the default occurred as they were genuinely not aware of the said proceedings. It is only when the local police started visiting the house of the petitioners, enquiring about their whereabouts that it transpired that the impugned order had been passed by the Executing Court, which was sought to be effected. Without any loss of time, the petitioners have sought indulgence of this Court by way of the present petition.

The relevant provisions under the rules in Order 21 CPC that need to be noticed, are—

“Arrest and detention in the civil prison

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.

38. Warrant for arrest to direct judgment-debtor to be brought up.—Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

39. Subsistence allowance.—(1) No judgement-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sums as the Judge thinks sufficient for the subsistence of the judgment debtor from the time of his arrest until he can be brought before the Court.

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under Section 57, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deemed to be costs in the suit:

Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed”.

It is emphatically contended that the impugned order cannot be executed for want of compliance of Order 21 Rule 39(1), CPC. As per the inquiry made through counsel and information obtained from the record, the decree holder has not yet deposited the subsistence allowance, which is not only mandatory but a pre-requisite before arresting the Judgment Debtor in execution of a decree. In fact, no application has been moved by the decree holder for getting the subsistence allowance assessed nor any such assessment has been made by the Executing Court. It is pleaded that thus, there is a procedural impediment in executing the warrants of arrest. Moreover, the petitioners are praying for an opportunity to be granted to them to put in appearance before the Executing Court and submit to its jurisdiction and only thereafter, seek their remedy in accordance with law.

Heard learned counsel for the petitioners and perused the pleadings and other documents on record with his able assistance.

Keeping in view the above noticed facts and the legal position, I am of the considered opinion that issuing notice to the respondents at this stage would only further delay the proceedings before the Executing Court, keeping in view of the order that is being passed.

The warrants of arrest were ordered to be issued in terms of sub-rule (2) of Rule 37, as appearance by the petitioner-JDs was not made in obedience to the notice issued under Order 21 Rule 37(1), CPC. Whether the petitioners were duly served or not, can only be proved by leading cogent evidence. However, the petitioners are pleading at this stage to join proceedings in obedience to the notice under sub-rule (1) of Rule 37 of Order 21 CPC and submit to the jurisdiction of the Court. It is trite law that detention in civil prison in execution of a decree is as a last resort and before that an endeavour should be made for satisfaction of the decree.

Accordingly, the present petition is disposed of with a direction to the petitioners to put in appearance before the trial Court on 31.01.2023 and till the said date, the petitioners be not arrested pursuant to the warrants of arrest issued in the case bearing No.EXE/37/2022 titled '*M/s. Murli Trading Company vs. Surinder Singh and another*', for having defaulted to put in appearance on 17.11.2022. They would be at liberty to simultaneously move an appropriate application seeking recall of the warrants of arrest, while putting in appearance before the Executing Court.

As a matter of abundant caution, it is clarified that in case any such application is moved, the same would be considered in accordance with law and keeping in view that the warrants of arrest were issued under the provisions of Order 21 Rule 37(2) CPC i.e. on account of default in appearance in obedience to the notice given under Order 21 Rule 37(1) CPC

and the said warrants of arrest would deem to have served its purpose on the petitioners having put in appearance before the Executing Court.

Accordingly, the present petition is disposed of in terms of the aforesaid observations.

January 18, 2023

Anjal

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No