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

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Date of decision : 13.09.2023

Sonia Ahuja

..... Petitioner

Versus

Kirpal Singh and others

..... Respondents

CORAM : HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Anand Chibbar, Senior Advocate with
Ms. Ateevraj Sandhu and Mr. Lalit Thakur, Advocate
for the petitioner.

Mr. Divanshu Jain, Advocate
for the respondents.

AMARJOT BHATTI J. (ORAL)

The petitioner Sonia Ahuja has filed civil revision for setting aside impugned order dated 09.11.2016 (Annexure P-9) and impugned order dated 03.09.2016 (Annexure P-2) passed by learned Additional Civil Judge (Senior Division), Chandigarh, whereby the said Court has dismissed the application for recalling the order dated 03.09.2016 wherein the present petitioner has been sentenced to undergo civil imprisonment for one month and warrants of arrest have been issued against the petitioner.

2. The learned counsel for the petitioner argued that the petitioner has been sentenced to undergo civil imprisonment for one month under the provisions of Order XXI Rule 41 C.P.C. by totally ignoring the provisions of Section 56 C.P.C., according to which there is a specific prohibition of arrest or detention of a women in execution of decree for money. As per this provision, “notwithstanding

anything in this Part, the Court shall not order the arrest or detention in the civil imprisonment of a woman in execution of a decree for the payment of money.”

The learned trial Court while passing the impugned order dated 09.11.2016 has relied upon the authorities which are not applicable to the facts of the present case.

It is pointed out that there was no lapse on the part of present petitioner nor the present petitioner had any intention to disobey the directions of the Court. Infact, she was never informed by her counsel Sh. G.D. Goyal, Advocate regarding filing of application under Order XXI Rule 41 C.P.C. nor she was informed that there was any direction of the Court to appear in the Court under the aforesaid provisions. Thereafter, the present petitioner had filed an affidavit alongwith application in compliance with the provisions of Order XXI Rule 41 C.P.C. which is Annexure P-7 and P-8. In support of his arguments the learned counsel has relied upon the authority of Kerala High Court W.A. No.379 of 2003 decided on 05.06.2003 in case titled as Cyril Britto Vs. Union of India and Others upholding the protection provided to women from arrest and detention in execution of a money decree under 5.56 of CPC. Other authorities on this point are also relied upon. Without considering the aforesaid factual position, the learned Executing Court passed the impugned order dated 03.09.2016, which is Annexure P-2 and also dismissed the application to recall the aforesaid order by passing impugned order dated 09.11.2016, which is Annexure P-9. It is prayed that the aforesaid impugned orders may kindly be set aside by accepting the present revision.

3. On the other hand, the learned counsel for the respondents argued that in the case in hand the Executing Court had initiated the proceedings under XXI Rule 41 C.P.C., therefore, the provisions of Section 56 C.P.C. does not create any bar to the Executing Court for proceeding further in the execution proceedings.

The facts of the case and the provisions under Order XXI Rule 41 C.P.C. were rightly considered by the Executing Court. It was the petitioner/judgment-debtor who disobeyed the orders of the Court to avoid the execution of money decree in favour of the respondents. Therefore, the Executing Court passed order dated 03.09.2016 vide which she was sentenced to undergo civil imprisonment for one month and accordingly, her non-bailable warrants of arrest were issued. After the passing of this order and at the time of filing of application to recall the warrants of arrest, Annexure P-3, even then she did not appear in the Court in compliance to the directions of the Executing Court. She merely filed application Ex.P-7 alongwith affidavit Ex.P-8 dated 09.11.2016. Therefore, considering the conduct of present petitioner/judgment-debtor, the application was rightly declined by passing order dated 09.11.2016, which is Annexure P-9. The matter was referred to Mediation and Conciliation Centre but no compromise could be effected. It is prayed that the present civil revision has been filed only to further delay the execution proceedings and the same may kindly be dismissed.

4. I have considered the arguments advanced before me and I have also gone through the record carefully. It is not disputed that Sonia Ahuja, the present petitioner/judgment-debtor was inducted as a tenant on the ground floor of SCO No. 179-180, Sector 17, Chandigarh in the year 2002 for a period of 5 years on the basis of registered lease deed dated 22.10.2002. The landlord filed ejectment petition bearing Rent Petition No. 456 of 2009 on the ground of non-payment of rent. It is admitted that the learned Rent Controller assessed the provisional rent and the petitioner/judgment-debtor Sonia Ahuja was to deposit the rent and on her failure to do so, the ejectment order was passed on 28.04.2010 and thereafter, the premises were handed over to the landlord. The landlord/respondents filed Civil

Suit bearing No. 3828 of 2010 seeking recovery of arrears of rent, damages etc. which was ultimately decreed *exparte* on 24.01.2012. Subsequently, the present petitioner filed application for setting aside *exparte* judgment and decree passed against her which was also dismissed. Thereafter, the execution proceedings started on the basis of *exparte* decree dated 24.01.2012 in which the impugned order dated 03.09.2016 was passed under the provisions of Order XXI Rule 41(3) C.P.C., which is Annexure P-2. Order XXI Rule 41 C.P.C. runs as under : -

“41. Examination of judgment-debtor as to his property.-

[(1)] Where a decree is for the payment of money the decree-holder may apply to the Court for an order that -

(a) the judgment-debtor, or

(b) [where the judgment-debtor is a corporation], any officer thereof, or

(c) any other person,

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.

[(2)] Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.

(3) In case of disobedience of any order made under sub-rule (2), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the Court directs his release.]”

5. The facts narrated in civil revision clearly indicates that in the execution proceedings the present petitioner had engaged Sh. G.D. Goyal, Advocate. The present petitioner/judgment-debtor while filing civil revision levelled allegations against her counsel that she was not informed about the filing of application under Order XXI Rule 41 C.P.C. and under these circumstances, she could not comply the orders passed by the Executing Court. It is not the case that the present petitioner/judgment-debtor was not aware of the execution proceedings. She was represented by an Advocate. As per the directions of Executing Court, the judgment-debtor was called upon to appear in the Court personally and to file her affidavit regarding the particulars of her assets. Despite this, she did not appear in the Court nor her counsel appeared, as a result, the impugned order dated 03.09.2016 was passed under Order XXI Rule 41(3) C.P.C. vide which she was sentenced to undergo civil imprisonment for one month and her non-bailable warrants of arrest were issued. It is rightly pointed out by learned counsel for the respondents that after the passing of this order, the present petitioner/judgment-debtor filed application to recall the warrants of arrest, which is Annexure P-3. She also filed one application Annexure P-7 alongwith her Annexure P-8 disclosing about her assets. Despite coming to know about the order dated 03.09.2016, the present petitioner/judgment-debtor did not opt to appear before the Executing Court in compliance with the directions passed by the Executing Court.

The learned counsel for the petitioner strongly argued that as per Section 56 C.P.C. there is specific provision prohibiting the arrest or detention of a woman in execution of decree for money. He has also relied upon various authorities conforming the prohibition of arrest and detention of a woman in

execution of decree for money under Section 56 C.P.C. He has also relied upon certain authorities where it was held that on application under Order XXI **Rule 37 C.P.C.** even the notice cannot be issued to judgment-debtor who is a woman, considering the specific bar under Section 56 C.P.C. I have considered this aspect of the present case. In the case in hand, the impugned order dated 03.09.2016 (Annexure P-2) and the order dated 09.11.2016 (Annexure P-9) to recall the aforesaid order has not been passed under Section 56 C.P.C. In the case in hand, the proceedings are initiated on application under Order XXI Rule 41 C.P.C. which enables the decree-holder to get information from the judgment-debtor regarding his or her assets which is within the special knowledge of the judgment-debtor. Therefore, it cannot be said that application under Order XXI Rule 41 C.P.C. is an application for execution of decree but merely it is an aid to the decree-holder to enable him to execute the decree by obtaining the information from the judgment-debtor. As referred above, the present petitioner took the commercial premises on rent for running a restaurant and ejectment order was passed on account of non-payment of rent. Thereafter, the landlord filed suit for recovery of arrears of rent etc which was again decreed in their favour and in the execution proceedings, the present petitioner/judgment-debtor was called upon to appear in the Court to disclose about her assets so that the decree in favour of respondents/decrees-holders could be executed. In my opinion, the petitioner/judgment-debtor was not justified in disobeying the orders of the Executing Court passed under the provisions of Order XXI Rule 41 C.P.C. She was duty bound to disclose about her assets alongwith documents which she failed to disclose. Rather while passing the order dated 03.09.2016, Annexure P-2, neither judgment-debtor nor her counsel appeared which compelled the Executing

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Court to pass the impugned order dated 03.09.2016, Annexure P-2. Even after coming to know about this order, she did not make any effort to appear before the Executing Court to comply the directions and therefore, the order dated 03.09.2016, Annexure P-2 was not recalled and the application was rejected by passing order dated 09.11.2016, which is Annexure P-9.

Considering all the facts of the present case, I do not find any reason to interfere in the aforesaid orders passed by the Executing Court under the provisions of Order XXI Rule 41 C.P.C. and the same are accordingly, upheld and finding no merits in the present civil revision, the same is accordingly, declined.

(AMARJOT BHATTI)
JUDGE

13.09.2023
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Whether speaking/reasoned:	Yes
Whether Reportable:	Yes