

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

**CR-3821 of 2023(O&M)
Date of Decision: 13.07.2023**

Naresh Kumar

...Petitioner

Versus

Dhanpat Rai

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Deepak Aggarwal, Advocate
For the petitioner.**

KARAMJIT SINGH, J.

1. The present revision petition has been filed by Naresh Kumar, judgment debtor against the order dated 31.05.2023 passed by the Court of Civil Judge(Jr.Divn.), Samrala whereby the said Court has issued conditional warrants of arrest of the petitioner in an execution application filed by Dhanpat Rai, decree holder under Order 21 Rule 37 CPC.

2. The counsel for the petitioner submits that the impugned order was passed by the concerned Executing Court without complying with the provisions of Order 21 Rule 37 CPC, which mandates that the Court shall instead of issuing a warrant of arrest of judgment debtor, issue a notice calling upon him to appear before the Court on the date fixed and show cause as to why he should not be committed to civil imprisonment. Such show cause notice is exempted only if the Court is satisfied that the judgment debtor is likely to abscond or leave the local limits of the jurisdiction of the Court. The counsel for the petitioner further submits that

there is nothing on the record to show that the judgment debtor was going to abscond or leave the local limits of the executing Court and as such issuance of show cause notice to the judgment debtor was necessary before issuance of conditional warrants of his arrest. The counsel for the petitioner further submits that in the instant case, no such show cause notice was issued to the judgment debtor before passing of the impugned order and consequently the impugned order is illegal and is liable to be quashed.

3. I have considered the submissions made by counsel for the petitioner.

4. From the perusal of the impugned order it is apparent that before passing of the impugned order, no such show cause notice as has been provided in Rule 37 of Order 21 CPC was issued to the judgment debtor to explain as to why he should not be committed to civil imprisonment. After the issuance of show cause notice the executing Court is to proceed further as per provisions of Rule 40 of Order 21. In the given circumstances, as the executing Court did not issue any show cause notice to the petitioner as per the provisions of Rule 37 of Order 21, the impugned order cannot be sustained in the eyes of law.

5. Consequently, the present petition is allowed and the impugned order is set aside with direction to the executing Court to proceed further in the matter after issuing show cause notice as per the provisions of law, as has been discussed above.

6. Keeping in view the circumstances mentioned above, this petition is being disposed of without issuing any notice to the opposite party.

If respondent is summoned to contest this litigation, he will have to incur

huge expenses to defend this case. However, liberty is granted to the respondent that if he feels dissatisfied with this order, he may move an application to recall the same.

13.07.2023
Jiten

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No