

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No. 4565 of 2023(O&M)
Date of Decision: 11.08.2023

M/s Josan Rice Mills Jalalabad (W) through its partners

...Petitioners

Versus

M/s Ramesh Kumar & Sons

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Karan Nehra, Advocate and
Mr. Abhay Josan, Advocate
For the petitioners.

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioners/ judgment debtors for setting aside of order dated 27.07.2023 (Annexure P-1) whereby the Executing Court gave direction to summon the petitioners through non bailable warrants of arrest in an application filed by the respondent under Order 21 Rule 37 CPC.

2. The counsel for the petitioners while assailing the impugned order has , *inter alia*, contended that the same has not been passed in conformity with the provisions of Order 21 Rule 37 CPC as firstly show cause notice is to be issued calling upon him (JD) to appear before the Court on a specified day and show cause why he should not be committed to civil imprisonment. The counsel for the petitioners further submits that the case of the petitioners is not covered under proviso to Rule 37 of Order 21 as there is no likelihood that the JD is going to abscond or leave the local limits

of jurisdiction of Court. The counsel for the petitioners further submits that thus the impugned order deserves to be set aside.

3. I have considered the submissions made by counsel for the petitioners and gone through the relevant provisions of law.

4. Order 21 Rule 37 and 40 CPC reads as follows:-

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 on 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.

40. Proceedings on appearance of judgment debtor in obedience to notice or after arrest.-(1) *When a judgment debtor appears before the court in obedience to a notice issued under rule 37, or is brought before the court after being arrested in execution of a decree for the payment of money, the court shall proceed to hear the decree holder and take all such evidence as may be produced by him in support of his application for execution, and shall then give the judgment*

debtor an opportunity of showing cause why he should not be committed to the civil prison.

(2) Pending the conclusion of the inquiry under sub-rule (1) the court may, in its discretion, order the judgment debtor to be detained in the custody of an officer of the court or release him on his furnishing security to the satisfaction of the court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the court may, subject to the provisions of section 51 and to the other provisions of this Code, make an order for the detention of the judgment debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the judgment debtor an opportunity of satisfying the decree, the court may, before making the order of detention, leave the judgment debtor in the custody of an officer of the court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment debtor released under this rule may be re-arrested.

(5) When the court does not make an order of detention under sub-rule (3), it shall disallow the application and, if the judgment debtor is under arrest, direct his release.

5. From the perusal of the aforesaid statutory provisions it is apparent that before issuing a warrant of arrest, show cause notice is to be issued to the JD as to why he should not be committed to civil imprisonment and when the JD appears before the Court in pursuance to the said show

Order 21 Rule 40 CPC and JD is to be given an opportunity of showing cause why he should not be committed to civil imprisonment.

6. However, in the instant case, it appears that no such show cause notice was served to the petitioners before passing the impugned order whereby the petitioners are directed to be summoned through non bailable warrants of arrest. Thus, the impugned order is not sustainable in the eyes of law and accordingly the same is hereby set aside.

7. The petitioners are directed to appear before the Executing Court concerned on the date already fixed there and the learned Executing Court is directed to proceed further in the execution application in accordance with the provisions of Order 21 Rules 37 and 40 CPC.

8. 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.

11.08.2023

Jiten

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No