

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-7470 of 2017 (O&M)  
Date of Order:03.04.2024

**Rajinder Kumar Chauhan and another**

**.Petitioners**

**Versus**

**Tata Capital Financial Services Ltd. and another**

**..Respondents**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**Present:     None for the petitioners.**

**Mr. Suresh Kumar Kaushik, Advocate  
for Mr. Vikrant Sharma, Advocate  
for the respondents.**

**ANIL KSHETARPAL, J**

1.            The petitioners herein are Judgement Debtor Nos.2 and 3. In an execution petition filed for implementing arbitration award dated 28.06.2016, for recovery of Rs.1,77,15,404/- along with interest @18% per annum, the Executing Court has ordered civil imprisonment of the petitioners for a period of 3 months.

2.            This revision petition is pending for the last 7 years. Though, no stay was granted, however, the learned counsel representing the decree holders submits that the petitioners were arrested but subsequently granted bail on the same day. Neither the petitioners nor their counsel are present. However, with the able assistance of the learned counsel representing the decree holders, this court has perused the paper book containing the impugned order. It is evident that the Executing Court has not recorded any positive finding to the effect that the judgment debtors are intentionally evading to pay the amount although they have sufficient resources.

3. In execution of the civil court decree for recovery of the amount, the inability of judgment debtors to pay the amount does not automatically result in civil imprisonment. The Court is required to record a positive finding that the judgment debtors are intentionally evading to re-pay the amount despite resources.

4. At one stage, the petitioner appeared in the Court and stated that he does not have any resources and therefore they are at the mercy of the court. It has also come on record that previously the petitioners were sent to 6 months' imprisonment in criminal original contempt petition no.27 of 2013.

5. Keeping in view the aforesaid facts, the impugned order passed by the Additional District Judge, on 18.09.2017, is set aside, while remitting the matter back to the Executing Court to pass a fresh order keeping in view the law laid down by the Supreme Court in paragraphs 10 and 11 of the judgment passed in **Jolly George Varghese and another vs. The Bank of Cochin, (1980) 2 SCC 360**, which read as under:-

*“10. Equally meaningful is the import of Article 21 of the Constitution in the context of imprisonment for non-payment of debts. The high value of human dignity and the worth of the human person enshrined in Article 21, read with Arts. 14 and 19, obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence. Maneka Gandhi's case as developed further in **Sunil Batra v. Delhi Administration, Sita Ram & Ors. v. State of U.P. and Sunil Batra v. Delhi Administration** lays down the proposition. It is too obvious to need elaboration that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is*

*appalling. To be poor, in this land of daridra Narayana, is no crime and to 'recover' debts by the procedure of putting one in prison is too flagrantly violative of Article 21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness. Unreasonableness and unfairness in such a procedure is inferable from Article 11 of the Covenant. But this is precisely the interpretation we have put on the Proviso to Section 51 CPC and the lethal blow of Article 21 cannot strike down the provision, as now interpreted.*

11. *The words which hurt are "or has had since the date of the decree, the means to pay the amount of the decree". This implies, superficially read, that if at any time after the passing of an old decree the judgment-debtor had come by some resources and had not discharged the decree, he could be detained in prison even though at that later point of time he was found to be penniless. This is not a sound position apart from being inhuman going by the standards of Article 11 (of the Covenant) and Article 21 of the Constitution. The simple default to discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or reculant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it. The provision emphasises the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and straitened circumstances will play prominently. We would have, by this construction, sauced law with justice, harmonised Section 51 with the Covenant and the Constitution."*

6. All the pending miscellaneous applications, if any, are also disposed of.

April 03, 2024

(ANIL KSHETARPAL)  
JUDGE

nt

Whether speaking/reasoned

:YES/NO

Whether reportable

:YES/NO