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

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Date of decision :11.09.2025

SUKHWINDER SINGH

... PETITIONER

VERSUS

JARNAIL SINGH

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Karan Bhardwaj, Advocate and
Mr. Ishan, Advocate
for the petitioner.

PARMOD GOYAL, J. (ORAL)

1. Petitioner has approached this Court being aggrieved by order dated 12.08.2025 (Annexure P-11) passed by the Executing Court i.e. Court of Civil Judge (Junior Division), Ferozepur.

2. Vide order dated 12.08.2025, the Executing Court had issued conditional warrants of arrest against judgment debtor with respect to principal amount of Rs. 6,45,000/- along with interest with a direction to decree holder to deposit subsistence allowance within 3 days and thereafter conditional warrants of arrest were ordered to be issued for 29.08.2025.

3. Learned counsel for the petitioner argued that the order dated 12.08.2025 is liable to be set-aside as Executing Court has failed to take into consideration that petitioner vide his objections has clearly stated that he has no means to pay the debt. Reliance has been placed upon the judgment of Supreme Court in *Jolly George Varghese and another Vs. The Bank of Cochin, 1980(2) SCC 360* and this Court in *Akash Sharma and another Vs. State Bank of Patiala*



now SBI, 2024 (2) R.C.R. (Civil) 360, ‘Rupinder Kumar Bansal Vs. M/s Balian Trading Company and another, 2025(1) Law Herald 371, Didar Singh @ Dara Singh Vs. State Bank of India, 2013(1) R.C.R. (Civil) 588 and Sorab Vs. M/s India Bulls Financial Services Ltd. and another, 2016 (4) R.C.R. (Civil) 962.

4. It is the case of the petitioner that Executing Court was bound to record satisfaction that Judgment Debtor is not paying the decretal amount intentionally, even though, he has got sufficient means. It is asserted that petitioner-Judgment Debtor has already shown his inability due to his financial restrictions having no assets with him. Therefore, the Executing Court has erred in passing the order dated 12.08.2025.

5. After going through the referred judgments, it is clear that the principle of law laid down therein are not in dispute. There is no doubt that if a person has no means to pay, in absence of any malafide or dishonest intention, the arrest and detention cannot be resorted to. It is also not in doubt that if a person is incapable on account of physical disability and is able to show his inability to pay in a bonafide manner, then also detention cannot be justified. The main principle, while ordering detention of a judgment debtor, is whether non payment is on account of genuine difficulties or its a malafide intention of JD to avoid payment of money decree. This distinction between bonafide and malafide ability to pay needs to be kept in mind.

6. In the present case, the Executing Court has duly found out that JD is intentionally not disclosing property owned by him. Relevant part of order dated 12.08.2025 is as under:-

“As per averments of the show cause notice, J.D. has failed to make payment of decretal amount nor has furnished any information qua property owned by him.”



7. It is also noted by Executing Court that Judgment Debtor is being represented through counsel and has filed frivolous objections and has concluded that Judgment Debtor is not intending to pay money to decree holder. The conclusion drawn by learned Executing Court cannot be faulted with.

8. Till date, no application seeking bankruptcy has been preferred by Judgment Debtor. It was not shown that Judgment Debtor is dependent only on Government subsidy. Judgment Debtor is not seeking legal aid and being represented by lawyers before executing Court as well as before this Court. Merely asserting that he has no means to pay the debt, would not be sufficient for a judgment debtor to avoid his liability to pay debt and undergo imprisonment. It is the duty of Judgment Debtor to come clean and show his bonafide inability. The onus is upon judgment debtor and not on decree holder to prove that judgment debtor is solvent to pay back the debt, which he has incurred by virtue of decree against him. If the onus is shifted upon decree holder, no decree could be executed. Each and every Judgment Debtor would come before the Court and plead that he has no means without disclosing his assets. It is very easy to conceal owned assets by one person. It is very common that assets are purchased in the name of the family and by doing such things, Judgment Debtor continues to live a lavish life whereas decree holder keeps running in the Court for execution of decree. Since the onus to show that judgment debtor has no means and, therefore, his plea that he has no means, has not been discharged.

9. In the present case, the Judgment Debtor has simply asserted that he has got no means. Since Judgment Debtor has not filed any material to show that he is insolvent or that he is dependent upon government subsidies for livelihood or has not explained payment of fee for legal recourse. Therefore, mere assertions



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that he has no means, cannot be held to be bonafide.

10. In the facts and circumstances of the present case, the intention is only to avoid payment of debt and such intention is not genuine and is malafide. Accordingly Executing Court has rightly rejected objections as well as reply filed by Judgment Debtor to the show cause notice under Order 21 Rule 37 of the Code of Civil Procedure, 1908.

11. There is no merit in the present petition, hence dismissed.

11.09.2025
manoj

(PARMOD GOYAL)
JUDGE

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