



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

CR-8291-2025

Reserved on: 17.11.2025

Pronounced on 21.11..2025

SIDHARTH GUPTA

.... Petitioner

Versus

RAJEEV SETHI

... Respondent

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Ravi Sikri, Senior Advocate with Mr. Deepank Yadav,
Advocate for the petitioner (Through VC)

Mr. Sanjay Jain, Advocate for the respondent/caveator.

Parmod Goyal, J.

Petitioner/judgment debtor is aggrieved by order dated 11.09.2025 (Annexure P-21), passed by Executing Court/Commercial Court, Gurgaon, whereby application filed by respondent/decree holder under Order XXI Rule 37 and 40 read with Section 151 CPC was allowed. Petitioner/ judgment debtor is further aggrieved by order dated 29.10.2025, whereby application filed by petitioner/judgment debtor under Section 114 read with Order XLVII Rule 1 CPC seeking review of order dated 11.09.2025 was also dismissed.

2. Vide judgment and decree dated 27.02.2020, passed by High Court of Delhi, suit preferred by decree holder against judgment debtor/defendant for recovery of Rs. 2.25 Crores along with *pendente lite* and future interest @ 9% per annum along with cost of Rs.2.22 Lakhs was decreed. The said decree was transferred for execution by High Court of



Delhi vide its order dated 12.10.2021. The appeal bearing RFA (OS) (COMM) No. 2/2022 preferred by petitioner/judgment debtor dated 27.02.2020 (Annexure P-5) filed by judgment debtor/defendant was dismissed by Division Bench of Delhi High Court vide its judgment dated 02.06.2022.

3. It is worth noticing that petitioner/judgment debtor had preferred the said appeal along with an application under Order XLIV Rule 1 read with Section 151 CPC seeking permission to file appeal as indigent person. Appeal as well as application preferred by Petitioner/judgment debtor to sue as indigent person were dismissed vide judgment dated 02.06.2022.

4. Before the Executing Court respondent / decree holder had preferred an application under Order XXI Rule 41 CPC seeking details of assets of petitioner/judgment debtor. In compliance of said application petitioner/judgment debtor had duly filed his reply. After receipt of reply decree holder claimed that petitioner/judgment debtor has intentionally concealed material facts regarding his movable and immovable properties and assets required to be mentioned and had intentionally given vague and incomplete details of properties and assets owned and disposed off by him only with purpose to defeat execution petition without any documents. It was averred that petitioner/judgment debtor has neither admitted nor denied about the movable and immovable properties belonging to him as mentioned in schedule attached with the execution petition. He has intentionally not disclosed the nature and source of income regarding his alleged consultation and liasoning work. Judgment debtor has only referred to income tax return



for the assessment year 2022-2023 without filing copy of said return and computation certificate. He had also not intentionally filed income tax return for the year 2015-2016 on the ground that he is facing complaint under Section 138 of Negotiable Instruments Act, 1881. He also denied having any immovable property and claimed to be living in leased house leased by his wife, however, has not disclosed source of income of his wife who is stated to be housewife without any independent earnings. He had not disclosed status of property mentioned in schedule filed along with execution petition. He has failed to disclose the relationship between him and different alleged creditors payments were made by him to dispose off sale consideration received by selling his known properties. It was alleged that petitioner/judgment debtor has also concealed details of his bank accounts. In view of evasive reply to application under Order XXI Rule 41 CPC petitioner/judgment debtor had prayed for examination of petitioner/judgment debtor by moving application under Order XXI Rule 40 CPC and also prayed for sending petitioner/judgment debtor to civil imprisonment for not satisfying the decree.

5. The application preferred by decree holder was contested by petitioner/judgment debtor. He pleaded that he is an indigent person and does not possess any means to pay and satisfy decree against him. He claimed that he is not keeping good health for the past two years and suffering from various ailments i.e. loss memory, diabetes, high blood pressure, etc. and due to litigation his mental health has been compromised and he remains in depression. It is asserted that roving inquiry relating to his assets should not be allowed. It was asserted that no facts were suppressed



by him. He had already disclosed complete details about his assets. It was asserted that he was not obliged to furnish income tax returns and disclose source of income of his wife as she is not judgment debtor.

6. From the pleadings of parties, following issues were framed vide order dated 07.01.2023 by the Executing Court :-

1. Whether JD is a man of resources and he is intentionally and deliberately refusing to pay the dues of DH, is so its effect? OPDH
2. Whether the application filed on behalf of DH is not maintainable? OPJD
3. Relief.

7. After giving opportunity to lead evidence to both sides, learned Executing Court vide impugned order dated 11.09.2025 and also vide order dated 29.10.2025 passed on review application preferred by petitioner/judgment debtor had concluded that petitioner/judgment debtor has not come clean and has not disclosed all his assets. The conduct of petitioner/judgment debtor was duly noticed by Executing Court. It was held that petitioner/judgment debtor in order to claim that he was suffering from psychosis had intentionally not disclosed name of Advocate as well as his brother. It was also noted that no application for declaration as indigent person was ever moved by petitioner/judgment debtor nor any effort was made to avail legal services. The Executing Court had duly noticed that entire litigation was conducted by petitioner/judgment debtor through private counsels. The Executing Court had further noticed efforts on the part of petitioner/judgment debtor not to disclose his income tax returns and disclose source of income of his wife and particulars of financial status of



his son. It had noticed that in the garb of loss of memory he had not even disclosed his current address before the Court. In review petition also learned Executing Court had duly considered that subsequent documents filed along with review application cannot be taken into consideration to come to different conclusion. It had duly noticed that wife of petitioner/judgment debtor who used to accompany him in the Court but she was however, never examined to prove that it is she who is taking care of household expenditure. It was also held that initial onus was duly discharged by decree holder which petitioner/judgment debtor has failed to rebut and accordingly had dismissed the contentions raised on behalf of judgment debtor & review application.

8. Learned counsel for the petitioner argued that the orders dated 11.09.2025 & 29.10.2025 are liable to be set-aside as Executing Court has failed to take into consideration that petitioner vide his reply and review application has clearly stated & has established 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 of Madras High Court in ***Ibram Sha Vs. Lakshmi Prabha Chit Funds (P) Ltd.***, 2009 (6) CTC 560.

9. 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 impugned orders dated 11.09.2025 & 29.10.2025.

10. 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 *mala fide* 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 *bona fide* 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 *mala fide* intention of JD to avoid payment of decretal amount. This distinction between *bona fide* and *mala fide* ability / failure to pay needs to be kept in mind while adjudicating present revision.

11. I find merit in the contentions raised on behalf of petitioner/judgment debtor that initial onus is on the petitioner/judgment debtor to prove that petitioner/judgment debtor has got means and is willfully avoiding to pay decretal amount. Firstly it has to be seen whether decree holder has succeeded in discharging initial onus cast upon him. On consideration of facts and evidence of present case, it is clearly made out that in the present case decree holder has done everything possible at his ends to show that petitioner/judgment debtor is not intending to pay the decretal amount despite having sufficient resources. He has not only attached the schedule of properties which were known to be owned by petitioner/judgment debtor along with his execution petition. He has duly



moved an application under Order XXI Rule 41 CPC for seeking directions against petitioner/judgment debtor to file details of his properties.

12. From material placed by decree holder it is clearly made out that petitioner/judgment debtor was high worth individual who had got movable and immovable properties. Further it is proved by decree holder that presently also petitioner/judgment debtor is residing in a leased accommodation in Gurugram and spending considerable amount on himself, therefore, the initial onus cast upon decree holder stands discharged in the present case. It is the duty of petitioner/judgment debtor to rebut the evidence of decree holder and show that he has got no means to discharge the liability.

13. While appreciating evidence of petitioner/judgment debtor in this regard. The provisions of Section 106 of The Indian Evidence Act, 1972 needs to be kept in mind which mandates that facts which are in special knowledge of a person need to be established by said person. It is therefore, duty of petitioner/judgment debtor to come clean and disclose specifically all the particulars about his properties to show his *bona fide*. Failure to come clean by taking plea of roving enquiry would be against his own case.

14. In the present matter petitioner/judgment debtor has simply examined himself and his brother in support of his case. He has also placed reliance upon income tax returns as well as sale of few of his properties and payment of dues to one of his creditors, namely Capital First Limited. Perusal of reply filed by petitioner/judgment debtor to application under Order XXI Rule 41 CPC goes to show that petitioner/judgment debtor has been filing only evasive replies without specifically denying assertions made by decree



holder. Decree holder has specifically alleged and given details of properties in schedule attached with the execution petition, however, without disclosing status of each of the property the petitioner/judgment debtor has simply stated details to be incorrect false and misleading. He is simply proclaiming that he has got nothing with him without placing material to show details of all the assets which decree holder has alleged. In fact reply to application under Order XXI Rule 41 CPC and reply to application under Order XXI Rule 41 and 37 CPC both goes to show that petitioner/judgment debtor has been very evasive in his replies.

15. From admissions made in pleadings as well as evidence of parties, following facts are also clearly made out:

(I) That though application to file appeal as indigent person was moved by appellant before Delhi High Court, however, said application was dismissed along with appeal preferred by petitioner/judgment debtor. Judgment dismissing the appeal as well as application to file appeal as indigent person, both have attained finality as they were not challenged further.

(II) Throughout the present case, petitioner/judgment debtor is being represented by Senior Advocate which he is claiming to be on *pro bono* basis without there being any material in this regard. It is worth noticing that during pendency of the execution petition in the year 2022, petitioner/judgment debtor had moved an application with Legal Services Authority to seek legal aid, however, despite appointment of legal service counsel,



his services were not availed by petitioner/judgment debtor, rather he had engaged a Senior Counsel.

16. From above facts it is clearly made out that petitioner/judgment debtor is only trying to create smokescreen by moving application as indigent person and by seeking legal aid, however, neither application for indigent person was taken to logical conclusion nor legal aid was ever availed throughout the pendency of suit, appeal or execution petition. The facts regarding actual financial status is within exclusive knowledge of petitioner/judgment debtor and once it is *prima facie* shown that petitioner/judgment debtor has or had means, it was for petitioner/judgment debtor to show that such means stands exhausted and he has got no means. Other facts which show the evasive manner in which present petitioner/judgment debtor is operating is the fact that initially he had taken plea that rent and other household expenses were being paid by his wife, however, neither wife was examined nor any source of income of wife was disclosed to justify payment of rent of Rs.25,000/- per month being made by petitioner/judgment debtor for the house where he was residing. No source disclosed or explanation as to how he is meeting his medical and daily expenses has been given.

17. It is worth noticing that it was the duty of petitioner/judgment debtor to show that his wife was gainfully employed and was not a housewife as being alleged by decree holder. Furthermore, even this stand that household expenses were being taken care by his wife was changed by petitioner/judgment debtor conveniently by taking the plea that his brother is



taking care of household expenses, who was examined in execution petition. Petitioner/judgment debtor while appearing as his own witness before executing Court had shown ignorance about name of his brother, name of his counsel and claimed loss of memory. However, this alleged loss of memory is not made out from affidavits duly sworn by petitioner/judgment debtor before the executing Court.

18. Pleadings of petitioner/judgment debtor goes to show that petitioner/judgment debtor is giving evasive replies to buy time and not disclosing true facts which are in his exclusive knowledge. Once initial onus has been discharged by decree holder it was petitioner/judgment debtor to rebut claim of decree holder and show that he had no means. However, from conduct of petitioner/judgment debtor as noted above, it is clearly made out that petitioner/judgment debtor is only avoiding to disclose his true financial status before the executing Court, by giving evasive and vague replies and by raising hyper technical objections.

19. Therefore, learned executing Court has rightly decided issue No.1 in favour of decree holder and against petitioner/judgment debtor holding that petitioner/judgment debtor has failed to show that he has no means to pay the decretal amount. The protection of law to petitioner/judgment debtor is available only if he is unable to pay the decretal amount in *bonafide* manner. However, from evidence led by decree holder as well as by petitioner/judgment debtor it is clearly made out that non-payment in the present case is totally *mala fide* with intention to avoid payment of decretal amount, despite due means.



20. Faced with the above conclusion, learned counsel for petitioner/judgment debtor has tried to argue that no show cause notice was issued in pursuance of application under Order XXI Rule 37 CPC, however, objections raised on behalf of petitioner/judgment debtor is liable to be rejected in view of the fact that due notice of application under Order XXI Rule 37 CPC was given to petitioner. He had duly filed his reply thereafter, issues were framed on the basis of pleadings i.e. on application moved by decree holder and reply by petitioner/judgment debtor. Both the parties i.e. decree holder as well as judgment debtor were granted due opportunity to lead their respective evidence and it was after consideration of pleadings and evidence led by parties, the Court concluded that petitioner/judgment debtor is avoiding to pay the decretal amount in a *mala fide* manner, therefore the argument that no show cause notice was issued shall have no effect in the facts and circumstances of the present case.

21. In view of the above discussion, I do not find any error in the impugned orders passed by the executing Court. Revision petition is without any merit, hence is dismissed.

21.11.2025
chiranjeev

(PARMOD GOYAL)
JUDGE

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No