IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CMPMO No. 205 of 2026

Decided on: 27.10.2026

Ravi Kumar

... Petitioner

Versus

M/s Mahajan Traders

...Respondent

Coram
Hon'ble Mr. Justice Virender Singh, Judge
Whether approved for reporting?

For the Petitioner: Mr. S.D. Gill, Advocate.

For the Respondent *:* Mr. Mukesh Thakur, Advocate.

Virender Singh, Judge (oral)

Petitioner Ravi Kumar has filed the present petition, under Article 227 of the Constitution of India, against the order dated 15.1.2026, passed by the Court of learned Senior Civil Judge, Bilaspur, District Bilaspur, H.P. (hereinafter referred to as 'the Executing Court'), in Execution case No. 10-10 of 2024, titled as, 'M/s Mahajan Traders versus Ravi Kumar'.

2. By way of order dated 15.1.2026, the learned Executing Court has passed the following order:

> *"No details of property of JD filed and the judgment debtor has not cared to appear personally before the Court either for any circumstances to be disclosed that may explain any sufficient reasons for his not complying with the decree of the Court. As such, steps be taken for detention of the JD in Civil Imprisonment whereafter warrants shall be issued for his production before the Court on 23.2.2026."*

3. The matter under Section 138 of the N.I. Act was compromised before the National Lok Adalat on 11.5.2024, in case No. 152/3 of 2019, titled as, 'M/s Mahajan Traders vs. Ravi Kumar'.

4. Thereafter, the award of the Lok Adalat was sought to be executed. On 27.11.2025, the learned Executing Court has passed the following order, on the statement of learned counsel for the Decree Holder:

> *"At this stage, learned counsel for the DH has stated that necessary averments in the application under Order 21 Rule 37 CPC are missing and intends to file afresh with complete averments. He has withdrawn the earlier application vide endorsement as to withdrawal has been made on the application itself and fresh application has been moved. The present application details that the judgment debtor, to the knowledge of DH has no property movable or immovable against which the present decree may be enforced in view of these circumstances, let notice of this application be issued on old PF afresh to the JD seeking him to present details of his assets on 15.1.2026, failing which the Court shall undertake coercive process.*

The application No. 518/2025 to be put up for final order before National Lok Adalat on 13.12.2025.

5. If the order dated 27.11.2025 and the impugned order dated 15.1.2026 are seen in the light of decision of Hon'ble Supreme Court in a case titled as, **'Jolly George Varghese and another versus the Bank of Cochin'**, reported in (1980) 2 SCC 360, then, the aforesaid orders are not sustainable in the eyes of law. Relevant paragraphs 10 and 11 of the judgment are reproduced, as under:

> *"10. Equally meaningful is the import of Art. 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 Art. 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 Art. 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 Art. 11 of the Covenant. But this is precisely the interpretation we have put on the Proviso to s. 51 C.P.C. and the lethal blow of Art. 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 Art. 11 (of the Covenant) and Art. 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 recusant 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 s. 51 with the Covenant and the Constitution."

(self emphasis supplied)

6. When, the learned counsel for the Decree Holder himself has admitted, as per order dated 27.11.2025 that the Judgment Debtor is having no movable or immovable property, then, poor Judgment Debtor cannot be sent to civil imprisonment merely because he is having no means to pay the awarded amount.

7. In such situation, the present petition is allowed as impugned order dated 15.1.2026 does not sustain in the judicial scrutiny of this Court and the same is accordingly set aside.

8. The pending application(s), if any, are also disposed of.

(Virender Singh)
Judge

27.10.2026
Kalpana