



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
251

CR-1465-2023 (O&M)
Date of decision: 04.05.2026

M/s J.S. Builders

...Petitioner(s)

Vs.

Haryana Police Housing Corporation Ltd.

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sukhdeep Singh, Advocate
for the petitioner.

Mr. Varun Katyal, Advocate
Mr. Satyam Sharma, Advocate
for the respondent.

NIDHI GUPTA, J.

Present Revision Petition has been filed by the judgment debtor seeking setting aside of the order dated 21.02.2023 (Annexure P9) passed by learned Additional Civil Judge (Senior Division), Indri, whereby conditional warrants have been issued against the petitioner; and application dated 31.1.2023 (Annexure P-8) filed by the petitioner for setting aside ex parte order dated 15.11.2021 and to recall the arrest warrant, has been dismissed.

2. It is inter alia submitted by learned counsel for the petitioner that in passing the impugned order, no justification in terms of the provision of Order 21 Rule 37 CPC has been made by the learned trial Court; and in a very



casual manner, Arrest Warrants of the petitioner have been issued. It is submitted that in light of provision of Order 21 Rule 37 CPC, the petitioner had to be granted an opportunity to show cause as to why he should not be committed to civil imprisonment. However, in the present case, adequate opportunity to submit his defence has not been given to the petitioner. Moreover, till such time the application filed by the petitioner is not decided, the present application could not have been decided.

3. It is submitted that in the light of provisions of Order 21 Rule 29 where the proceedings in a suit for setting aside the ex-parte decree has been pending, the Executing Court until the application is decided, can stay the proceedings. Thus, even in view of the provisions of Order 21 Rule 29 CPC the execution proceedings as well as issuing the arrest warrant of the petitioner suffers from patent illegalities and jurisdiction error in the eyes of law. The petitioner has originated from Village Khanpur Tehsil Indri, District karnal. The brother of the petitioner is settled with their agriculture land in Village Khanpur Tehsil Indri, District Karnal. Thus, there is no position where the petitioner likely to abscond. Therefore, the issuing the order of warrant of arrest of the petitioner suffers from patent illegalities and jurisdiction error.

4. It is accordingly prayed that the present Revision Petition be allowed; and the impugned order be set aside.

5. Per contra, learned counsel for the respondent vehemently opposes the submissions advanced on behalf of the petitioner and submits



that the respondent has not been able to enjoy fruits of the decree since 2012. It is submitted that the petitioner is deliberately evading appearance before the District Courts. It is only when Warrant of Attachment was issued against the petitioner vide order dated 15.11.2021 that petitioner filed the present application. It is accordingly prayed that present Revision Petition be dismissed.

6. No other argument is made on behalf of the parties.

7. I have heard learned counsel for the parties and perused the case file in detail. I find merit in the submissions of the respondent.

8. Brief facts of the case in chronological order are as under: -

20.08.2008: The respondent/plaintiff/decreed holder had filed Civil Suit dated 20.08.2008 (Annexure P1) for recovery of Rs.2,85,831/- from the petitioner.

23.11.2009: As per the own saying of the petitioner, in the said Suit, the petitioner had initially put in appearance through counsel; however, was subsequently absent and was accordingly, proceeded against ex parte vide order dated 23.11.2009.

16.08.2012: Thereafter, ex parte judgment and decree dated 16.08.2012 (Annexure P1) was passed in favour of the respondent/plaintiff and Suit was decreed for recovery of Rs.2,85,831/- along with interest @ 12% per annum.

27.11.2012: The respondent had then moved an application dated 27.11.2012 (Annexure P2) for execution of the decree.

03.02.2016: The said execution petition came to be dismissed in default vide order dated 03.02.2016.



13.09.2016: On 13.09.2016, the respondent had moved an application for restoration of the Execution Petition.

26.2.2018: In the said application for restoration, notice was issued to the petitioner for 26.2.2018; on which date petitioner counsel had duly put in appearance before the Executing Court.

15.11.2021: Vide order dated 15.11.2021, the Execution Application was restored to its original number. However, as the petitioner again remained absent, vide the said order dated 15.11.2021, the petitioner/judgment debtor was also proceeded against ex parte; and Warrants of Attachment of property of the petitioner were issued.

23.12.2022: In pursuance to the above order dated 15.11.2021 report was received from the Halqa Patwari that in the meantime, the petitioner had transferred his property fraudulently in the name of his real brother in order to defeat the decree. Accordingly, on 23.12.2022, the respondent had moved an application (Annexure P4) under Section 151 CPC for issuance of Conditional Arrest Warrants of the judgment debtor in which notice was issued to the petitioner.

24.01.2023: Vide order dated 24.01.2023 (Annexure P7), Warrants were issued against the petitioner so that he can be sent to civil imprisonment.

31.01.2023: It is at this stage that the petitioner moved an application dated 31.01.2023 (Annexure P8) for setting aside the ex parte order dated 15.11.2021, and to recall the arrest warrant issued against the petitioner.



21.02.2023: Vide impugned order dated 21.02.2023 (Annexure P9), the said application of the petitioner, has been dismissed. However, the petitioner was permitted to join proceedings “today” while it was directed that Conditional Warrants be issued against the petitioner.

Nil: During the course of arguments, learned counsel for the petitioner has submitted that the petitioner had actually moved an application dated 06.12.2022 under for setting aside the ex parte order dated 23.11.2009; and the ex parte judgment and decree dated 16.08.2012, which is now pending before the Id. Civil Judge (Senior Division), Karnal for 07.05.2026. A copy of the said application stated to have been filed on dated 6.12.2022 has been handed over in Court and is taken on record as ‘Mark A’.

9. However, the said statement of the petitioner is factually incorrect as, in para 9 of the above application, petitioner has made reference to the application dated 31.1.2023. Therefore, the above application could not have been filed on 6.12.2022. This is reinforced from the fact that in para 9 of application dated 31.1.2023 petitioner has stated that: “9. *That the applicant/defendant going to file an application u/o 9 rule 13 in the main case.*”

10. From the factual sequence of events enumerated hereinabove, the callous, casual, and careless conduct of the petitioner is writ large on the record of the case. To set aside the order dated 23.11.2009 whereby petitioner was proceeded against ex parte in the civil suit, application ‘Mark A’ has been moved by the petitioner ostensibly on 6.12.2022 i.e. 13 years later. To set aside



the order dated 15.11.2021 whereby petitioner was proceeded against ex parte in the execution proceedings, application was moved by the petitioner only on 31.1.2023 i.e. After more than one year. In actual fact, it is only when Arrest Warrants were issued against the petitioner vide order dated 24.01.2023 that the petitioner filed application dated 31.01.2023 (Annexure P8) and the application Mark A, for setting aside the ex parte orders. On this short ground alone, present petition deserves to be dismissed.

11. Moreover, no cogent or believable reason has been given by the petitioner for this delay in filing the above said applications. At every stage, the petitioner has concocted a different story ranging from not being served to blaming his counsel for not following the case; and *"The counsel of the applicant due to ignorance of law, did not filed the application under order 9 rule 13 CPC....."*. The said statements of the petitioner do not inspire the belief of this Court one whit. If the petitioner was not served, he has not disclosed as to how he gained knowledge of the order dated 24.1.2023, whereby his arrest warrants were issued.

12. As regards constantly blaming his counsel, petitioner is expected to be diligent and vigilant in respect of his rights; and entire blame cannot be conveniently cast upon the counsel. Reference judgment of the Delhi High Court in **Moddus Media Pvt. Ltd. v. M/s. Scone Exhibition Pvt. Ltd., (Delhi): Law Finder Doc Id # 887148** holding that:



“11. The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the Advocate. It appears that the blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree. After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory put forth by the appellant / applicant/ defendant company, which cannot be accepted and ought not to have been accepted.”

13. The record also reveals that after restoration of the execution petition, notice was served upon the petitioner for 26.2.2018 and process server has duly reported that *‘the summons have been received by the defendant’*. On 14.10.2021, one learned counsel by the name of Mr. Gaurav has duly put in appearance on behalf of the petitioner before the Executing Court. The petitioner has, however, even gone to the extent of stating that said Id. counsel has appeared before the Executing Court, without the consent of the petitioner. However, there is nothing on record to support the said utterly irresponsible uttering of the petitioner, which have clearly been resorted to merely to delay the execution. In fact, there are contradictions galore in the reasons cited by the petitioner.



14. Relevant findings returned by learned Executing Court in impugned order dated 21.02.2023 are as follows:-

“..... On 14.10.2021 Presence of Shri Gaurav, advocate was marked on behalf of JD and matter was adjourned to 15.11.2021. On 15.11.2021 ex parte order was passed by the Court. JD/ Applicant never engaged Shri Gaurav as his advocate nor received summon from the Court. The execution pertain to ex-parte Judgment & Decree dated 16.8.2012, he is going to file an application under Order 9 Rule 13 of CPC. Conditional Warrant of arrest has been issued by the Court without giving notice to him and on application of DH under section 151 of CPC. He came to know about this when DH openly declared so. Considering the arguments and the record, the Court does not find merits in the application; the applicant claim that he is going to move an application under Order 9 Rule 13 of CPC seeking setting aside of ex-parte Judgment & Decree dated 16.8.2012, if that is the case he should have done it by now. Also, warrant of arrest has not yet been issued as notice of application under Order 21 Rule 37 of CPC has been issued by the Court VOD 24.01.2023, so he cannot take a plea that Court is not complying with the procedure. The application is without merits therefore, it is dismissed and accordingly disposed of. However, JD is permitted to join proceedings today.

Learned counsel for JD requested that he wants to file reply to the application filed by DH under order 21 Rule 37 of CPC. It is observed that notice of application under order 21 Rule 37 was given to JD on 23.12.2022 thereafter, he filed application for setting aside ex-parte order on 31.01.2023 and today also, he has



not shown cause why JD should not be committed io the civil imprisonment for non-payment of the decreetal amount. Learned counsel for JD requested for adjournment which is declined. Let, Conditional Warrant against JD be issued for 14.03.2023.”
(Emphasis added)

15. The above facts amply establish the contumacious conduct of the petitioner, which do not call for exercise of revisional jurisdiction of this Court. Moreover, Id. counsel for the petitioner is unable to dispute or controvert the aforesaid facts and findings, and contradictions.
16. In view of the above, present Revision Petition stands **dismissed**.
17. Pending application(s) if any also stand(s) disposed of.

04.05.2026		(Nidhi Gupta)
Sunena		Judge
	Whether speaking/reasoned:	Yes/No
	Whether reportable:	Yes/No