



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.201

CR-2533-2020

Date of Decision: 01.05.2025

Anoop Singh

.... Petitioner

Versus

M/s Sri Ram Transport Finance Company and another

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Sachin Ohri, Advocate, for the petitioner.

Mr. G.S. Sandhu, Advocate, for respondent no.1.

TRIBHUVAN DAHIYA, J. (ORAL)

The revision petition has been filed against the order dated 08.07.2019, Annexure P-1, passed by the Additional District Judge, Gurdaspur, whereby application filed by respondent no.1/decree holder for arrest and detention of the petitioner/judgment debtor has been allowed issuing conditional warrants of arrest against him.

2. As per undisputed facts on record, the petitioner took a vehicle loan of ₹7,07,000 from respondent no.1 in 2013, which was not fully repaid by him. Arbitral proceedings were initiated, which led to passing of the award dated 25.03.2016, holding respondent no.1 entitled to ₹3,65,663 along with interest at the rate of nine per cent per annum from the date of filing of arbitration application. The award was not challenged, and attained finality. Execution of the award was sought. Before the Executing Court, respondent no.1 filed an application dated 16.02.2019 for arrest and detention of the petitioner on account of non-compliance with the orders passed by the Arbitrator and making the due payments. The application was allowed vide the impugned order, dated 08.07.2019, by observing as under:



3. Though, this application has been replied by Jds by stating that respondent is having no source of income and is living miserable life but respondent has not appended any affidavit alongwith the reply stating therein that he is having no moveable or immovable property. Perusal of award in question which attained finality reveals that JD No.1 was disbursed an amount of Rs.70,7000/-(Rs.7,07,000/-) and JD No.2 stood as guarantor of respondent/JD No.1. In these circumstances, this court has come to this conclusion that respondents/Jds are avoiding payment of DH. Thus, amount can not be realized without issuance of conditional warrants of arrest of respondents/Jds.

4. Accordingly, application in hand stands allowed and conditional warrants of arrest of Jds/respondents are ordered to be issued, returnable for 29.7.2019.

3. Learned counsel for the petitioner contends that the impugned order is not sustainable since it has been passed without following the mandatory procedure laid down under Section 51 of the Code of Civil Procedure (CPC). There is no finding by the Executing Court that the petitioner intentionally avoided payment of decretal amount despite having means to do so.

4. Learned counsel for the contesting respondent no.1 is not in a position to dispute these facts.

5. Heard.

6. To decide the matter it is apt to refer to the provisions of Section 51 CPC, which are as follows:

51. Powers of Court to enforce execution.—Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

(a) by delivery of any property specifically decreed;

(b) by attachment and sale or by the sale without attachment of any property;

(c) by arrest and detention in prison [for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section];



(d) by appointing a receiver, or
 (e) in such other manner as the nature of the relief granted may require:

[Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied—

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

6.1. A perusal of the impugned order dated 08.07.2019 establishes that the Executing Court has failed to record the reasons as mandated under Section 51 CPC, before allowing the application and issuing conditional warrants of arrest against the petitioner.

7. In view thereof, the revision petition is allowed and the impugned order, dated 08.07.2019, is set aside directing the Executing Court to pass a fresh order in accordance with law.

(TRIBHUVAN DAHIYA)
JUDGE

01.05.2025
 Maninder

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