



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

227

CR-5083-2022 (O&M)
Date of decision: 09.10.2025

Kashmiri Lal

...Petitioner

V/s

Amandeep Nagpal and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Ashok Kumar Khunger, Advocate, for the petitioner.
Mr. Saurabh Singla, Advocate, for the respondents.

VIKRAM AGGARWAL, J (ORAL)**CM-5723-CII-2025**

Prayer in the present application preferred under Section 151 CPC is for placing on record the attested affidavit dated 11.03.2025 of the petitioner.

For the reasons mentioned in the application, the same is allowed.
Attested affidavit of the petitioner dated 11.03.2025 is taken on record.

The Registry is directed to place the same at an appropriate place on the case file.

CR-5083-2022 (O&M)

The present revision petition, preferred under Article 227 of the Constitution of India, assails order dated 03.10.2022 (Annexure P-4) passed by the Court of Civil Judge (Sr. Divn.), Sri Muktsar Sahib, vide which conditional warrants of arrest were ordered to be issued against the petitioner.



2. The facts, as emanating from the revision petition, are that a suit for recovery of Rs.1,59,000/- filed by the respondents against the present petitioner was decreed vide judgment and decree dated 28.11.2019 (Annexure P-1). The respondents-plaintiffs were held entitled to recover a sum of Rs.1,50,000/- along with interest @ 7.5% per annum from the date of the amount becoming due i.e. 30.09.2017 till the decision of the suit and future interest @ 6% per annum from the date of the decision of the suit till its actual realization.

3. Execution proceedings were filed. Initially, the pension of the petitioner was attached but vide order dated 13.10.2020, the same was released. Thereafter, the house of the petitioner was attached but the same was also released vide order dated 04.03.2022. Under the circumstances, an application under Order 21 Rules 37 and 38 of the Code of Civil Procedure, 1908 (for short the "CPC") (Annexure P-2) was filed by the decree-holder for the issuance of warrants of arrest for detention of the petitioner in civil prison. The said application was opposed by way of a reply (Annexure P-3). A stand was taken that the judgment debtor was 77 years old and was a retired Government employee getting a pension of Rs.33,000/- per month, which had been revised to Rs.45,000/- per month. It was averred that the judgment debtor and his wife have one son namely Pawan Kumar, who also has his wife and two sons to take care of. It was also averred that the judgment debtor had taken a house loan from the State Bank of India, Sri Muktsar Sahib, for which Rs.11,000/- per month was being paid as installment and the remaining pension was being used on medical expenses of the judgment debtor and his wife. It was also averred that even the family of his unemployed son had to be maintained by him as a result of which, he was unable to pay the decretal



amount. It was averred that still the judgment debtor was ready to pay Rs.7,000/- per month to the decree holder from his pension account. By way of the impugned order, a show cause notice was issued to the petitioner-judgment debtor to show cause as to why warrants of arrest be not issued against him.

4. I have heard learned counsel for the parties.

5. Sh. Ashok Kumar Khunger, learned counsel representing the petitioner has vehemently submitted that the impugned order is not sustainable. He submits that in terms of the provisions of Section 51 CPC, no such detention could have been ordered to execute a money decree. He further submits that the executing Court did not take note of the fact that the petitioner was willing to pay a sum of Rs.7,000/- per month from his pension. He further submits that even today, the petitioner is willing and ready to pay a sum of Rs.10,000/- from his pension. However, on a query put by the Court, learned counsel for the petitioner concedes that till date no amount has been paid.

6. Per contra, learned counsel representing the respondent submits that there is no illegality in the impugned order. He submits that only when no other mode of recovery was left, the application for arrest and detention was filed. He submits that the intention of the petitioner can be gauged from the fact that no amount has been paid till date and the offer is only on paper.

7. I have considered the submissions made by learned counsel for the parties.

8. Section 51 CPC lays down as under:-

“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.

Explanation. —In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.”

9. Concededly, the suit for recovery was decreed vide judgment and decree dated 28.11.2019. During execution proceedings, initially the pension of the petitioner was attached but the same was released vide order dated 13.10.2020. Subsequently, the house of the petitioner was attached but the same was also released vide order dated 04.03.2022. It was under these circumstances that the decree-holder preferred an application under Order 21



Rules 37 and 38 CPC. Order 21 Rule 37 CPC provides for a show cause notice to be issued against detention in prison and Rule 38 CPC provides for warrants of arrest to be issued for the arrest of a judgment debtor. It was duly averred in the application moved under Order 21 Rules 37 and 38 CPC that since the house of the judgment debtor was released and the decree-holder was not having knowledge of property of the judgment debtor, the only recourse left was to issue arrest warrants. The said application was opposed by way of a reply in which, it was stated that the judgment debtor had no means to pay the decretal amount or a substantial part of the decretal amount.

10. The executing Court rightly relied upon the provisions of Order 21 Rule 41 CPC and while relying upon the judgment in the case of *Satpal Vs. Baljit Singh and others, 2019(4) CCC 630*, held that the decree could not be satisfied except through the process of detention of the judgment debtor. Accordingly, a show cause notice was issued to the judgment debtor. Instead of submitting a reply to the show cause notice, the judgment debtor approached this Court by way of the instant revision petition. In the considered opinion of this Court, no illegality was committed by the executing Court in resorting to the provisions of arrest and detention. Even Section 51 CPC provides for issuance of a show cause notice before committing a judgment debtor to prison, especially, where the decree is for the payment of money. The said provision nowhere lays that arrest and detention cannot be ordered. Since there was no other means to execute the decree, as had been stated by the judgment debtor himself, the executing Court had rightly issued a show cause notice for arrest and detention. This Court finds absolutely no illegality in the said approach adopted by the executing Court. The said



approach was in consonance with the provisions of law and the instant revision petition is, therefore, devoid of merit.

11. In view of the above, I do not find any merit in the instant revision petition and the same is accordingly dismissed.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

October 09, 2025

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No