

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****128****CR-2324-2024 (O&M)****Date of Decision : 09.01.2025**

Rupinder Kumar Bansal

....Petitioner

VERSUS

M/s Balian Trading Company and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jatin Bansal, Advocate for the petitioner.

Mr. Amrik Singh, Advocate for the respondents.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed challenging the order dated 11.03.2024 issuing conditional warrants of arrest of the petitioner.
2. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 herein filed a suit for recovery, which was decreed for Rs.6,89,195.34 paise vide judgment and decree dated 12.04.2022. Subsequently, an execution petition was filed for recovery of Rs.9,12,954/-. In the said execution petition an application was filed under Order XXI Rule 37 of the Code of Civil Procedure, 1908 and on 20.02.2024 the Court granted the judgment-debtor one opportunity to follow the provisions contained in Order XXI Rule 37 and 40 CPC in true letter and spirit. The Court further adjourned the matter for producing necessary evidence by both the decree-holder and judgment-debtor to the effect that Order XXI Rule 37 CPC was the only mode to satisfy the decree. Pursuant to that, an affidavit was filed by the petitioner herein stating that he only owns 02 Biswas of

land, which was attached in some other proceedings, and that he did not have any other property or cash or bank balance to satisfy the decree. Subsequently, the impugned order dated 11.03.2024 was passed issuing conditional warrants of arrest of the petitioner herein.

3. Learned counsel for the petitioner has contended that before passing the impugned order dated 11.03.2024, there was no compliance of Section 51 CPC and hence the order is not sustainable in law.

4. *Per contra* learned counsel for respondent No.1 would contend that there is no other way of satisfying the decree as the petitioner is refusing to pay the money and has stated that he has no other means.

5. Heard.

6. Section 51 CPC reads 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.”*

7. Proviso to Section 51 CPC clearly states that the Court must record in writing its satisfaction that the judgment-debtor with the object of obstructing or delaying the execution proceedings was likely to abscond,

leave the local limits or after the institution of the suit dishonestly transferred, concealed or removed any part of the property or has the means to pay the amount or some substantial part thereof and refuses or neglects to pay the same or that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account. Perusal of the impugned order reveals that no such satisfaction has been recorded by the Executing Court before passing the impugned order.

8. In view of the above, the impugned order dated 11.03.2024 is not sustainable in law and the same is accordingly set aside. Present revision petition is disposed off by remitting the matter to the Executing Court concerned for passing a fresh order after considering the above relevant provisions of law. Pending applications, if any, also stand disposed off.

09.01.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO