



CR-7067-2025 (O&M)

-1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

-.-

**CR-7067-2025 (O&M)
Decided on :-30.09.2025**

Parampreet Singh

...Petitioner

VERSUS

Harkamal Singh

....Respondent

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

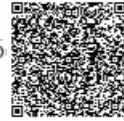
Present: Mr. Vaibhav Sehgal, Advocate for the petitioner.

-.-

MANDEEP PANNU J.

1. The present revision petition under Article 227 of the Constitution of India has been filed for setting aside the impugned orders dated 18.03.2025 and 09.09.2025 passed by the learned Executing Court, Ludhiana. Vide order dated 18.03.2025, the Executing Court allowed the applications filed by the decree-holder under Order 21 Rule 37 CPC read with Sections 51 and 55 CPC and under Order 21 Rule 39 CPC, directing the decree-holder to deposit subsistence allowance and issuing conditional warrants of arrest against the judgment-debtor. Subsequently, vide order dated 09.09.2025, the Executing Court dismissed the review petition filed by the judgment-debtor against the earlier order.

2. The brief facts are that a money decree in the sum of ₹2,36,000 was passed ex parte on 19.10.2015 against the present petitioner. The decree-holder filed an execution petition for realization of the decretal amount. During the pendency of the execution, the decree-holder moved two applications: one under Section 51 read with Section 55 and Order 21 Rule 37 CPC seeking arrest and detention of the judgment-debtor in civil prison, and the second under Order 21 Rule 39 CPC for issuance of conditional warrants after deposit of subsistence

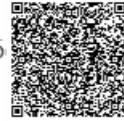


allowance. Copies were supplied to the judgment-debtor and time was granted for reply. On the adjourned date, instead of filing reply on merits, learned counsel for the judgment-debtor raised an objection to the maintainability of the applications on the ground that an application under Order IX Rule 13 CPC was pending. The Executing Court, by order dated 18.03.2025, dismissed the objection, noted that the application under Order IX Rule 13 had already been dismissed, and allowed the decree-holder's applications, directing deposit of subsistence allowance and issuance of conditional warrants.

3. The judgment-debtor thereafter moved a review petition under Order 47 Rule 1 CPC contending that the order dated 18.03.2025 was in violation of mandatory provisions of Section 51 CPC and Order 21 Rule 37 CPC, inasmuch as no show cause notice was issued to the judgment-debtor and no enquiry was conducted into his means to pay before ordering arrest and detention. The executing court, however, dismissed the review petition on 09.09.2025, holding that there was no error apparent on the face of record, as the judgment-debtor was aware of the applications filed by the decree-holder, and that he had failed to plead or prove inability to pay.

4. No notice is required to be issued, matter being self-explanatory.

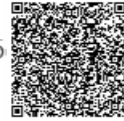
5. Having considered the submissions of learned counsel for the petitioner and perused the record, it is apparent that the impugned order dated 18.03.2025 suffers from serious infirmities. The scheme of execution by arrest and detention of a judgment-debtor is contained in Sections 51 to 55 CPC and Order 21 Rules 37 to 40 CPC. Section 51 CPC permits execution by arrest and detention in civil prison, but its proviso makes it clear that no such detention can be ordered unless the court is satisfied, and records reasons in writing, that the judgment-



debtor has or has had since the decree means to pay and has refused or neglected to pay, or that he is dishonestly transferring or concealing property, or has acted with mala fide intent to obstruct execution. Order 21 Rule 37 further mandates that before ordering arrest, the court shall issue a notice calling upon the judgment-debtor to show cause why he should not be committed to civil prison. Only in exceptional cases, where the court is satisfied that the judgment-debtor is likely to abscond, can a warrant be issued directly without such notice. Rule 40 CPC further obliges the court to hold an enquiry upon the appearance of the judgment-debtor and to record reasons before making an order of detention.

6. In the present case, the Executing Court, while allowing the applications on 18.03.2025, neither issued a proper notice to the judgment-debtor under Order 21 Rule 37 CPC nor conducted the enquiry envisaged under Rule 40 CPC. The judgment-debtor had appeared in the proceedings and raised objections to maintainability. The fact that he did not file a detailed reply on merits did not absolve the decree-holder of the burden to prove that the judgment-debtor, despite having means, had willfully neglected to pay. Liberty of a citizen cannot be curtailed without strict compliance of these provisions. The order dated 18.03.2025 directing conditional arrest without such compliance is therefore contrary to the mandatory scheme of Section 51 and Order 21 Rules 37 to 40 CPC.

7. At the same time, in so far as the review order dated 09.09.2025 is concerned, the Executing Court was justified in dismissing the review. The grounds urged by the judgment-debtor went to the merits and legality of the order dated 18.03.2025, but those grounds cannot be canvassed in review jurisdiction, which is confined to correction of errors apparent on the face of record. The



CR-7067-2025 (O&M)

-4-

executing court, therefore, rightly held that it had no power to review its earlier order on such grounds.

8. Thus, while the dismissal of the review petition was correct in law, the original order dated 18.03.2025 allowing the applications under Order 21 Rule 37 and Rule 39 CPC suffers from jurisdictional error and material irregularity, having been passed without adherence to the mandatory procedure. The proper course would be to set aside the order dated 18.03.2025 and remit the matter to the Executing Court for fresh consideration of the decree-holder's applications in accordance with Section 51 CPC and Order 21 Rules 37 to 40 CPC, after issuing proper notice to the judgment-debtor, affording opportunity of reply, and conducting the necessary enquiry into his means and conduct.

Conclusion

9. Accordingly, the present revision petition is partly allowed as per the observations made above. The impugned order dated 18.03.2025 is set aside, and the matter is remanded to the Executing Court to decide the applications filed by the decree-holder afresh in the light of the mandatory requirements of Section 51 CPC and Order 21 Rules 37 to 40 CPC. No opinion is expressed on the merits of the applications, and the Executing Court shall decide the same uninfluenced by any observations herein.

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

September 30, 2025
tripti

(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No