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

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CR-5421-2025 (O&M)

Decided on :- 13.08.2025

Surender

....Petitioner

VERSUS

Mukesh

....Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Sushil Bhardwaj, Advocate and
Ms. Devanshi Sharma, Advocate for the petitioner.

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MANDEEP PANNU J.

1. The present revision petition has been filed against the order dated 05.08.2025 passed by the learned Civil Judge (Senior Division), Charkhi Dadri, in Execution Petition arising out of Civil Suit No. 142 of 2016, whereby warrant of arrest has been issued against the petitioner.

Brief Facts:-

2. The plaint/respondent instituted Civil Suit No. 142 of 2016 for recovery of ₹3,64,640/- allegedly advanced to the petitioner/defendant-judgment debtor. On 20.01.2020, the learned Civil Judge (Senior Division) Charkhi Dadri decreed the same in favour of the respondent, directing the petitioner to pay the decretal amount within two months. The respondent filed an execution petition titled as "*Mukesh v. Surender*" before the learned Additional Civil Judge (Senior Division) Kanina. On 01.08.2025, the petitioner filed detailed objections stating that the decree amount could be satisfied by attachment and sale of requisite



property and not the entire property. He demonstrated willingness to comply with the decree, but the executing court dismissed the objections as “not maintainable” and ordered issuance of a conditional warrant of arrest against the petitioner vide impugned order dated 05.08.2025, without issuing any show-cause notice as required under Section 51 CPC.

Submissions On Behalf Of Petitioner

3. It is argued by learned counsel for the petitioner/defendant-judgment debtor that Section 51, CPC, mandates that for a money decree, execution by arrest and detention is permissible only if (i) the judgment-debtor is first given a show-cause notice, and (ii) the court is satisfied, for reasons recorded in writing, of any of the statutory conditions (e.g., likelihood of absconding, dishonest concealment of property, refusal to pay despite having means, fiduciary liability). Thus, bypassing the show-cause requirement violates natural justice and is impermissible even for execution of a money decree.

Issue For Determination

4. Whether the executing court was justified in issuing a conditional warrant of arrest without issuing a statutory show-cause notice and without recording any satisfaction of the conditions in Section 51 CPC.

Findings

5. Section 51 of the Civil Procedure Code, 1908 is reproduced as under:-
“*Section 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; or



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

(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; or

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief 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—

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

(1) is likely to abscond or leave the local limits of the jurisdiction of the Court; or

(2) has, after 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

(ii) 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



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

6. Thus, a bare perusal of Section 51 CPC would show that it expressly prohibits ordering arrest unless a notice is given to the judgment-debtor and the court is satisfied of enumerated grounds.

7. The Executing Court neither issued any notice nor recorded satisfaction of statutory grounds justifying issuance of warrants of arrest. Petitioner expressly offered attachment and sale of property to satisfy the decree, demonstrating no mala fide or evasive conduct. Not only this, arrest without giving the petitioner any opportunity to be heard is a procedural fatality and a breach of natural justice.

8. The order dated 05.08.2025 fails to articulate any written reasons for bypassing Section 51 CPC. No showing of an emergency or real likelihood of absconding was made; none of the statutory preconditions existed.

9. This Court in case of *Mal Singh and Another Vs. State Bank of India [2015(5) RCR (Civil) 583]* and *Mohinder Singh Vs. M/s Amrit Singh Zora Singh Merchants & Commission Agents [2019(4) PLR 689]* held that Executing Court is to record a positive finding as to the fact that there is no possibility of satisfying the decree except by way of arrest. Merely because it appeared to the Court that there is no possibility to satisfy the decree, is not equivalent of 'satisfaction' statutorily required under Section 51 as also in terms of Rule 37 Order 21, Civil Procedure Code to be recorded by the Court before proceeding to resort to arrest and detention of the JDs. Executing Court is required to issue a



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show cause notice calling upon JD with regard to payment of decretal amount failing which judgment debtor was liable to be arrested.

10. In view of the above discussion and the settled law, the impugned order dated 05.08.2025 is hereby set aside and the present revision petition is allowed. The conditional warrant issued against the petitioner is quashed for non-compliance of provisions of Section 51 CPC and violation of natural justice. Further, the Executing Court is directed to proceed afresh, complying strictly with Section 51 CPC.

11. Meanwhile, the petitioner's offer to attach and auction sufficient property to satisfy the decree shall be considered.

12. Pending application(s), if any, also stand disposed off.

August 13, 2025
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(MANDEEP PANNU)
JUDGE

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