



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

109

CR No. 5323 of 2025

DATE OF DECISION :- 08.08.2025

KRM Tyres & Ors.

...Petitioners

Versus

M/s Arihant Fabrics

...Respondent

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL**Present:-** Mr. Shikhar Sarin, Advocate for the petitioners.

VIRINDER AGGARWAL, J. (Oral)

1. An Ex-parte Award was passed against the petitioners for a sum of Rs.12,91,733/- along with interest and respondent Award holder filed an Execution Petition before the Executing Court and during the pendency of Execution Petition, notice was issued to the petitioners. The petitioners appeared through Sh. Amit Luthra, Advocate on 27.05.2025 and the Execution Petition was adjourned for filing objections for 31.05.2025 and on that date the petitioners-JDs failed to appear and petition was adjourned to 08.07.2025 for awaiting the presence of JDs and on that date list of property of JDs was called for 15.07.2025 from Award holder. On 15.07.2025 first impugned order was passed by the learned Executing Court whereby the application moved by decree holder for issuance of arrest warrants of petitioner Sandeep Jain was allowed and conditional warrants of arrest of JD were issued for 24.07.2025. JD appeared and filed an application for recalling the arrest warrants by supplying three bank account numbers of JD company for attachment and realization of the Award amount. That



application was declined by the learned Executing Court vide order dated 24.07.2025 which has also been impugned in the present Revision Petition along with order dated 31.07.2025 whereby the arrest warrants has been again issued for 07.08.2025.

2. The present Revision Petition has been filed by the petitioners alleging that the impugned orders suffers from jurisdictional error as the learned Executing Court assumed the jurisdiction in violation of mandatory provisions of law. The proviso of Section 51 of CPC and Order 21 Rule 37 of CPC has been given a go-bye.

3. I have heard learned counsel for the petitioners and gone through the record carefully.

4. Learned counsel for the petitioners submitted that the impugned orders suffers from jurisdictional error as the same have been passed in violation of mandatory provisions of Section 51 of CPC and Order 21 Rule 37 of CPC. The relevant portion of first impugned order reads as under :-

“2. Heard on the application. Since, the execution application has been filed by the DH for the recovery of Rs.12,91,733/- along with interest and costs on the basis of the Arbitration award passed by the Sole Arbitrator, Smt. Sakshi Sawhney (IAS), Chairperson DIMSEFC-cum-DC, Ludhiana on 22.8.2024 and the JD have not made any payment to the satisfaction of the claim of the DH for which DH is before the Court and DH has not aware of the property of the JD, to which, the JD is not in possession of any property. Hence, in order to satisfy the claim of the DH, this Court is left with no other option, except to pass an order of arrest or detention of JD. As such, the present application stands allowed and the Judgment debtor Sandeep Jain, Partner, M/s. KRM Tyres, Plot No.5A, EPIP Solan, Himachal Pradesh and also at # 295, New Jawahar Nagar, Opp. Guru Gobind Singh Stadium, Jalandhar is ordered to be



summoned through conditional warrants of arrest for 24.07.2025. The application stands disposed of accordingly. “

and the relevant portion of order dated 24.07.2025 reads as under :-

“5. Perusal of the file reveals that Sh. Amit Luthra, Advocate appeared in the court on 27.5.2025 on behalf of JD, however, till date neither he filed any objections nor complied with the decree. Further, on dated 8.7.2025, Ld. Counsel for JD stated at bar that "JD has no money to pay and comply with the decree." On the other hand, DH has not found any property, assets of JD to satisfy the decree passed in his favour and consequently arrest/conditional warrants of JD issued by the court. Now, Ld.counsel for JD moved the present application mentioning three account numbers of JD for realization of execution amount, however, he has not mentioned the total amount lying in the abovesaid accounts showing that the same is enough to satisfy the decree and he openly stated in the court that "Ena accounts vicho kuj recover hunda ta karwalo." On one hand, JD stated "he has nothing to pay", whereas, on the other hand, he provided his account numbers, especially, when arrest warrants issued against him which clearly shows the intention of JD that he is moving the present application just to delay the execution proceeding and to avoid his arrest. As such, keeping in view the act and conduct of JD, this court finds no merits in the present application and same stands dismissed accordingly. Let, fresh conditional warrant be issued against JD for 31.7.2025.”

5. A perusal of this order clearly shows that the learned Executing Court was in a hurry to dispose of the Execution Petition in view of the directions issued by the Hon'ble Supreme Court in the case of **'Periyammal (dead) through Lrs & Ors. Vs. V. Rajamani & Anr.'** 2025 SCC Online (SC) 507 as directions have been issued to all the Executing Courts to decide the Execution Petitions within a period of six months. The directions issued by the Hon'ble Supreme Court are to be complied with but that does not mean that mandatory



provisions of law has to be ignored while complying with the directions of the Hon'ble Supreme Court. Section 51 of CPC and provisions of Order 21 Rule 37 are relevant for adjudging the legality of the impugned orders and to ascertain as to if the learned Executing Court has committed any material jurisdictional error. The relevant provisions are reproduced as under :-

"S. 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 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.

O. XXI R. 37. Discretionary power to permit judgment-debtor to show cause against detention in prison.

(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court shall, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor."

6. As per these provisions, the Executing Court is required to first issue a notice to the JD to show cause as why he be not arrested for execution of the decree and no arrest proceedings can be initiated directly without issuing the show cause notice stipulated under above quoted provisions. A perusal of the impugned orders clearly shows that the Executing Court had not cared for the mandatory provisions of CPC and has not issued any show cause notice to the JD and in a



zeal to comply with the directions of the Hon'ble Supreme Court in *Periyammal's* case (supra) has passed the orders in violation of these provisions.

7. The impugned orders suffers from material jurisdictional error and are not sustainable as such the Revision Petition is allowed and the impugned orders are set aside. The Executing Court is directed to proceed with the execution in accordance with law to comply the directions issued by the Hon'ble Supreme Court in *Periyammal's* case (supra) while complying with mandatory provisions of Code of Civil Procedure.

(VIRINDER AGGARWAL)
JUDGE

08.08.2025

P.Singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No