

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE PRANAY VERMA**

**MISC. PETITION No. 7406 of 2023**

**BETWEEN:-**

**JEEVAN SINGH S/O CHANDAR SINGH, AGED  
ABOUT 30 YEARS, OCCUPATION: LABOUR R/O:  
VILLAGE MADAAN TEH. GULANA DIST.  
SHAJAPUR (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI AKASH RATHI - ADVOCATE)***

**AND**

**JAGDISH S/O SHIVCHARAN MEWADA, AGED  
ABOUT 35 YEARS, OCCUPATION: TEACHER R/O:  
VILLAGE MADAAN, TEH. GULANA DIST.  
SHAJAPUR (MADHYA PRADESH)**

**.....RESPONDENT**

***(BY SHRI ANIRUDH SAXENA – ADVOCATE FOR RESPONDENT)***

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Reserved On :- 01.02.2024

Pronounced On :- 18.03.2024

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*This petition having been heard and reserved for orders coming on  
for pronouncement this day, the Court passed the following:*

**ORDER**

This petition under Article 227 of the Constitution of India has been preferred by the petitioner/judgment debtor being aggrieved by the order dated 08.09.2023 passed by the First Civil Judge, Senior Division, District Shajapur in execution Case No.B-8/2015, whereby an application under Order 21 Rule 37 of the CPC preferred by the respondent/deeree

holder has been allowed and he has been directed to be sent to civil prison.

02. The facts in brief are that the decree holder instituted Civil Suit No.04B/2014 against the judgment debtor for recovery of a sum of Rs.1,03,000/-. By judgment and decree dated 12.12.2014 the same was decreed by the trial Court and the judgment debtor was directed to pay a sum of Rs.1,03,000/- to decree holder along with interest at 6% per annum from the date of institution of the suit. The judgment debtor failed to do so hence the decree holder instituted proceedings before the executing Court for execution of the aforesaid decree.

03. In the execution proceedings, a warrant of attachment was issued in respect of the immovable properties of the judgment debtor. When the warrant was tried to be executed, wife of the judgment debtor caused obstruction in the attachment and stated that she will not permit the property to be attached. Upon receipt of the attachment warrant before the executing Court, the decree holder filed an application under Order 21 Rule 37 of the CPC for sending the judgment debtor to civil prison which has been allowed by the executing Court by the impugned order.

04. Learned counsel for the judgment debtor has submitted that the executing Court has exceeded its jurisdiction in passing the impugned order. On 13.07.2022, a notice was issued to the judgment debtor under Order 21 Rule 37 of the CPC for sending him to civil prison. In response he had appeared before the executing Court and had filed his reply giving reasons in detail as to why he should not be sent to the civil prison. The prayer of the judgment debtor was not adverted to by the executing Court, which has straightaway passed the impugned order without considering the financial feasibility of the judgment debtor and without conducting

suitable enquiry as regards the documents submitted by him along with his reply. It was mandatory for the executing Court to have conducted an enquiry as contemplated under Order 21 Rule 40 of the CPC which has not been done by it. It is hence submitted that the impugned order be set aside.

05. Per contra, learned counsel for the decree holder has submitted that no error has been committed by the executing Court in passing the impugned order. In execution of the decree, notice was issued to the judgment debtor to show cause as to why he should not be sent to civil prison. He did not furnish any satisfactory reply to the same. When the warrant of attachment was being served on the house of judgment debtor his wife had obstructed the same. There was hence no occasion for conducting any enquiry in the matter. No affidavit or evidence was adduced by the judgment debtor to show that he is living below the poverty line and that he is not possessed of any property which may be attached. The executing Court has hence rightly passed the impugned order. The petition hence deserves to be dismissed.

06. I have considered the submissions of learned counsel for the parties and have perused the record.

07. The proceedings are for execution of a money decree passed by the trial Court. In those proceedings the judgment debtor did not deposit any amount before the executing Court. In such circumstances, upon allowing an application filed by the decree holder on 08.08.2022 notice was issued to the judgment debtor to show cause as to why he should not be sent to civil prison. On 18.08.2022, the judgment debtor appeared through his counsel and filed reply to the notice. The executing Court has held that since judgment debtor was served with the notice he would not

get any benefit of the proviso to Order 21 Rule 37 of the CPC. He has contended himself to be living below the poverty line but has not filed any affidavit in support of the said fact or to state that he is not possessed of any property which may be attached. Merely for stating that he is below the poverty line he cannot escape execution of the decree.

08. At this stage, it would be apt to refer to the relevant provisions in this regard.

09. Section 51 of the CPC confers power upon the Court to enforce execution of a decree. As per Clause (c) thereof one of such mode is by arrest and detention of the judgment debtor in prison for a period not exceeding the period specified in Section 58 where arrest and detention is permissible under this section. However, prior to passing of an order for detention, the Court has to satisfy itself about existence of the conditions of the proviso. For ready reference Section 51 is reproduced below:-

**“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.”

10. Under Order 21 Rule 37 of the CPC arrest and detention in civil prison is provided for. Rule 37 gives discretionary power to the executing Court to permit judgment debtor to show cause against detention in prison. The same is as under:-

**“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 <sup>1</sup>[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.”**

11. When a notice is issued to the judgment debtor under Order 21 Rule 37, on his appearance, proceedings are to be conducted in accordance with Rule 40 of Order 37 which reads thus:-

**“40. Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.— (1) When a judgment-debtor appears before the Court in obedience to a notice issued under Rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the**

**judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.**

**(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may, in its discretion, order the judgment-debtor to be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.**

**(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may, subject to the provisions of Section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:**

**Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.**

**(4) A judgment-debtor released under this rule may be re-arrested.**

**(5) When the Court does not make an order of detention under sub-rule (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release.”**

12. Under Order 21 Rule 37 of the CPC where application is made for arrest and detention of the judgment debtor in civil prison, the executing Court has to issue firstly, instead of a warrant for his arrest, a notice calling upon him to appear before the Court to show cause why he should not be committed to civil prison. After he so appears, the executing Court has to proceed to hear the decree holder and take all such evidence as may be produced by him in support of his application and then has to give an opportunity to the judgment debtor of showing cause as to why he should not be committed to civil prison. Thus, an enquiry is contemplated thereunder prior to committing the judgment debtor to civil prison.

13. Before ordering detention of judgment debtor in civil prison, the Court has to record reasons in writing of its satisfaction of existence

of any of the conditions enumerated in Clause (a), Clause (b) or Clause (c) of the proviso to Section 51. It is specifically mandated that prior to detention of judgment debtor in civil prison reasons have to be recorded in writing, satisfaction has to be arrived at and at least one of the contingencies contemplated under Clause (a), Clause (b) or Clause (c) of the proviso have to be held to be existing. The procedure which has been laid down in sub-rule (1) of Rule 40 of Order 21 has to be followed and the conditions laid down in the proviso to Section 51 have to be held existing.

14. In this regard, I may profitably refer to the decision of this Court in *Subhash Chand Jain Vs. Central Bank of India, AIR 1999 MP 195* in which it has been held as under:-

**“7. From a bare reading of the relevant provisions quoted above, it is evident that when executing Court exercises discretion of issuing show cause against the detention in prison then executing Court has to follow the procedure laid down in Clause (1) of Rule 40 of Order 21 which provides that after notice issued under Rule 37; the Court shall proceed to hear the decree holder and to take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison. In the case in hand the executing Court after issuing show cause did not hold any enquiry as contemplated of Clause (1) of Rule 40 of Order 21 nor has complied the conditions laid down in proviso to Section 51 so as to record its reasons after its satisfaction for detaining or sending the judgment-debtor in civil prison”**

15. In the present case when the judgment debtor appeared before the executing Court in compliance of the notice issued to him by the Court and filed his reply he has straightaway been directed to be sent to civil prison. It has merely been observed that he has not filed any affidavit to show that he is below the poverty line and is not having any property which can be attached. The executing Court was enjoined to

follow the procedure laid down in sub-rule (1) of Rule 40 of Order 21 and was required to conduct an enquiry as provided thereunder and prior to passing any order for sending the judgment debtor to civil prison it had to comply with the proviso to Section 51 and to record its reasons after its satisfaction for sending the judgment debtor to civil prison. The same has however not been done by it.

14. As a consequence, the impugned order having been passed without following the mandatory provisions cannot be sustained and is hereby quashed. The matter is remanded back to the executing Court for holding an enquiry as contemplated under Order 21 Rule 40 (1) of the CPC and to record reasons after its satisfaction as required by proviso to Section 51 of the CPC and to proceed in accordance with law. Since parties are represented before this Court they are directed to appear before the executing Court on 15.04.2024 for which date no fresh notices shall be required to be issued to them. The executing Court shall thereafter pass appropriate order within a period of two months from the date of appearance of the parties.

The petition is accordingly allowed and disposed off.

**(PRANAY VERMA)**  
**JUDGE**

Shilpa