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**(1979) 03 P&H CK 0024**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Revision No. 1983 of 1978**

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| M/s Manjeet Hosiery Mills, Brahmpuri | APPELLANT  |
| Vs                                   |            |
| Shri Siri Paul and others            | RESPONDENT |

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**Date of Decision :** 30-03-1979

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 51

**Citation :** (1979) 03 P&H CK 0024

**Hon'ble Judges :** Rajendra Nath Mittal, J

**Bench :** Single Bench

**Advocate :** Vijay Jhanji, for the Appellant; D.S. Keer with Mr. P.S. Sandhu for Respondents 1, 2, for the Respondent

**Final Decision :** Allowed

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## Judgement

Rajendra Nath Mittal, J.—This revision petition has been filed against the order of the executing Court dated October 3, 1978, whereby warrant of arrest has been issued against the. Judgment-debtor

2. Briefly the facts are that a decree for the recovery of Rs. 15000/- with future interest and costs was passed by the trial court against the Judgment-debtor. The decree-holder filed an application for the execution of the decree with a prayer that the judgment-debtor be detained in civil prison. The learned trial Court, on the application, ordered that he be detained as he was intentionally evading the execution of the decree. The judgment-debtor has come up in revision against the order of the executing Court, to this Court.

3. It is contended by the learned counsel for the petitioner that before passing an order of detention it was the duty of the executing Court to comply with the provisions of the proviso to section 51 and order 21, rule 40 Civil Procedure Code. I find force in the contention of the learned counsel. Section 51 provides that where the decree is for 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, is likely to abscond or leave the local limits of the jurisdiction of the Court, or 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 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 to account.

Order 21, rule 40, prescribes as to how the Court has to proceed after the judgment-debtor has put in his appearance in obedience notice under Order 1 rule 37 or after his arrest. It, inter alia, says that after his appearance in obedience to the notice, 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. It appears from the order of the Court that the aforesaid provisions were not brought to the notice of the Court when the impugned order was passed. It was the duty of the Court to have given a finding regarding the matters mentioned in the proviso to section 51 as reproduced above after giving an opportunity to the judgment debtor of showing cause against his arrest. The detention of the judgment-debtor in a civil prison is an extreme penalty and it was essential that the procedure prescribed in order 21 rule 40, should have been followed. After taking into consideration all the aforesaid circumstances. I am of the view that the impugned order is liable to be set aside and the matter is required to be decided afresh. It may be mentioned that the judgment-debtor today paid an amount of Rs. 500/- to the decree holder in the Court.

4. For the reasons recorded above, I accept the revision petition, set aside the order of executing court and direct it to decide the matter afresh, in accordance with law. The parties are directed to appear before the executing court on April 28, 1979.