

(2000) 02 BOM CK 0086

In the Bombay High Court

Case No : Civil Revision Application No. 33 of 2000

Saleem Abdul Majid Mujawar and Others

APPELLANT

Vs

Smt. Maria Francisca D'Souza

RESPONDENT

Date of Decision : 11-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 51

Citation : (2000) 2 ALLMR 585 : (2000) 4 BomCR 738

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : Miss. Amira Razaq, for the Appellant; Miss. F. Fernandes, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—Rule. By consent rule made returnable forthwith. If is the contention of the petitioners that the Executing Court has passed the impugned order in contravention of section 51 of the CPC in as much as that the Executing Court has totally ignored the proviso to section 51 of C.P.C. which clearly requires the Court to pass the reasoned order before issuance of warrant of arrest and detention of the judgment debtor. It is also the contention of the learned Advocate for the petitioners that before proceeding with the execution of a decree against the legal representatives of the judgment debtor, it is necessary to ascertain the extent of liability of the legal representatives of the judgment debtor.

2. Upon hearing the learned Advocates for the parties and on perusal of the record, it is seen that the Executing Court has passed the impugned order merely after observing that the petitioners here in who are the judgment debtor were absent and there was none to represent them before the Court. Apart from that, there is no other reason disclosed in the impugned order for directing issuance of warrant of arrest and detention of the petitioners in the execution proceedings. As rightly submitted by the learned Advocate for the petitioners, the proviso to section 51 of C.P.C. clearly requires that in execution of the decree for payment

of money, the judgment debtor can be ordered to be detained in prison only after giving an opportunity of showing cause against such order and after recording reasons in writing about the satisfaction of the Court that the judgment debtor is either likely to abscond or to leave the local limits of the jurisdiction of the Court with the object of delaying the execution of the decree or judgment or with the same object 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 that the judgment debtor has, inspite of having the means to pay the amount of the decree or some substantial part thereof, refused or neglected to pay the same, or that the decree is for a sum for which the judgment debtor was bound in a fiduciary capacity to account for.

3. The learned Advocate for the petitioners was also justified in submitting that an Executing Court is not entitled to proceed with the execution of a decree against the legal representatives of the judgments debtor unless an opportunity is given to the legal representatives of the judgment debtor to put forth their say in the matter regarding the extent of their liability to meet the claim against the predecessor in relation to the decree passed. In the absence of such an opportunity being given to the judgment debtor, the order passed for recovery of any amount from the legal representatives of the judgment debtor would tantamount to denial of justice to the petitioners and, therefore, the Executing Court has to decide about the extent of liability of legal representatives of the judgment debtor before proceeding with the matter in question.

4. In the result, therefore, the petition succeeds. Rule is made absolute in the above terms. No order as to costs.

5. Petition allowed.