
(2002) 01 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 212 of 2002

Shiv Auto Trading Company

APPELLANT

Vs

Oriental Bank of Commerce

RESPONDENT

Date of Decision : 24-01-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 58(2)

Citation : (2002) 4 RCR(Civil) 768

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : Mani Ram Verma, for the Appellant; Ravinder Chopra, for the Respondent

Judgement

M.M. Kumar, J.—This revision petition is directed against the order dated 3.1.2002 passed by the Additional Civil Judge (Senior Division), Charkhi Dadri dismissing the application filed by the judgment-debtor - petitioner for cancellation of his warrant of arrest wherein it was claimed that he had already undergone the sentence of imprisonment from 21.5.1997 to 11.6.1997.

2. The decree-holder - respondent has filed execution application against the judgment-debtor - petitioner in which warrant of arrest was issued. An application was filed by the judgment-debtor-petitioner seeking cancellation of warrant of arrest on the ground that he has already served the sentence of imprisonment and he was released by the High Court on the ground of severe illness. He also complained of various ailments asserting that he is under treatment from Safdarjang Hospital. New Delhi. All India Medical Sciences. New Delhi. Lady Medical Harding College, Sucheta Kripalani Hospital, New Delhi and Escorts Heart and research Centre, New Delhi. Therefore, request was made that he may not be sent to civil imprisonment and his warrant of arrest be suspended. The application was dismissed by recording the following order:-

"Accordingly, when each and every aspect of this case including ailment of the J.D. has been-taken into consideration by the court and the orders dated

13.5.1997 to carry out sentence of three months imprisonment as per order dated 21.12.1996 were passed, therefore, holding no force in the instant application moved by J.D./applicant, the same is dismissed. J.D./applicant be sent to the civil imprisonment for carrying out the sentence of unexpired period as already inflicted by the court vide order dated 21.12.1996, until he makes the payment of whole outstanding against him towards the Decree-Holder which ever is earlier. Fresh warrant be prepared and photostat copy of warrant of imprisonment of sentence in civil imprisonment dated 13.5.1997 be also sent alongwith it to carry out the sentence into execution of remaining unexpired period. The conditions put in the note of that warrant would be also prevailing for the remaining unexpired period of sentence to be undergone by the J.D."

3. Shri Mani Ram Verma, learned counsel for the judgment-debtor-petitioner has argued that under Sub-section (2) of Section 58 of the CPC (for brevity, the Code), once the judgment-debtor-petitioner is released from detention, he could not be re-arrested for execution of decree. According to the learned counsel, once he has remained in jail from 13.5.1997 to 11.6.1997, he cannot be re-arrested for the purposes of execution of that very decree.

4. On the other hand, Shri Ravinder Chopra, learned counsel for the decree-holder-respondent has submitted that the judgment-debtor-petitioner is misusing the process of the Court and is avoiding the execution of the decree. He points out that this Court earlier also has dismissed his revision petition in 1997. Therefore, the judgment-debtor-petitioner does not deserve any sympathy of this Court.

5. Having heard learned counsel for the parties and perusing the record, I am of the opinion that this revision petition is devoid of any merit. Section 58 of the Code reads as under:

"58. Detention and release.- (1) Every person detained in the civil prison in execution of a decree shall be so detained,

(a) where the decree is for the payment of a sum of money exceeding [one thousand rupees, for a period not exceeding three months, and,]

[(b) where the decree is for the payment of a sum of money exceeding five hundred rupees, but not exceeding one thousand rupees, for a period not exceeding six weeks:]

Provided that he shall be released from such detention before the expiration of the [said period of detention]-

(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or

(ii) on the decree against him being otherwise fully satisfied or

(iii) on the request of the person on whose application he has been so detained, or

(iv) on the omission by the person, on whose application he has been so detained, to pay subsistence allowance:

Provided, also that he shall not be released from such detention under Clause (ii) or Clause (iii), without the order of the Court.

[(1-A) For the removal of doubts, it is hereby declared that no order for detention of the judgment-debtor in civil prison in execution of a decree for the payment of money shall be made, where the total amount of the decree does not exceed five hundred rupees.]

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison."

6. A perusal of Section 58(1)(a) of the Code shows that the judgment-debtor-petitioner could be detained in civil prison for a period not exceeding 3 months, whereas he remained in civil prison from 13.5.1997 to 11.6.1997 i.e. for a period of less than one month. Sub-section (2) of Section 58 of the Code creates a bar to re-arrest the judgment-debtor-petitioner in cases where the judgment-debtor remained in jail for 3 months. Therefore, the immunity to the judgment-debtor-petitioner from the second arrest is not dependent merely on the fact of arrest but also the period for which he was detained in jail as the period of his arrest is less than one month. It is not a case of the kind which would be covered by the bar created by Sub-section (2) of Section 58 of the Code: Moreover, the matter had come up before this Court on an earlier occasion in Civil Revision No.2440 of 1997, decided on 21.10.1997, when this Court had directed that the judgment-debtor-petitioner be taken into custody to undergo civil imprisonment for a period of 3 months as earlier directed by the executing Court vide its order dated 21.12.1996. In its order dated 3.1.2002, the executing Court has dealt with this aspect.

7. Having examined the impugned order in the light of the arguments advanced by the parties, I do not find that there is any material irregularity or error of jurisdiction. However, the jail authorities are directed to ensure that the judgment-debtor-petitioner is provided all the necessary medical and if he is required to be taken to any of the hospitals at Delhi mentioned in earlier part of this judgment, then either the jail authorities should make arrangements or he should be allowed to make arrangements for his removal to Delhi. In case any such serious eventuality arises, the executing Court shall on an application filed by the judgment-debtor-petitioner consider his request for suspension of warrant of arrest as his right under article 21 of the Constitution of India has to be given precedence on any other right or liability.

The revision petition is disposed of with the above observations.