

(2018) 04 CHH CK 0114
In the Chhattisgarh High Court
Case No : WPC No. 1627 of 2008

Smt. Prem Kumari

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 10-04-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 51, 58, 151
Code of Civil Procedure, 1908 — Order 21 Rule 37, Order 21 Rule 30
Constitution of India, 1950 — Article 227

Citation : (2018) 04 CHH CK 0114

Hon'ble Judges : MANINDRA MOHAN SHRIVASTAVA, J

Bench : Single Bench

Advocate : Surfaraj Khan, Rajendra Tripathi

Final Decision : Disposed of

Judgement

1. By this petition, the petitioner has assailed correctness and validity of order dated 28/02/2008, by which, the Trial Court has directed the petitioner to

be arrested and sent to Civil Jail in the matter of execution of money decree passed in favour of the respondent.

2. The respondent filed a suit against the petitioner herein, claiming a money decree which was eventually allowed and a money decree of

Rs.6,47,000/- along with interest @ 6% was passed. The respondent, then sought execution of decree by instituting execution proceedings before the

Executing Court. Initially, the petitioner / judgment debtor submitted an application on 24/07/2005 stating that as he has got a valuable property, he

would be paying decretal amount. But later on, he did not pay. The Court, then, proceeded to pass an order of attachment of the petitioner's property.

The order of attachment was however, challenged by filing a petition by petitioner's son â?" Gopal Agrawal in WPC No.6384/2006 wherein, an

interim order was passed by this Court on 22/11/2006 staying the execution proceedings.

3. As the money decree could not be satisfied by the petitioner, the respondent / decree holder moved an application under Section 51 and Order 21

Rule 37 read with Section 151 CPC for effecting arrest of the petitioner / judgment debtor. On such application moved, the learned Executing Court

issued notice for appearance of the petitioner and thereafter, the impugned order was passed on the reasons that the petitioner / judgment debtor

having sufficient means, is deliberately, in bad faith, not satisfying the money decree.

4. Learned counsel for the petitioner would submit that the petitioner, by this petition, seeks to invoke supervisory jurisdiction of this Court under

Article 227 of the Constitution of India on the submission that the learned Executing Court has exceeded its jurisdiction vested under the law by

directing the petitioner to be sent to Civil Prison, even though there was no material available with the Executing Court to arrive at such satisfaction

that the petitioner, though possessed of sufficient means, has neglected or acted in bad faith to satisfy with money decree. He would submit that the

only operative reason behind passing of impugned order is that the petitioner is possessed of sufficient property. It is contended that the learned Court

below omitted to consider that the property was under dispute with the petitioner's own son, who had challenged the order of attachment before this

Court and this Court also stayed execution proceedings. The petitioner's son claiming his interest in the property, had also filed partition suit. Amidst,

these litigations, only on the ground that the petitioner also had interest in the property, without anything more, could not be made a basis to arrive at

the conclusion that with that property alone, the petitioner was possessed of sufficient means to satisfy the money decree. According to learned

counsel for the petitioner, the arrest in execution of judgment and decree is a serious matter as it affects the personal liberty. Therefore, before

incarceration of personal liberty, though in fulfillment of the civil liability, to effect arrest and sending a person in civil prison, recording of satisfaction

must receive strict consideration. Reliance has been placed by learned counsel for the petitioner on the decision of the Supreme Court in the case of

Jolly George Varghese and anr. v. The Bank of Cochin, 1980 (2) SCC 360 and decision of Madras High Court in the case of K. Vijayan v. K.G.

Kuppusamy and ors., 2006 3 MLJ 759.

5. On the contrary, learned counsel for the respondent would submit that in the totality of circumstances, relevant in nature, taken note by learned

Executing Court, are not only sufficient but relevant to exercise discretion in the matter for sending the petitioner to civil prison. It is submitted that the

learned Court below took into consideration that on 07/05/2005, the judgment debtor had submitted an application in the Court that his house is worth

Rs.40 lakhs and is in a position to pay the decretal amount and would be satisfying money decree and thereafter, he did not pay. It is submitted that

thereafter, when the property was attached, son of the petitioner filed a writ petition before this Court. Before that, a partition suit was also filed by

petitioner's son which clearly shows that the petitioner and his son were hand-in-glove to frustrate the execution of money decree. This, by itself, was

sufficient to draw an inference that the petitioner, possessed of sufficient means to pay the amount of decree or atleast a substantial part thereof, but

he refused to pay it.

6. The material on record which is not disputed is that the petitioner suffered money decree for a payment of Rs.6,47,000/- along with interest @ 6%

vide judgment decree dated 22/07/2004 in civil suit no.21-B/1999. It is also not in dispute that the only basis for the learned Executing Court to hold

that the petitioner despite possessed of sufficient means, neglected or refused to satisfy the decree is that the petitioner is possessed of property.

The material on record, however, shows that initially, the property was attached in execution of decree but later on, the son of the petitioner -Gopal

Agrawal filed a writ petition i.e. WPC No.6384/2006 challenging the attachment of property in execution of decree and this Court, vide order dated

22/11/2006 stayed the execution proceedings. It is also not in dispute that Gopal Agrawal had also instituted a suit for partition. It is also found that the

matter was also settled in Lok Adalat.

7. Amidst of this dispute, there is nothing on record to show that except this property, the judgment debtor was possessed of any other means to pay

huge decretal amount of more than Rs.6 lakhs.

8. Under Order 21 Rule 30 of CPC, the mode in which money decree could be executed has been provided as below -

â??Decree for payment of money â?" Every decree for the payment of money,

including a decree for the payment of money as the alternative to

some other relief, may be executed by the detention in the civil prison of the judgment debtor, or by the attachment and sale of his property, or by

both.

The provision unmistakably authorises the Court to order arrest also by placing judgment debtor in civil jail. In addition to execution by way of

attachment and sale of the property of the judgment debtor, the provision allows the Court to apply both the modes towards execution of decree for

payment of money. However, the relevant considerations, before the Court in execution of decree directs arrest and detention in prison of judgment

debtor, has been provided in Section 51 of CPC is as 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.

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.â??]

From the aforesaid provisions, it is clear that though the Executing Court has all the powers to order execution of decree by delivery of property

specifically decreed; by attachment and sale or by sale without attachment of any property, it may as well direct arrest and detention in prison. The

Court also has the power to appoint receiver or to seek execution in such other manner as the nature of relief granted may require. In so far as the

money decree is concerned, the proviso to Section 51 carves out an exception to general rule by providing that where the decree is for payment of

money, execution by detention in prison shall not be ordered unless an opportunity is given to the judgment -debtor as to why he should not be

committed to prison and the Court, for reasons recorded in writing, is satisfied with reference to the factors enumerated in clauses (a) or (b) or (c) of

the proviso. Therefore, before ordering detention in civil prison, the law requires the Executing Court to record satisfaction of the nature provided in

the aforesaid provision. Since the matter relates to incarceration of personal liberty, though in fulfillment of the civil liability arising under a decree, the

requirement of recording satisfaction and consideration therefor must receive strict consideration. Therefore, in case of money decree, before ordering

the judgment debtor to be sent to civil prison, the Executing Court is required to record a satisfaction that the judgment debtor with the object and

effect of obstruction in delaying execution of decree, amongst other things, as stated in clause (b) appended thereto, had means to pay the amount of

decree or some substantial part thereof yet refused or neglected to pay the same. The satisfaction of above nature is required to be arrived at by the

Executing Court with reference to the material available on record led by the parties to the proceedings i.e. the decree holder and the judgment debtor.

9. This Court found that the Court issued a notice of appearance of the judgment debtor to draw proceedings under Order 21 Rule 37 of CPC and the

judgment debtor appeared before the Court. The decree holder did not lead any oral evidence as such. It, however, appeared that the learned

Executing Court, took into consideration certain circumstances to reach to a satisfaction that the petitioner / judgment debtor, despite having means to

pay the amount of decree or some substantial part thereof, refused or neglected to pay the same. The satisfaction of the Court is based on the

circumstances that firstly, the judgment debtor had moved an application on 07/05/2005 that he is possessed of property worth approximately Rs.40

lakhs and he is in a position to pay, Secondly that between the appellant and his sons, there has been a compromise decree passed in the Lok Adalat.

Except this, there was no material before the Executing Court to arrive at the satisfaction.

It is also worth noting that as the petitioner failed to pay the amount, the property was purchased in execution of decree but before the same could be

sold and the proceeds could be used to satisfy the money decree, petitioner's son - Gopal Agrawal filed a writ petition before this Court and execution

proceedings were stayed. Learned counsel for the respondent could not place before this Court any material to show that in those proceedings, any

finding was recorded that the petition filed before the Court was a collusive act of judgment debtor Shyamlal Agrawal with his son-Gopal Agrawal.

There is no material on record to show that by that property, the petitioner / judgment debtor fetched any income.

10. That much of material alone available with the Court to arrive at the satisfaction that the petitioner was possessed of sufficient means and he

neglected or refused to satisfy the decree, is completely perverse. The property remained under litigation and at one point of time, the property was

attached but could not be sold because of the interim order passed by this Court in other proceedings. Therefore, with this situation, how can one

arrive at this satisfaction that the judgment debtor neglected or refused to pay the amount money decree despite having been possessed of sufficient

means.

11. In view of the aforesaid considerations, this Court is of the view that the learned Trial Court exceeded its jurisdiction in directing detention of the

petitioner in civil jail towards execution of money decree. The impugned order, therefore, cannot be sustained in law as interference by this Court in

exercise of supervisory jurisdiction has become imperative in the interest of justice. In the result, the petition is allowed. The impugned order is set aside.

12. Learned counsel for the respondent / decree holder, however, submits that despite there being decree in his favour, he could not reap the fruit thereof even after 13 years.

13. Keeping that submission in view, the Executing Court is directed to dispose off execution proceedings as early as possible, preferably within a period of six months from the date of receipt of copy of this order adopting such.