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JUDGMENT SHEET

IN THE LAHORE HIGH COURT
BAHAWALPUR BENCH,BAHAWALPUR.
JUDICIAL DEPARTMENT

W.P. No. 2729 of 2017.

Pervaiz Ahmed. Vs. Additional District Judge, & others.

J U D G M E N T

Date of hearing.	23.10.2026.
Petitioner by:-	Mr. Muhammad Farooq Warrind, Advocate.
Respondent No.3 by:-	Ex-parte vide order dated 21.10.2026.
	Mr. Jamshed Iqbal Khakwani, Assistant Advocate General Punjab.

TANVEER AHMAD SHEIKH, J.:-. Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, the petitioner has assailed the orders dated 02.02.2017, 04.02.2017, 17.02.2017 & 02.03.2017, passed by learned Executing Courts and order dated 21.02.2017, passed by learned Revisional Court/Additional District Judge.

2. Learned counsel for respondent No.3 entered appearance on 09.12.2024, but thereafter did not turn up so far, as such she was proceeded against ex-parte, vide order dated 21.10.2026.

3. Perusal of the file speaks that petitioner/judgment debtor was arrested in the pursuance of execution proceedings of a decree passed in a family case lodged against him by respondent No.3 (Mst. Parveen Bibi-decree holder). He was produced before the learned Executing Court on 02.02.2017. He was issued a show cause notice and

allowed time for one hour for submission of reply, but he failed to submit reply or surety bond as required by the Court, as such was ordered to be lodged in the civil prison. On 04.02.2017, he was again produced before the learned Executing Court, but failed to deposit decretal amount. He was produced third time on 17.02.2017 and the matter was adjourned to 02.03.2017, for further proceedings.

4. Meanwhile, petitioner called in question the legality & validity of execution proceedings through revision petition, which was disposed of by learned Additional District Judge, vide order dated 21.02.2017 with the observations that he refused to pay the decretal amount, therefore, not entitled to any leniency.

5. The learned Executing Court passed an order dated 02.03.2017, sending the petitioner to civil prison for detention for a period of one year as he could not pay decretal amount, nor submitted surety bond.

6. Main focus of learned counsel for petitioner was on the point that relevant law on the subject was not taken into consideration by the learned Executing Court before passing the order of detention of petitioner for one year; both the Courts below completely ignored the provision of Section 51 as well as Order XXI, Rule 37 of CPC, therefore, the very arrest as well as detention was illegal and unlawful.

7. Case revolves around Section 51 of C.P.C. and Order XXI, Rule 37 of C.P.C. It would be advantageous to have a look of said provisions, which read as under:-

> ***Sec. 51 of C.P.C.***
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> *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—*
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> *(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;

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require;

Provided that, 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.

Order XXI, Rule 37 C.P.C. Discretionary power to allow judgment debtor an opportunity to show good cause against detention in prison.—*(1) Notwithstanding anything in the rules, where a decree for the payment of money is sought to be executed through arrest and detention in prison of the judgment debtor, the Court may, before issuing a warrant of arrest, provide one opportunity to the judgment debtor to show good cause as to why he should not be detained in prison:*

Provided that such opportunity shall not be necessary if the Court is satisfied, by affidavit or otherwise, that with the object 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 the judgment debtor fails to avail himself the opportunity or is unable to show a good cause, the Court shall, if the decree holder so requires, issue a warrant for the arrest of the judgment debtor."*
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> ***Notification No.237/Legis/XI-Y-26 dated 15.08.2018, w.e.f. 1.11.2020.***

8. Section 51 of CPC out lines the powers of a Civil Court to enforce the execution of a decree upon the application of decree holder. It permits the execution through the delivery of specific property, attachment and sale of property, arrest and detention of judgment debtor in the prison, an appointment of receiver or other appropriate relief method.

9. Order XXI, Rule 37 of C.P.C. also governs the execution of money decree through the arrest/detention of judgment debtor in civil prison.

It emerges from the combined effect of said provision that when an application is moved for the execution of money decree by the arrest and detention of judgment debtor, the Court before issuance of warrant for his arrest is required to issue a notice calling him to appear and to show cause as to why he should not be detained in prison. Order dated 16.12.2016, passed by learned Executing Court reveals that after making the service upon petitioner/judgment debtor through affixation of process at his abode, the non-bailable warrant was issued straightway for his arrest and the notice to show cause as required by said provision of Order XXI, Rule 37 of CPC was not issued. Petitioner was arrested and produced in the Court on 02.02.2017, but he failed to deposit the decretal amount, or to furnish the surety bond despite of the fact that he was allowed time for one hour to do the needful. Petitioner also did not submit reply to the notice. Issuance of the non-bailable warrant for the arrest of

petitioner before issuing show cause notice to him, was in flagrant violation of said provisions.

10. Moreover, according to Section 51 of CPC the Court was required to proceed for the satisfaction of the decree by attachment and sale of any property and then by arrest and detention of judgment debtor. It appears from the record that Executing Court made no effort for the ascertainment of assets, if any, of petitioner/judgment debtor for the purpose of attachment/sale, which was also a deviation from the Law. Proviso to section 51 of CPC discloses that detention of judgment debtor shall not be ordered unless after giving him an opportunity to show cause, the Court is satisfied on affidavit of judgment debtor or otherwise that judgment debtor is likely to abscond or leave the limits of the jurisdiction of the Court or he has after filing of the suit in which the decree is passed, dishonestly transferred, or concealed, or removed any part of the property, or he despite of having means to pay the decretal amount, has refused or neglected to make the payment.

It was ruled in case titled *"Meeno Kharas Versus Ali Khan"* (**PLD 1973 Note 133 Karachi**) and "*Ch. Harpal Singh and others Versus Lala Hira Lal*" (**AIR 55 Alabad 402**) that burden lies upon the decree holder to prove through evidence that judgment debtor was guilty of the conduct contemplated in Section 51 of C.P.C.

11. Perusal of record transpires that the Executing Court failed to hold any inquiry in order to follow the above pre-requisites before ordering the arrest and detention of petitioner/judgment debtor.

12. The Court must verify that the decree cannot be satisfied through other means such as the delivery of

property, attachment, or the sale of any property. Mere non payment of decretal amount is not a valid ground for arrest.

13. The Court cannot order the detention of judgment debtor without first giving him a proper notice and an opportunity to explain as to why he should not be sent to prison. The Court must record specific reasons in writing to be satisfied of the judgment debtor's default.

14. Constitutional and statutory provisions of law curtailing the liberty of a citizen has always to be construed as strictly as possible against the state and as liberally as possible in favour of the subject. It was discernable from the critical analysis of both the said provisions that in the execution proceedings mode of arrest of the judgment debtor has to be adopted as a measure of last resort that too under strict conditions and safeguards, when other methods happen to be flopped.

15. It has been well settled time and again by the Superior Courts that when a thing is required to be done in some specific manner, that must be done in that manner and not otherwise and in case of the failure each & every step shall be considered in sheer violation of the law.

16. In the sequel to above discussion, I declare whole of the said proceedings culminating in to the arrest and detention order to be illegal and unlawful and a nullity in the eye of law. Therefore, I accept present petition and set aside the orders passed by Executing Court as well as Revisional Court/Additional District Judge.

(Tanveer Ahmad Sheikh)
Judge

APPROVED FOR REPORTING.

Judge

Shahzad Ahmad Nasir