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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision: 8th April, 2025***
+ CM(M) 655/2025 & CM APPL. 20675/2025 & CM APPL.
20676/2025
NIZAM SHEIKH

.....Petitioner

Through: Mr. Manoj Kumar, Advocate.

versus

ALIMUDDIN

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner-Mr. Nizam Sheikh suffered a decree. Based on the statements made by the parties, such decree, which is consent-decree, was passed by the learned Trial Court on 09.05.2016.
2. As per the broad terms of the settlement, the defendant had agreed to make a payment of Rs.4 lacs to the plaintiff. However, the defendant had also given a timeline for making such payment and also stated before the learned Trial Court that if he failed to make the payment as per the given schedule, he would pay interest @ 18% p.a.
3. It looks that such time-schedule was not adhered to by him and, resultantly, an Execution Petition was filed by the decree-holder in the year 2017.
4. In such Execution Petition, the judgment-debtor filed an objection



application under Section 47 read with Section 151 CPC while also contending therein that the *settlement* did not incorporate any interest and also that the rate of interest @ 18% p.a. was exorbitant.

5. The learned Executing Court, on the basis of the material available on record, dismissed the objection, being devoid of any merit.

6. However, since the decree-holder had also filed an application under Order XXI Rule 37 CPC whereby he was seeking arrest of the judgment-debtor, the learned Trial Court has issued *warrants of arrest*.

7. Such order with respect to issuance of *warrants of arrest* is under challenge.

8. The reasons given by the learned Executing Court in this regard are contained in para 7 to para 14 which read as under:-

“7. Now coming to the application filed by the DH under Order XXI Rule 37 CPC seeking arrest of the JD. The DH has pleaded for issuance of warrants of arrest of the JD by taking the plea that JD does not have any intention to pay the decretal amount and for the same, he should be sent to civil imprisonment.

8. The perusal of the record reveals that the decree in question was passed on 09.05.2016 and the present execution petition was filed way back on 04.05.2017 and since then, the JD is avoiding his liability to make the payment of the decretal amount to the DH on one pretext or another.

9. The record further reveals that for the first time the arrest warrants of JD were directed to be issued vide order dated: 16.09.2019, the operation of which was stayed on the submissions of JD that he would make the payment of the decretal amount within reasonable time. However, the JD did not mend his ways and vide order dated: 24.09.2021 again warrants of arrest were directed to be issued for the arrest of the JD, which were also stayed vide order dated: 30.10.2021 and since then the JD has been avoiding his liability under the decree in question.

10. Even after the issuance of notice of the instant application under Order XXI Rule 37 CPC, the JD apprised this Court that he had settled the present execution petition with the decree holder at Rs.5,00,000/- and promised to make the part payment of Rs.2,00,000/- today i.e. 07.02.2025 .



11. However, instead of making the part payment of Rs.2,00,000/-out of the total decretal amount, the JD filed the objections which have been dismissed by this Court and when a Court query was put to him regarding his intention to make payment of the decretal amount, he simply stated that he has no means to pay any money to the decree holder.

12. The perusal of the affidavit filed by the JD disclosing his movable and immovable assets also reveals that the same has been filed only for the sake of formality.

13. Even otherwise, the JD is physically fit and capable to earn, however, despite that no effort has been made on his behalf to even raise money for the payment of the decretal amount in question to the decree holder.

14. In view thereof, this Court is of the opinion that the facts and circumstances of the present case calls for the civil imprisonment of the JD Sh. Nizam Sheikh for the execution of the decree in question.”

9. It is also quite obvious that application seeking arrest of the judgment-debtor was filed by decree-holder on 20.09.2024 and the Court was also, simultaneously, seized with the objection filed by the judgment-debtor under Section 47 CPC.

10. The impugned order is a composite one as while dismissing the Objection Petition, the learned Trial Court has also directed issuance of *arrest warrants*.

11. According to judgment-debtor (petitioner herein), the judgment-debtor has already made a payment of Rs.4 lacs which was the agreed amount. It is contended that without conducting inquiry of any nature whatsoever and without issuing any show cause to him, the learned Executing Court has, straightaway, directed issuance of *warrants of arrest* and such approach is in teeth of the specific directions given by this Court in *CELL Page Communication vs. Vijay Shankar Pandey: 2022 SCC OnLine Del 3421*.

12. The relevant paras of said judgment read as under:-

“22. Arrest and detention in prison is one of the modes by which Section 51 permits the executing court to enforce execution of a decree.



This power is, however, expressly subject to the proviso to Section 51. It is well settled that a proviso is in the nature of an exception to the main provision. The proviso to Section 51 applies exclusively to a situation in which the decree under execution is a money decree, as in the present case. In such a case, there is an absolute proscription - as is reflected by the use of the words "shall not be ordered" - against execution of a money decree by detention in prison unless the protocol envisaged by the proviso is scrupulously followed. This protocol may be set out thus:

(i) *The executing court is required, in the first instance, to grant, to the judgment debtor, an opportunity to show cause as to why he be not committed to prison.*

(ii) *Consequent on receipt of response from the judgment debtor to the said show cause notice, the Court has to be satisfied that one or more of the exigencies envisaged by Clauses (a) to (c) of the proviso exist. Clause (a) envisages the judgment debtor being likely to abscond or to leave the local limits of the jurisdiction of the Court or dishonestly transferring, concealing or removing any part of his property or committing any other bad faith in relation to his property, with the object or effect of obstructing or delaying the execution of the decree. Clause (b) envisages a situation in which the judgment debtor, despite being possessed of the means to pay the amount of the decree or a substantial part thereof, refuses or neglects to do so. Clause (c) contemplates a situation in which the decree is for a sum for which the judgment debtor was bound to account in a fiduciary capacity.*

(iii) *It is only after issuing a notice to the judgment debtor to show cause against committal in prison, and the court is satisfied that one or more of these exigencies applies, that execution of the decree by detention in prison can be ordered.*

23. *Clearly, therefore, Section 51 prescribes a very rigid protocol before enforcing execution of a simpliciter or money decree by detention of the judgment debtor in prison. This protocol is mandatory and non-negotiable.*

24. *Order XXI Rule 37 is, in a manner of speaking, a provision supplemental to Section 51 of the CPC and geared at facilitating the implementation thereof. Order XXI Rule 37 also applies where the execution application seeks execution of a money decree. The provision starts with the non-obstante clause, indicating that it prevails over other Rules in the CPC.*

25. *Order XXI Rule 37(1) provides that, in the case of an application for execution of a money decree, instead of issuing warrants of arrest of the judgment debtor, the Court shall - thereby indicating the provision to be mandatory - issue of notice to the judgment debtor calling upon him to appear before the Court on a specified date and show cause as to why he be not committed to the civil prison. The proviso to Order XXI Rule 37 relaxes this requirement "if the Court is satisfied, by affidavit*



or otherwise, and that the object and effect 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”.

26. *It is obvious that insofar as the proviso to Order XXI Rule 37(1) compromises the liberty of the judgment debtor, it has to be subjected to a strict construction. It can apply, therefore, only where the Court, for clear and cogent reasons, satisfies itself that the judgment debtor is likely to abscond or leave the jurisdiction of the Court with the object or effect of delaying the execution of the decree.*

27. *It is only where appearance is not made in response to the notice issued Order XXI Rule 37(1) that Order XXI Rule 37(2) empowers the Court to issue a warrant for arrest of the judgment debtor.*

28. *Order XXI Rule 40 envisages yet a further protocol, where a judgment debtor appears before the executing court in obedience to the notice issued under Order XXI Rule 37. Where notice is issued under Order XXI Rule 37(1) and in response thereto, the judgment debtor appears before the executing court, the court cannot straightaway direct him to be detained in civil prison, even where he is in default of execution of the decree. The Court is required to (i) hear the decree holder, (ii) take all such evidence as may be produced by the decree holder in support of his execution application and thereafter (iii) provide, to the judgment debtor, an opportunity to show cause as to why he be not committed to the civil prison. The exercise that Order XXI Rule 40(1) envisages is an inquisitorial exercise, as is apparent from the opening words of Order XXI Rule 40(2), which provides for detention, of the judgment debtor, in the custody of an officer of the Court, pending conclusion of the inquiry under Order XXI Rule 40(1). It is only after this inquisitorial exercise is carried out under Order XXI Rule 40(3), that the Court may direct detention of the judgment debtor in civil prison.*

29. *It is not necessary to refer to the relevant passages cited by Mr. Gupta from the four decisions noted hereinabove, as they essentially reiterate the principles contained in Section 51 and Rules 37 and 40 of Order XXI of the CPC.*

30. *Suffice it to state that, in the present case, the issuance of warrants of arrest of the petitioner, by the learned ADJ, does not conform to the rigour of the protocol envisaged by Section 51 and Rules 37 and 40 of Order XXI of the CPC. Warrants of attachments were initially issued for attaching the properties of the petitioner. The said warrants were received back with the endorsement that the petitioner had left the address at which the warrants were attempted to be served. Thereafter, warrants of arrest of the petitioner were issued at the very same address. They were also received back. Despite the fact that an alternate address of the petitioner was available in the Execution Petition filed by the respondent, no attempt to serve the petitioner at the*



said alternate address was made. Rather, in the order dated 17th July 2019, the learned ADJ observes that, in the circumstances, “instead of issuance of notice of the application for arrest, warrants of arrest be issued against the JD”.

31. This, quite clearly, is in the teeth of the procedure, envisaged by Section 51 and Rules 37 and 40 of Order XXI of the CPC.

32. The arrest of any citizen compromises his right to life and personal liberty, which are the most sanctified of the fundamental rights under Part III of the Constitution of India. Liberty is a sanctified preambular constitutional goal. Adherence, to any procedure which affects the liberty of the citizen, has to be strict and scrupulous.”

13. It seems quite apparent that the protocol in this regard has not been followed.
14. A specific opportunity ought to have been given to the judgment-debtor to show cause as to why he should not be committed to imprisonment and, even after receiving his response, if any, to such show cause notice, the Court was under obligation to satisfy itself with respect to existence of the conditions specified in proviso to Section 51 CPC read with Order XXI Rule 37 CPC.
15. It seems that without conducting any inquiry and without giving any show cause and without recording satisfaction with respect to existence of the conditions given under Section 51 CPC, the *arrest warrants* have been issued. There is nothing which may indicate that judgment-debtor is likely to abscond or is dishonestly disposing of his assets or despite being possessed with means has refused or neglected to pay the amount.
16. None appears on behalf of respondent/decreed-holder despite advance notice.
17. In view of the above, the impugned order so far as it relates to issuance of *warrants of arrest* is set aside.
18. Since the application has already been moved by the concerned



decree-holder under Order XXI Rule 37 CPC, the learned Trial Court would consider the abovesaid application afresh and conduct inquiry in terms of the protocol as delineated in the abovesaid judgment *CELL Page Communication* (supra) and, would thereafter, proceed further with the matter in accordance with law.

19. The present petition, along with pending applications, stands disposed of.

20. A copy of this order be given *dasti* under the signatures of the Court Master and a copy of this order be also transmitted to learned Executing Court for information.

(MANOJ JAIN)
JUDGE

APRIL 8, 2025/ss/SS