

**(1988) 10 P&H CK 0003**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 1181 of 1987

Piara Singh

APPELLANT

Vs

Sarmukh Singh and Others

RESPONDENT

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**Date of Decision:** Oct. 31, 1988

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 37, Order 21 Rule 37(2), Order 21 Rule 40, 60(1)

**Citation:** (1990) 1 ILR (P&H) 208

**Hon'ble Judges:** D.V. Sehgal, J

**Bench:** Single Bench

**Advocate:** Jasbir Singh, for the Appellant; M.S. Rahi, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

D.V. Sehgal, J.

This judgment shall dispose of civil revisions No. 1181 and 1209 of 1987. The facts involved in both the revision petitions are similar and the point of law involved in them is the same. Reference to the facts and the parties shall, however, be made from civil. revision No. 1181 of 1987.

2. Surmukh Singh, decree-holder-Respondent No. 1, sought to execute a decree for payment of money passed in his favour and against judgment-debtor-Respondent No, 2 to 5. During the pendency of the execution proceedings, an order was passed by the executing Court detaining Kirpal Singh, Respondent No. 3, in civil prison. This order was challenged by way of civil revision No. 156 of 1986 in this Court. When it came up for motion hearing on 16th January, 1985, J.V. Gupta, J., passed an order to the following effect:

Notice for 18th March, 1985 to-Respondent No. 1 decree-holder only. The Petitioner be released on furnishing security for the decretal amount.

3. In pursuance of the above order, Respondent No. 3 and Piara Singh, Petitioner furnished security., The Petitioner filed the security bond to the effect that on a default committed by Respondent No. 3, he shall pay the decretal amount. The security bond dated 21st January, 1985 was attested and accepted by the executing Court on the same day. The revision petition was later on allowed by this Court on 18th March, 1985 and the order of detention of Respondent No. 3 in civil revision was set aside. It is not in dispute that subsequent thereto the execution application was dismissed.

4. Later on another execution application was filed by Respondent No. 1. He sought to enforce the decree against the property of the Petitioner on the basis of the security bond dated 21st January, 1985. The Petitioner filed objections in the executing Court stating that he was bound to produce Respondent No. 3 in Court for proceedings under Order 21 Rule 37, Code of Civil Procedure, but the said security bond did not amount to creating a charge on his property with regard to the decretal amount nor could he be held liable for the same on the failure of the judgment-debtor to make payment of the decretal amount. He further pleaded that the house in dispute which is sought to be attached is his only residential house and the same is, therefore, exempt from, attachment u/s 60(1) (cc) of the Code of Civil Procedure. These objections have been dismissed by the learned executing Court,--vide the impugned order dated 17th March, 1987. This is how the Petitioner has approached this Court in the present revision petition.

5. I have heard the learned Counsel for the parties.

6. I am of the considered view that the learned executing Court has fallen in error in enforcing the decree passed in favour of Respondent No. 1 and against Respondents No. 2 to 5 by directing attachment of property of the Petitioner. The security bond furnished by him was for the limited purpose of securing release of Respondent No. 3 from civil prison under the order dated 16th January, 1985 passed by J.V. Gupta, J. Once the order of detention from civil prison was set aside, the security bond so furnished became redundant and the Petitioner was discharged from the same. Order 21 Rule 37(2) of the CPC provides that in case the judgment-debtor does not appear in obedience of notice to show cause why he should not be detained in civil prison, the Court shall, if the decree-holder so desires, issue a warrant for the arrest of the judgment-debtor. Rule 40 ibid further provides that when a judgment-debtor is brought before the Court after being arrested in execution of a decree for payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

7. When the order of detention of Respondent No. 3 in Civil prison was set aside by this Court,--vide order dated 18th March, 1985, the position was restored back to the stage as contemplated by Rule 40 *ibid*. The executing Court was then to proceed to record its satisfaction whether the judgment-debtor should be detained in civil prison. The Petitioner was under a bounden duty in view of the security bond furnished by him to secure the production of the judgments-debtor in Court for taking such proceedings. But it would be too much to contend that by furnishing the said security bond, the Petitioner became a guarantor for payment of the decretal amount or he created a charge on his property which should be attached and sold in execution of the decree.

8. Consequently, I allow these revision petitions, set aside the impugned orders of the executing Court dated 17th March, 1987. There shall, however, be no orders as to costs.

9. It is made clear that the decree-holder-Respondent No. 1 shall be at liberty to proceed against the judgment-debtors in accordance with law but the Petitioners cannot be proceeded against on the basis of the security bonds dated 21st January, 1985 which cease to have play.