
(1980) AWC 139

Allahabad High Court

Case No: S.A. No. 241 of 1970 in Suit No. 1306 of 1961

Shiv Ram Singh

APPELLANT

Vs

Purshottam Das

RESPONDENT

Date of Decision: Jan. 11, 1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Section 51

Citation: (1980) AWC 139

Hon'ble Judges: R.S. Singh, J

Bench: Single Bench

Advocate: S.N. Agarwal, for the Appellant; Ram Nath, S.S. Pandey and Sankatha Rai, for the Respondent

Final Decision: Allowed

Judgement

R.S. Singh, J.

This second appeal has been filed by the judgment debtor against the order dated 31-1-1970 passed by the District Judge,

Kanpur, affirming the order of the trial court, by which the judgment debtor is liable to be arrested and detained in Civil Prison.

2. The facts of the case in brief are that the decree holder sought to execute his decree by arrest and detention of the judgment debtor in Civil

Prison. An objection was filed by the judgment debtor on similar grounds. Ultimately the judgment debtor gave an undertaking before the trial

court that he will pay the decretal amount in instalments of Rs. 15/-per month. It appears that the judgment debtor did not pay any instalment. The

decree holder again applied for execution of the decree by arrest and detention in Civil Prison. Again, an objection was preferred by the judgment

debtor similar to previous objection. The case of the judgment debtor was that merely because he could not pay the instalments, no ground for his

arrest has been made out. The trial court heard both the parties and rejected the objection of the judgment debtor and held that the judgment

debtor is liable to be arrested and sent to the Civil Prison, The order passed by the trial court was challenged by the judgment debtor, which was

summarily dismissed by the District Judge, Kanpur.

3. It has been contended by the learned Counsel for the Appellant that no case of arrest and detention has been made out in this case. He referred

to Section 51(c) of the CPC , which is as follows:

* * *

4. According to Section 51(c) of the Code of Civil Procedure , there is provision for arrest and detention in prison. But according to proviso (b), it

depends on the fact 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. According to the learned Counsel for the Appellant,

the courts below have recorded a finding that the judgment debtor has had the means to pay the decretal amount since the date of decree, but has

refused to pay the same. No independent finding has been recorded by the courts below about the fact that the judgment debtor has had the

means to pay the decretal amount since the date of decree. The order of arrest and detention has been passed only on account of the fact that the

judgment debtor had agreed, at one stage, to pay the decretal amount in instalments, but has refused to do so. In support of his contention, the

learned Counsel for the Appellant placed reliance upon Kesava Pillai Karunakaran Pillai Vs. Ouseph Joseph , wherein, it has been held that:

Sub-clause (b) of the proviso to Section 51 CPC in so far as it deals with the question of means has been interpreted in Ch. Harpal Singh and

Others Vs. Lala Hira Lal, as follows: ""Mere nonpayment to the decree-holder when the judgment-debtor.... Whether he has means to pay has to

be decided irrespective of the offer to pay instalments.

5. In view of the above decision, it is quite clear that in a case where an offer is made by the judgment debtor to pay the decretal amount in

instalments, and in case he refuses to pay the same, on this fact it cannot be held that the judgment debtor had means to pay and has refused to

pay. The offer can be made by him to maintain his respectability before the public and under the hope and expectation that money would be

forthcoming in future. There are many other reasons for making proposal for payment of the decretal amount but it does not necessarily mean that

the judgment debtor has had the means to pay the decretal amount.

6. The next question arises whether the judgment debtor has to show that he has not sufficient means to pay the decretal amount or the decree

holder has to satisfy the court that the judgment debtor has sufficient means to pay the decretal amount, but is not paying. In V.K.S. Sivam v.

Thirupathiswami AIR 1972 Mad 9 ; K.P. Mohamed Ibrahim Vs. The State Bank of Travancore, , it has been held that the burden is on the decree

holder to satisfy the court that the judgment debtor has sufficient means to pay the requisite amount, but he has refused to do so.

7. In view of the aforesaid facts, it is clear that in a case where decree- debt has not been paid by the judgment-debtor, it is necessary for the court

while passing orders for the arrest and detention of the judgment debtor to record a clear finding that the judgment debtor had the means to pay

the decretal amount but he refused or neglected to do so, irrespective of the fact that he had made any under taking before the court that he will

pay the decretal amount, No independent finding to that effect has been recorded in the present case. Therefore, the orders of the courts below

cannot be sustained in law and are liable to be set aside.

8. In the result, I allow this appeal, set aside the orders of the courts below and direct the trial court to decide the objection of the judgment debtor

ac cording to law. However, the parties will bear their own costs.