

**HIGH COURT OF JAMMU AND KASHMIR AT  
JAMMU**

C. Rev. No. 61/2010  
CMP Nos.71/2010

Date of decision: 29.03.2012

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| <b>Gian Chand</b> | <b>Vs.</b> | <b>Mangi Ram</b> |
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***Coram:***

**MR. JUSTICE J. P. SINGH.**

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***Appearing Counsel:***

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| For the Petitioner(s) | : | Mr. P.R.Sharma, Advocate.                                      |
| For the Respondent(s) | : | Mr. V.R.Wazir, Sr. Advocate with<br>Mr. Amit Chopra, Advocate. |

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| i)  | Whether approved for reporting<br>in Press/Media | : Yes |
| ii) | Whether to be reported<br>in Digest/Journal      | : Yes |
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This Civil Revision is directed against Sub-Judge, Reasi's order dated 30.04.2010 whereby the petitioner-judgment debtor, who had already remained in Civil Prison for three months, was again ordered to be sent to the Civil Prison for a period of one month.

During the course of execution proceedings initiated by the respondent for execution of Decree dated 30.12.1992, whereby the petitioner was, *inter alia*, restrained from taking produce of the land, the petitioner was ordered to be detained in Civil Prison on three occasions of one month each by the Sub-Judge, Reasi for his omission to file Undertaking to comply with the terms of the Decree. Vide order impugned in the Revision, the petitioner was ordered to be sent to the Civil Prison for the fourth time for his

omission to file Undertaking to comply with the terms of the Decree.

Referring to the provisions of Sections 51 and 58 of the Code of Civil Procedure, the petitioner's learned counsel questions the order impugned in the Civil Revision as illegal being in violation of the provisions referred to hereinabove.

Supporting the order of the learned Sub-Judge, learned senior counsel appearing for the respondent would contend that the bar enacted under Section 51 of the Code of Civil Procedure providing for arrest and detention of judgment debtor in Civil Prison for a period not exceeding three months, gets attracted only in case of arrest and detention for more than three months continuously and not to arrest and detention for any period less than three months on different occasions and the order passed by the learned Sub-Judge did not, therefore, suffer from any illegality.

I have considered the submissions of learned counsel for the parties and perused the records.

A plain reading of the provisions of Sections 51 and 58 of the Code of Civil Procedure demonstrates that the legislature did not intend to provide for detention in Civil Prison beyond a total period of three months in any case. Such intention is amply demonstrated by the provisions of Section 58 (2) of the Code of Civil Procedure which is reproduced hereunder for reference:-

“58(2) A judgment debtor released from detention under this Section shall not merely by reason of his release be discharged from his debt but he shall not be liable to be re-arrested under the Decree in execution of which he was detained in civil prison.”

The maximum period for which a judgment debtor may be detained in Civil Prison having been prescribed under Section 51(c) as not exceeding the period specified in Section 58 of the Code of Civil Procedure i.e. **three months**, the petitioner’s detention in Civil Prison ordered vide Sub Judge Reasi’s order dated 30.04.2010, when he had already remained in Civil Prison for three months, cannot, therefore, be justified in view of the intendment of the legislature demonstrated by the provisions of Sections 51 and 58 of the Code of Civil Procedure.

The reported non-filing of Undertaking by the petitioner-judgment debtor to comply with the terms of the Decree, pursuant to the directions of the Court, cannot be dealt with by resorting to the provisions dealing with arrest and detention of judgment debtor in Civil Prison in view of his having already spent the maximum prescribed period in the Civil Prison and the decree holder is required to suggest permissible modes for execution of the Decree other than those providing for arrest and detention of the judgment debtor.

For all what has been said above, the learned Sub Judge, Reasi is found to have acted illegally in directing the petitioner’s detention in Civil Prison.

This Civil Revision, therefore, succeeds and is accordingly allowed setting aside Sub-Judge Reasi's order dated 30.04.2010.

Records be sent back.

**(J. P. Singh)**  
**Judge**

**Jammu**  
**29.03.2012**  
Vinod.