

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

Civil Revision No. 154 of 2012  
Decided on: February 27, 2019

-----  
Nabib Ali Shah ...Petitioner  
Versus

Maan Singh ...Respondent  
-----

Coram:

**The Hon'ble Mr. Justice Sandeep Sharma, Judge.**

Whether approved for reporting?<sup>1</sup> Yes.  
-----

For the petitioner Mr. Nimish Gupta, Advocate.  
For the respondent Nemo.  
-----

**Sandeep Sharma, J. (Oral)**

Being aggrieved and dissatisfied with the order dated 17.11.2012, passed by the learned Civil Judge (Senior Division), Chamba, Himachal Pradesh in CMA No. 54/09, whereby learned Court below, while allowing application under Order 21 Rule 32 CPC, having been filed by the respondent-Decree Holder, has ordered for detention of the petitioner-judgment debtor in civil imprisonment for a period of one month and attachment of his property.

**2.** On 25.5.2013, respondent despite having received notice, failed to put in appearance and as such matter came to be admitted. Record reveals that an actual date notice was sent to the sole respondent for 15.5.2017, but despite that respondent chose not to remain present, as such, this court

---

<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment?

has no option but to decide the case at hand on the basis of material available on record.

**3.** Precisely, the facts of the case, as emerge from the record are that the respondent/Decree Holder filed a civil suit bearing No. 49/07, before the civil court, praying therein for permanent prohibitory and mandatory injunctions against the petitioner/judgment debtor, which was dismissed vide judgment and decree dated 29.11.2008. Respondent/Decree Holder preferred an appeal before the learned Additional District Judge, Fast Track Court, Chamba, which came to be registered as Civil Appeal No. 2/09. The aforesaid appeal ultimately came to be allowed vide judgment and decree dated 8.4.2009. Vide aforesaid judgment and decree, suit of the respondent/Decree Holder was decreed and petitioner/judgment debtor was directed to remove the stones, debris etc. thrown over the suit property and restore the site to its original position, within a period of one month from the date of decree. Since the petitioner/judgment debtor despite lapse of one month, failed to comply with aforesaid judgment and decree, respondent/Decree Holder filed an application under Order 21 Rule 32 CPC (Annexure P/2), in the court of learned Civil Judge (Senior Division), Chamba, District Chamba, praying therein for detention of the judgment debtor in civil

imprisonment or for attachment of his property, for disobedience of judgment and decree dated 8.4.2009 passed by the learned Additional District Judge, Fast Track Court, Chamba in Civil Appeal No. 2/09.

**4.** Judgment debtor, by way of reply (Annexure P/3), stated before the court below that he has engaged labour for lifting debris and boulders lying on the site and same are being lifted manually. Judgment debtor also stated before the executing Court below that there are very big boulders lying on the site, which are to be lifted manually by the labour engaged by him and as such, it can not be said that he disobeyed the decree of injunction, intentionally and willfully. However the fact remains that, vide order dated 17.11.2012, learned Civil Judge (Senior Division), Chamba, allowed the application filed by the respondent/Decree Holder under Order 21 Rule 32 CPC and ordered for detention of petitioner/judgment debtor in civil imprisonment for one month and attachment of his property.

**5.** Being aggrieved and dissatisfied with the aforesaid order passed by the learned Civil Judge (Senior Division), judgment debtor approached this court in the instant proceedings filed under S.115 CPC, praying therein to set aside the aforesaid impugned order dated 17.11.2012. Vide order dated 3.1.2013, aforesaid order was stayed by this court,

whereafter, respondent, despite service, chose not to remain present in the court.

**6.** Having heard Mr. Nimish Gupta, learned counsel representing the petitioner/judgment debtor and perused the material available on record vis-à-vis impugned order dated 17.11.2012 passed by the learned Civil Judge (Senior Division), Chamba, this court is in agreement with Mr. Nimish Gupta, Advocate, that since factum with regard to compliance of judgment and decree dated 8.4.2009, passed by the learned Additional District Judge, Fast Track Court, Chamba, in Civil Appeal No.2/09 had come to the notice of the learned executing Court, i.e. Civil Judge (Senior Division), Chamba, there was no occasion for it to order for civil detention of the petitioner/judgment debtor and attachment of property. Close scrutiny of the reply having been filed by the judgment debtor to the application filed under Order 21 Rule 32 CPC, though suggests that at the time of filing of application, debris/boulder lying on the site, were being lifted manually but impugned order passed by the learned executing Court, itself suggests that by the time impugned order was passed, debris/boulders on the site were removed. Learned Court below, despite having taken note of the fact that debris/boulders lying on the site stand removed, proceeded to

allow the application in question, on the premise that since reply was filed on 11.12.2009 stating therein that debris lying on the site is being lifted manually, Decree Holder has been able to establish on the record that judgment and decree dated 8.4.2009, passed by the learned Additional District Judge, Fast Track Court, has not been complied within one month from the date of passing of the decree. No doubt, as per judgment and decree dated 8.4.2009, debris/boulders was to be removed by judgment debtor within a period of one month but, once, factum with regard to removal of debris/boulders had come to the notice of the learned executing Court, it ought not have ordered for civil detention of the petitioner/judgment debtor and attachment of his property, rather, matter could be disposed of by him by imposing penalty, if any, upon the Decree Holder for delay in complying with the judgment and decree dated 8.4.2009.

**7.** Very purpose and object of sending a violator in civil detention is to ensure that orders passed by a court are complied with, with utmost promptitude. Had the factum with regard to removal of debris/boulders not come to the notice of the learned executing Court, at the time of passing of impugned order, it was well within its domain to order for civil detention of the judgment debtor, but this court is of the view

that since at the time of passing of impugned order, judgment and decree passed on 8.4.2009, stood duly complied with, court below could have avoided to pass such a harsh order.

**8.** Consequently, in view of the above, present petition is allowed. Order dated 17.11.2012 passed by the learned Civil Judge (Senior Division), Chamba, Himachal Pradesh in CMA No. 54/2009 is set aside.

Pending applications, if any, stand disposed of.

**(Sandeep Sharma)**  
**Judge**

**February 27, 2019**  
**(vikrant)**