

Order below Ex-01

The instant application has been filed by the applicant petitioner to arrest the judgment debtor for execution of decree in order to recover the amount due. At the outset, before determination of the instant application, the legal provisions concerning the arrest of the judgment debtor and sending him to civil prison for the execution of decree is needed to be discussed upon.

At this stage, following important provisions concerning the same in the Civil Procedure Code are:

Section 51. *Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree-*

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale or by sale without attachment of any property;
- (c) by arrest and detention in prison;
- (d) by appointing a receiver; or
- (e) in such other manner as the nature of the relief granted may require.

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he

should not be committed to prison, the Court, for reasons recorded in writing, is satisfied-

- (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree-
 - (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or*
 - (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or**
- (b) 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, or*
- (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.*

Explanation.*-In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.*

Section 56.*Prohibition of arrest or detention of women in execution of decree for money.*

Notwithstanding anything in this part, the Court shall not order the arrest or detention in civil prison of a woman in execution of a decree for the payment of money.

Emphasis added)*We may here read also order 21 Rule 37:*

Rule 37.

(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court shall, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or 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.

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor

The above provision categorically provides that the Court has to mandatorily undertake an enquiry as to whether the person has the means to make the payment of the sum or not. If he does not, he cannot be arrested or detained. There has to be active attitude of refusal to pay, bad faith or malice involved on the part of the judgment-debtor due to which he evades his liability which is different from “a simple default to discharge” and “mere indifference to pay”

In the case of Jolly George Verghese & Anr vs The Bank Of Cochin 980 AIR 470, 1980 SCR (2) 913, it has been held that.

“The simple default to discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or reculant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it. The provision emphasizes the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and straitened circumstances will play prominently. We would have, by this construction, sauced law with justice, harmonized s. 51 with the Covenant and the Constitution.”

Now, if we look into the averment of the entire application, it is devoid of any instance which reflects that the judgment debtor has sufficient means to pay the amount due and despite the same; she has intentionally chosen not to pay the same. The record of the matter reflects that the bailiff process server has not found anything worth

confiscating at the house of the judgment debtor and the same has been endorsed by the official of the decree holder company. The petitioner company has also failed to adduce any evidence reflecting the financial condition of the judgment debtor. Now, where the decree holder itself states that after due verification and checking, they have not found anything worth confiscating and where the application itself is devoid of any averment that the judgment debtor despite of having sufficient means, intentionally avoiding to make the payment or trying to evade, the application itself is not sustainable in law. The provision referred above and the judgment of the Hon'ble Supreme Court lays a definite mandate that, it shall come into the notice of the Court, that despite sufficient means, the judgment debtor is not paying the amount due. Further decree-holder is a woman, and as per Sec-56 of CPC woman cannot be arrested or detained for execution of decree for money. Such is not the case at hand and without deliberating any further, the instant application, not satiating the parameters of the provision referred supra, is liable to be rejected. **Hence, rejected.**

Announced in open court today on 08/08/2026.

Date: 08-08-2026.

(S.U.Babar)
Principal Civil Judge
Jodiya
(GJ01178)