

Arrest and Detention in Civil Suits and Proceedings under Code of Civil Procedure

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The Code of Civil Procedure lays down various modes of execution of decree that can be brought into play once an application for execution of a decree is made. One of the various modes for execution of a decree is by arrest and detention of judgment-debtor in civil prison. Relevant Sections as regards to arrest and detention in civil prison are from Sections 51, 56-59, 62, 133-136, 145 and Rules 37 to 40 of Order XXI, Code of Civil Procedure. This paper would look into these provisions so as to develop a deep understanding of the force of that execution of decree through this method. The object of these sections is to prevent vexatious forms of resistance to execution proceedings which constantly obstruct decree holders in the execution of their decrees. This paper focuses on Sections 55-59 of the Code, which exclusively deal with arrest and detention. However, in the later sections of the research paper focus is shifted to Order 21, which supplements qualifying rules to aforementioned Sections.

Arrest and Detention

Section 55 of CPC provides for arrest and detention of a judgment-debtor and also lays down the procedure for such an arrest and release of the judgment-debtor in certain cases. The provisions of this Section are mandatory and any failure to observe the formalities laid down in the section would render the order illegal and unlawful.

“Most importantly, the purpose of sending a person to jail must be understood as being in a manner, procedure or device, for the satisfaction of the liability. Arrest and detention is only to coerce compliance. The liability to pay would stand discharged only by actual payment of the amount due. Remaining in jail would not discharge the liability to pay.²” Arrest and detention may be ordered where the decree is for the payment of money, for specific performance of a contract or for injunction. However, a word of caution is necessary here, simple default by the judgment-debtor to pay the decretal dues is not sufficient to order arrest. There should be an element of bad faith, some deliberate or recalcitrant disposition in the debtor, alternatively, current means to pay the decretal amount or substantial part thereof. A finding by the executing Court is, therefore, necessary before making an order of arrest of the

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²Subrato Roy Sahara v. Union of India, (2014) 8 SCC 470.

judgment-debtor that in spite of having enough means to pay the dues, the judgment-debtor intentionally or deliberately failed to make a payment or there was negligence or carelessness in satisfying the decretal dues of the judgment-debtor. "The provision needs to establish not mere omission to pay but an attitude of refusal on demand and dishonest disowning of the obligation under the decree. Here the consideration of debtor's other pressing needs and strained circumstances will play prominently. We would by this construction save law with justice."³

Section 51 provides for a number of rules. To begin with a judgment-debtor may be arrested in execution of a decree any day and at any time, implying that arrest can be made on Sunday or on a day on which the Court is closed. This power should be exercised subject to Proviso 1 of Section 55(1). However, a woman under this section cannot be arrested or detained under civil prison in execution of a decree for the payment of money. Section 55(1) enjoins the officer arresting a judgment-debtor to bring him before the Court as soon as practicable. In case, the Court is closed, the judgment-debtor should be produced at the next sitting of the Court and in the meantime, the officer can confine the judgment-debtor even in the decree-holder's house, which would not amount to wrongful confinement. The place of detention of the arrested person should either be civil prison of the district or any other place which the State Government may appoint. Hence, if a judgment-debtor committed to a particular jail is sent to a different jail by an officer on his own motion, such imprisonment will be unlawful and the prisoner will be entitled to be released.

The Code deals extensively as to how an arrest is to be made within a dwelling house. The manner and time at which a dwelling house may be entered has been specifically provided. Section 55(1) prohibits entry in a dwelling house for the purpose of making arrest after sunset and before sunrise. Further, no outer door of the dwelling house shall be broken open unless such dwelling house is in the occupancy of judgment-debtor and he refuses or prevents access thereto. This is one of the significant changes from the position under the old Code of 1882, as it mandated that the outerdoor was not to be broken open under any circumstances. However, mere reason that the judgment-debtor is in the dwelling house is not good enough for the authorized personnel to break open the outerdoor. Also, the officer arresting a judgment debtor must have the warrant of arrest in his possession at the time of making arrest. A special mention has to be made here as regards to the presence of women in the house, where the room is in actual possession of a pardanashin woman, who is not the

³Jolly George v. Bank of Cochin, AIR 1980 SC 470.

judgment debtor and who according to the custom of the country does not appear in the public. In such cases, she should be given enough time to withdraw from such an occupation. This, however, does not apply when she herself is the judgment-debtor.

Section 55(3) mandates that where a judgment-debtor is arrested and brought before the Court, it is the duty of the Court to inform him that he may apply to be declared insolvent, and that he might be discharged on complying with the requirements of law. However, a failure in doing so will not invalidate the arrest. A person arrested and brought before the Court may be released on furnishing security for his appearance as and when called upon to do so. This sub-section enables a judgment-debtor to make an application to be declared insolvent but he cannot be declared insolvent except in conformity with the provisions of insolvency law. A person may also be released if he expresses his intention to apply to be declared an insolvent within one month, failing which the Court may direct the security to be realized or commit the judgment-debtor to prison. The Court has no power to extend this period and the provisions of Section 148 of the Code do not apply. However, it may be noted that it is an alternative remedy and not a concurrent one. If the judgment-debtor is committed to civil prison, the position is just the same as if the surety has never come forward. He also stands discharged on the death of judgment-debtor or if the execution proceedings are struck off or are dismissed for non-prosecution even if they are restored subsequently. A surety may also be discharged, if he requests so, on the appearance of judgment-debtor. As far as Security bond is concerned, it is open to a Court to accept a person as a surety under this section on an oral statement. Also, the bond executed should be in favour of the Court and not the decree holder.

Section 56 of the Code provides that a woman shall not be arrested or detained in prison in execution of a decree for payment of money. Section 58 relates to the period of detention and on what conditions the person may be released. The section applies to all decrees and not only to a decree for payment of money. When read with Section 51, this section makes it clear that where the decree is for more than five thousand rupees, the maximum period of detention is three months; where the decree amount is exceeding two thousand but not more than five thousand rupees, the maximum period of detention is six weeks. It is to be noted here that the provisions of this section apply to all decrees including a money decree. Also, as is well known that provisions relating to procedural aspects operate retrospectively, hence this Section also applies to pending cases.

Where the judgment-debtor is released under a mistake and is re-arrested, the period of imprisonment under the new warrant must include the period of imprisonment suffered by

him under the old warrant. Section 58(1) enumerates circumstances in which a judgment-debtor should be prematurely released from detention, namely: (a) amount in warrant being paid; or (b) decree against being fully satisfied; or (c) on the request of decree holder; or (d) on the omission by decree-holder to pay subsistence allowance; or (e) on the ground of illness. Section 55(2) mandates that mere release of the judgment-debtor from detention does not discharge him from the debt. It may be noted that the provisions of this Section do not apply to cases of imprisonment for contempt of Court. Besides the four grounds mentioned in Section 58, judgment-debtor may be released on the grounds of illness as well. The Court may at any time cancel a warrant of arrest issued against judgment-debtor on the grounds of his serious illness. This is purely on the basis of moral grounds. A judgment-debtor released on the ground of illness can be re-arrested, however, the period of detention should not in the aggregate exceed the maximum prescribed in Section 58.

Other Provisions Relating to Arrest and Detention

This chapter focuses at elaborating various other provisions in the Code, which either provide for arrest under different circumstances or prohibit from doing so, apart from Section 55-59. Under Section 30 of the Code, a court has the power to issue summons to any person whose attendance is required in the court. The Court, under Section 32, has the power to enforce the attendance of any person, and for the same it may impose a penalty on him, one of which is issue a warrant, with or without bail for his arrest. However, provisions of this section shall apply only when summons have been issued to anyone. It is inapplicable if only a direction has been issued by the Court to submit documents. Also, as provided under Section 51, one of the modes of executing a decree is arrest and detention in a civil prison of the judgment-debtor. However, it is for the decree-holder to decide in which of the several modes he will execute his decree and where he prays for the arrest.

Rules 37 to 40 of Order 21 also deal with “Arrest and Detention in Civil Prison”. O. XXI, R. 37 provides that in an application for the execution of a decree for the payment of money by arrest and detention of the judgment-debtor the Court has a discretion to issue a notice in place of warrant calling upon him to show cause as to why he should not be committed to civil prison. The purpose is to afford protection to honest debtors incapable of paying dues for reasons beyond their control. Such a provision has a ‘human dignity touch’ in it alongwith keeping in view the principle of natural justice. However, this notice is not necessary where the Court is satisfied that the judgment debtor with the object of delaying the execution of the decree is likely to abscond or leave the local limits of the jurisdiction of the Court. Also if

obedience is not paid to the notice issued by the court, it may issue a warrant of arrest. In case, the judgment-debtor fails to impress the court on notice being served to him, the Court may issue an order of detention under Section 51 and other provisions of the Code. Further, Rule 38 provides for warrant for arrest to direct the judgment-debtor to be brought up before the Court. However, the officer is only empowered to arrest and detain the judgment-debtor for such a reasonable time as is sufficient to allow of his being brought before the Court.

O. XXI, R. 39 provides for the subsistence money to be paid. It is to be paid in advance by the execution-creditor before the execution could be put in force and the prisoner has a right to be discharged on the happening of the any of the contingencies specified in Sec 58. On a failure of the subsistence money ordered the detention of the prisoner becomes illegal, and he is immediately entitled to his discharge. There are times when a Court fixes installments to be paid by the judgment-debtor considering his means and inability to pay the amount in one go. After the installments have been fixed by the Court, then a failure to comply with it would immediately justify arrest and commitment to prison. This procedure would be perfectly admissible under Sec. 51(b).

O. XXI, R. 40 is the last of the provisions that directly relate to arrest and detention under CPC. This provision mandates that once the decree-holder has established a prima-facie case, the Court then has to give the judgment-debtor an opportunity of showing cause, who is then required to file his reply as to why he should not be committed to prison. It is to be noted that the privilege conferred by the proviso to Sec 51 of the Code on the judgment-debtor cannot be waived at all. It is to be noted that this rule is not only procedural but also mandatory in nature and confers certain power upon the Executing Court during the pendency of an enquiry to be conducted. The enquiry should mean with regard to defense, if any, taken up by the judgment-debtor and averments made by the decree-holder, before the former is sent to prison. In simple words, an application under Rule 37 is not enough, an enquiry under Rule 40 is necessary before the sending judgment debtor to the prison.

In *Badrachalam Satyanarayana v. Lotla Varalaxmi*,⁴ the Hon'ble High Court held that "opportunity of hearing of the Judgement Debtor is imperative before ordering arrest". In the said case the executing Court passed an order at the stage under order 21 Rule 37 and Judgement Debtor called absent. No evidence is contemplated before arrest. Hence arrest Judgement Debtor by 5-12-2012. In the said circumstances our Hon'ble held that "the above said order is patently erroneous because the Court shall proceed to hear the decree holder and

⁴2004 (1) AWR 565.

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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 as to why he should not be committed to civil prison. Without following this procedure, the Court has simply mentioned that no evidence is required to be received before arrest. The order of arrest was held to be invalid and does not stand for scrutiny in the light of the failure of the executing Court to follow the procedure indicated in Rules 40 of Order 21.

Conclusion

In my opinion, the issue of arrest and detention has been amply dealt with in the Code. As is often complained about laws, that they are either framed too strong or are tooth-less, it is neither in the case of arrest and detention. The framers have been liberal enough to give enough powers to the Civil Court so as to ensure appearance of the suit-bound parties and to enforce its decree, by empowering it to order as extreme a step as arrest in civil cases. However, simultaneously they have been careful enough to lay down various guidelines ensuring that there is no misuse of such powers. Even minute details like how to make an arrest, at what time, what to be done in presence of a woman, etc have all been elaborated in Sections 55-59 of the Code. Further, Order XXI, Rule 40 mandates that the judgment-debtor is given a fair chance to enlighten the Court, if he has not been able to pay for genuine reasons, before being committed to prison. However, this is not the only way how a person may be arrested. A person is liable to be arrested even for contempt of Court, which is not just a civil charge but also a criminal one. To conclude, I would say that even though the framers provided the Court with the provision of arrest, yet they made sure it is exercised only in extreme cases.