

agitated before the Bench. Thus this judgment is no authority for the proposition canvassed in the present case.

(8) In *Dalip Singh's case* (supra), the question of delay or laches was never agitated before the learned Judge. This judgment is also no authority for the proposition arising for determination in this case.

(9) In *Darbari Lal's case* (supra), the learned Single Judge disposed of the objections regarding delay with the following observations:—

“The defence of delay and bar of limitation in the circumstances do not hold good. When the law requires a thing to be done in a certain way, then it has to be done in that way and no other. It is rather the respondents who have been negligent in not giving their attention to the matter it rightly deserved. The defence is thus discarded.”

(10) The learned Judge did not appreciate that in writ jurisdiction we have to examine the conduct of the party approaching this Court and his conduct may, in the circumstances of the given case disentitle him of the relief. We are not concerned here with the negligence on the part of the respondents. What is to be seen is whether the conduct of the writ petitioners disentitle them from claiming the writ *ex debito justitiae*.

(11) For the reasons aforesaid, these writ petitions are dismissed.

S.C.K.

Before D. V. Sehgal, J.

PIARA SINGH,—Petitioner.

versus

SARMUKH SINGH and others,—Respondents.

Civil Revision No. 1181 of 1987

October 31, 1988.

*Civil Procedure Code (V of 1908)—S. 115, O. 21 Rls. 37 and 40—Judgment debtor detained in civil prison in execution proceedings—Release ordered on furnishing security—Petitioner furnishing such*

*Piara Singh v. Sarmukh Singh and others (D. V. Sehgal, J.)*

*security for Judgment Debtor—Detention order set aside by the High Court—Fresh execution against the petitioner—Liability of the petitioner—Effect of furnishing security for release.*

*Held*, that once the order of detention in civil prison was set aside by this Court the position was restored back to the stage as contemplated by Rl. 40 of the Code of Civil Procedure, 1908. The executing Court was then to proceed to record its satisfaction whether the judgment debtor should be detained in civil prison. The petitioner was under a bounden duty in view of the security bond furnished by him to secure the production of the judgment-debtor in Court for taking such proceedings. But it would be too much to contend that by furnishing the said security bond, the petitioner became a guarantor for payment of the decretal amount or he created a charge on his property which should be attached and sold in execution of the decree. (Para 7).

*Petition under Section 115 C.P.C. for the revision of the order of the Court of Shri R. G. Ahluwalia, P.C.S., Sub-Judge 1st Class, Jalandhar, dated 17th March, 1987, dismissing the application for vacating the attachment order of the property in question.*

Jasbir Singh, Advocate, for the Petitioner.

M. S. Rahi, Advocate, for the Respondent.

#### ORDER

*D. V. Sehgal, J. (Oral)*

1. This judgment shall dispose of civil revisions No. 1181 and 1209 of 1987. The facts involved in both the revision petitions are similar and the point of law involved in them is the same. Reference to the facts and the parties shall, however, be made from civil revision No. 1181 of 1987.

2. Sarmukh Singh, decree-holder-respondent No. 1, sought to execute a decree for payment of money passed in his favour and against judgment-debtor-respondent No. 2 to 5. During the pendency of the execution proceedings, an order was passed by the executing Court detaining Kirpal Singh, respondent No. 3, in civil prison. This order was challenged by way of civil revision No. 156 of 1986 in this Court. When it came up for motion hearing on 16th January, 1985, J. V. Gupta, J., passed an order to the following effect :

“Notice for 18th March, 1985 to respondent No. 1 decree-holder only. The petitioner be released on furnishing security for the decretal amount.”

3. In pursuance of the above order, respondent No. 3 and Piara Singh, petitioner furnished security. The petitioner filed the security bond to the effect that on a default committed by respondent No. 3, he shall pay the decretal amount. The security bond dated 21st January, 1985 was attested and accepted by the executing Court on the same day. The revision petition was later on allowed by this Court on 18th March, 1985 and the order of detention of respondent No. 3 in civil revision was set aside. It is not in dispute that subsequent thereto the execution application was dismissed.

4. Later on another execution application was filed by respondent No. 1. He sought to enforce the decree against the property of the petitioner on the basis of the security bond dated 21st January, 1985. The petitioner filed objections in the executing Court stating that he was bound to produce respondent No. 3 in Court for proceedings under Order 21 Rule 37, Code of Civil Procedure, but the said security bond did not amount to creating a charge on his property with regard to the decretal amount nor could he be held liable for the same on the failure of the judgment-debtor to make payment of the decretal amount. He further pleaded that the house in dispute which is sought to be attached is his only residential house and the same is, therefore, exempt from attachment under Section 60(1) (c) of the Code of Civil Procedure. These objections have been dismissed by the learned executing Court,—*vide* the impugned order dated 17th March, 1987. This is how the petitioner has approached this Court in the present revision petition.

5. I have heard the learned counsel for the parties.

6. I am of the considered view that the learned executing Court has fallen in error in enforcing the decree passed in favour of respondent No. 1 and against respondents No. 2 to 5 by directing attachment of property of the petitioner. The security bond furnished by him was for the limited purpose of securing release of respondent No. 3 from civil prison under the order dated 16th January, 1985 passed by J. V. Gupta, J. Once the order of detention from civil prison was set aside, the security bond so furnished became redundant and the petitioner was discharged from the same. Order 21 Rule 37(2) of the Code of Civil Procedure provides that in case the judgment-debtor does not appear in obedience of notice to show cause why he should not be detained in civil prison, the Court shall, if the decree-holder so desires, issue a

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(M. R. Agnihotri, J.)

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warrant for the arrest of the judgment-debtor. Rule 40 *ibid* further provides that when a judgment-debtor is brought before the Court after being arrested in execution of a decree for payment of money, the Court shall proceed to hear the decree-holder and 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 why he should not be committed to the civil prison.

7. When the order of detention of respondent No. 3 in civil prison was set aside by this Court,—*vide* order dated 18th March, 1985, the position was restored back to the stage as contemplated by rule 40 *ibid*. The executing Court was then to proceed to record its satisfaction whether the judgment-debtor should be detained in civil prison. The petitioner was under a bounden duty in view of the security bond furnished by him to secure the production of the judgment-debtor in Court for taking such proceedings. But it would be too much to contend that by furnishing the said security bond, the petitioner became a guarantor for payment of the decretal amount or he created a charge on his property which should be attached and sold in execution of the decree.

8. Consequently, I allow these revision petitions, set aside the impugned orders of the executing Court dated 17th March, 1987. There shall, however, be no orders as to costs.

9. It is made clear that the decree-holder-respondent No. 1 shall be at liberty to proceed against the judgment-debtors in accordance with law but the petitioners cannot be proceeded against on the basis of the security bonds dated 21st January, 1985 which cease to have play.

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S.C.K.

*Before M. R. Agnihotri and Amarjeet Chaudhary, JJ.*

KRISHAN SINGH KUNDU,—*Petitioner.*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 2216 of 1985*

March 31, 1989.

*Criminal Procedure Code (II of 1974)—Ss. 24 and 25—Constitution of India, 1950—Art. 226—Appointment—Posts of Director of*