Before Rajiv Narain Raina, J.

RAJESH ARORA—*Petitioner*

versus

SONIA ARORA AND ANOTHER—*Respondents*

CR No.1431 of 2020

March 05, 2020

(A) ***Hindu Marriage Act, 1955—Ss. 13 and 24—Family Courts Act, 1984—S.3—Civil Procedure Code, 1908—O.21 Rl. 37 and S.51—Order of imprisonment in execution proceedings—Legality thereof—Procedure for detaining defaulting judgment-debtor under the Act—However, satisfaction of conditions provided therein do not mandate civil imprisonment—Court has discretion to order either judgment-debtor's detention in custody of Officer of Court for maximum 15 days, or release him on furnishing security for appearance on specified date if decree is not sooner satisfied—Evident that there exist sufficient safeguards at each stage against detention of judgment-debtor, which Court cannot circumvent.***

Held that, the Court has the discretion to decide against detention in civil imprisonment and order either; the judgment-debtors detention in custody of an Officer of the Court for maximum fifteen days, or release him on furnishing security for appearance on a specified date if the decree is not sooner satisfied. Thus, it is evident that there exist sufficient safeguards at each stage against the detention of the judgment-debtor, which the Court cannot circumvent.

(Para 16)

(B) ***Hindu Marriage Act, 1955—Ss. 13 and 24—Family Courts Act, 1984—S.3—Code of Civil Procedure, 1908—O.21, Rl.37 and S. 51—Execution of order—Deemed fiction of service of summons—Principles of natural justice—Execution applications filed before Additional Principal Judge to implement order passed by Court in then pending divorce petition granting her arrears of maintenance—Order issued despite improper service of summons on husband leading to drastic measure of warrants of civil imprisonment disregarding principles of natural justice and law—Merely because husband was produced in Court and disclosed his whereabouts in***

Court is not sufficient for lawful service upon him or save impugned orders by creating fiction of service of proceedings upon the petitioner Order quashed.

Held that, merely because the petitioner was produced in the Court of Shri Ajaib Singh on 18.11.2019 or has been forced to approach this court in what is an essentially civil dispute for recovery of arrears of maintenance challenging the illegal orders dated 4.10.2019 and 29.11.2019 and has thereby disclosed his whereabouts in those Courts is, in my view, not sufficient to deem service upon him to save the impugned orders by creating a fiction of service of the proceedings upon the petitioner.

(Para 20)

(C) ***Code of Civil Procedure, 1908—O.21, Rl.37 and S.51—Order of imprisonment in execution proceedings—Legality— It is in subsequent stage of proceedings after warrants of arrest have been issued that Court has to record its satisfaction as regards requirements in proviso to Section 51—Family Court breached said law and misapplied it to stage he was at.***

Held that, it is in the subsequent stage of the proceedings after warrants of arrest have been issued that the Court has to record its satisfaction as regards requirements in proviso to Section 51. The Family Court has breached this law and misapplied it to the stage he was at.

(Para 39)

Aalok Jagga, Advocate,
for the petitioner.

Naveen Sharma, Advocate,
for the caveator respondents.

RAJIV NARAIN RAINA, J.

(1) The challenge in this petition filed under Article 227 of the Constitution is to the order dated 4.10.2019 (Annex P-7) and the order dated 29.11.2019 (Annex P-14) passed by the Additional Principal Judge, Family Court, Ludhiana alleging them to be unsustainable and contrary to law in Order XXI, Rule 37 CPC r/w Section 151 of the CPC. The prayer is for quashing both the orders issuing warrants of

imprisonment in execution proceedings for recovery of maintenance.

(2) During the course of hearing Mr. Aalok Jagga for the petitioner and Mr. Naveen Sharma for the caveator at length, on reading the impugned orders and connected orders passed in the execution proceedings [photocopies of which have been produced by Mr. Jagga and are taken on record with no objection from opposite side being judicial orders] and upon perusal of the papers on file, this Court is called upon to critically review; Firstly, the short order dated 4.10.2019 and Secondly, the long order dated 29.11.2019, which both are in my opinion not only patently illegal and improper but are also perverse in the draconian exercise of power to imprison the petitioner which is not vested in the Family Court at Ludhiana without following the due procedure in the facts and circumstances of this case. The orders have resulted in evil consequences to the petitioner by the imminent threat extended of being sent to judicial custody/ imprisonment in execution proceedings filed by the first respondent (presently his ex-wife) and her daughter, from her marriage with the petitioner, for payment of arrears of maintenance under an order dated 5.4.2016. The impugned orders have led to a grave miscarriage of justice. This order is passed without expressing any opinion on the merits of the case as to the right to arrears of maintenance or its quantification as claimed, as it is tiedto pending execution proceedings and, therefore, deserve not to suffer any comment from this Court in the present revision petition, except to say in a limited way that the petitioner has placed on record certain documents depicting that Rs.3 lakhs has already been paid towards maintenance *pendente lite*, as ordered by the trial court, which issue will fall to the work of the execution court on remand, if ordered. Petitioner admits that the amount has been paid under Section 125 of the Cr.PC, but says that it is to be adjusted against the maintenance awarded under the collateral provisions of the Hindu Marriage Act, 1955 (for short the 'HMA').

(3) A few broad but narrow facts are retold. Two executionapplications bearing No.1625 of 2019 and 1626 of 2019 were filed before the Additional Principal Judge, Family Court, Ludhiana on 2.8.2019 to implement an order passed by the court in the then pending divorce petition issued under Sections 24 and 26 of the HMA in favour of the respondent granting her the arrears of maintenance [before the marriage was dissolved by a decree of divorce granted on 15.11.2019 by the predecessor Additional Family Court at Ludhiana in

a divorce petition filed by the wife] and in execution of the orders passed in maintenance proceedings under Section 125 Cr.PC. Two execution applications were filed by the wife claiming different amounts in them. In execution proceeding case No.1626/2019 taken out by the respondent, the first *zimni* order in the case passed on 2.8.2019 reads:

> "Present: Sh. Sunil Dutt, Adv for Applicant.
>
> Execution has been filed. It be registered. Let notice of the execution be served upon JD for 04.10.2019."

(4) The case on being adjourned to 4.10.2019, on which day the following impugned order was passed, which has brought the petitioner to this Court challenging it as contrary to Order XXI, Rule 37 CPC r/w Section 151 CPC and complaining that the order was issued despite improper service of summons on the petitioner leading to the drastic measure of warrants of civil imprisonment disregarding the principles of natural justice and the law. Despite no notice to petitioner, fresh warrants of imprisonment were issued for 7.2.2020 while in the same breath ordering issuance of process for execution of fresh warrants of imprisonment, again without effecting service. That impugned order reads: -

> "Present: Sh. Sunil Dutt, Adv for Applicant.
>
> Notice issued to respondent reportedly received back unserved with the report that respondent has left the supplied address. This is an execution application where the arrears of maintenance fixed under Section 24 of HMA are payable. Therefore, Civil imprisonment for one month is ordered on deposit of one month charges. After deposit of one month charges by the petitioner, warrants of imprisonment beissued for accordingly, for 04.11.2019."

(5) Warrants of imprisonment (civil) have been issued against the petitioner several times as borne by the record even though the first notice issued on 2.8.2019 was received back 'unserved' with the process serving agency reporting that the respondent has left the "supplied address". The two orders have been reproduced above. On 4.11.2019 fresh warrants of imprisonment were issued on deposit of civil imprisonment charges as summons were not received back. The subsequent two orders dated 18.11.2019 and the impugned order dated

29.11.2019 have been dealt with in detail in the course of the order. Thereafter, two orders dated 2.12.2019 and 4.1.2020 were passed identical to the ones dated 4.11.2019 when warrants were not received back served. The case was adjourned to 15.2.2020. On 14.2.2020 the file was taken up by the Additional Family Court and the following order was passed recording that counsel for the parties be informed, but respondent (petitioner) was not even served leave alone engaging counsel, then who was expected tobe informed on his behalf:-

> "File taken up today as I would be on leave for 15.02.2020. Case is adjourned to 27.3.2020 for the purpose already fixed. Counsel for the parties be informed accordingly."

(6) Aggrieved by the impugned orders, the present petition was filed on 20.2.2020 and came up for hearing on 5.3.2020 in the presence of the caveator respondent. They were heard and the petition was allowed with orders partly dictated in Court and took some time to finalize and release and uploading on Mozilla. The petitioner has placed sufficient prima facie evidence on the file to prove the fact of want of service of summons on the correct correspondence address, those being the report of the Process Server and the addresses given in various applications, pleadings etc and the cause title describing the address differently from the one he was attempted to be served with the summons, so as to make proper service of court notice. Accordingly, personal service was deflected to the wrong quarters and justice was denied to the petitioner by the Additional Family Court.

(7) Another striking feature of impropriety committed by the Additional Family Court in the matter of service on the petitioner is, as pleaded by Mr. Jagga in the petition, that there is already a civil suit pending in the Ludhiana Courts between the parties, with the petitioner claiming that property in the name of the wife was actually purchased by him from his own funds.The petitioner is the plaintiff in the suit which is being contested by the respondents. No comment is made in this behalf as the matter is *sub judice* in the trial court at Ludhiana. Mr. Jagga says that the moment the petitioner appeared at the hearing in the civil suit on 18.11.2019 [three days after the marriage was dissolved] respondent taking advantage of the warrants of imprisonment already issued by the Additional Family Court, aided by the petitioner's presence in the court, got the petitioner arrested by the police with the warrants in hand ready for service to send the petitioner

to civil prison which is also the Jail. He was produced on the same day by the police [while the case stood adjourned to 7.2.2020 before the roster Additional Family Court (name withheld) and was taken up by the Court of Shri Ajaib Singh another Additional Principal Judge, Family Court, Ludhiana on duty as the former was not holding court on that day. An order was made on the request of therespondent ex-wife pressing for arrest by execution of the warrants of imprisonment [by calling for the file from the office, as the case was not listed before any of the Family Courts at Ludhiana] and the following order was passed, which order is, to my mind, an order sound in law and perfectly justified in the situation it was passed in restoring the path of justice and savingthe day from the virulent attack of the impugned order dated 4.10.2019. That perfectly good order dated 18.11.2019 by the Court of Shri Ajaib Singh, Additional Principal Judge, Family Court, Ludhiana, deserves to be paid a tribute while subjugating a slight transgression of jurisdiction as the Judge was on "work duty", but which departure is not fatal to the validity of the order as itultimately does justice according to law defanging the order dated 4.10.2019 and removing its sting, by releasing the petitioner to arrange payment. The order dated 18.11.2019 is reproduced for ready reference as it has a material bearing on the conduct of the Judge whose name is withheld: -

> "Present: Applicant with Shri Sunil Dutt, Advocate
>
> Respondent Rajesh Arora in person.
>
> ***
>
> The application for execution fixed for 07.02.2020 before the court of Shri xxx (*name withheld*), Additional, Principal Judge, Family Court, Ludhiana is put up today before me, because the respondent is produced before me by the police authority in pursuance of the warrant of imprisonment issued as per previous order. The respondent has suffered a separate statement that he has paid about more than Rs.2,00,000/- to the applicants and he shall clear the arrear of maintenance in installments to the applicants and he may kindly be givensome time for the same. The applicant No.2 Mridul has suffered a separate statement for withdrawal of the present application for execution on his behalf filed byhis mother against respondent at this stage of the same because he has received the entire payment of his part of the order passed in his favour against the

respondent. Therefore, the present application for execution is dismissed as withdrawn on the part of the applicant No.2 against the respondent. The applicant Nos.1 and 3 could not show any provision of law under which the respondent can be sent to undergo civil imprisonment on default of remaining payments of maintenance granted under Section 24 and 26 of Hindu Marriage Act and resulting of which the respondent is ordered to be released and is given time to the respondent to arrange the remaining payment of maintenance for clearing the arrear of maintenance to the applicants on 23.11.2019 before the said court to proceed as per law."

(8) Since I have dwelt in some detail on the order of the learned Additional Principal Judge Shri Ajaib Singh in the Family Courts at Ludhiana and praised the officer for passing a fair and reasonable order and doing the correct thing in balancing out the competing interests by recording the statement of the petitioner and being not unmindful of the slight transgression of jurisdiction therein while performing duty work, but, the power was resortedto, to save the petitioner from being sent to jail there and then from his Court in execution of warrants of imprisonment. Had the officer been holding court on 18.11.2019, the petitioner would have been serving civil sentence in jail without recourse to legal remedy.

(9) Nevertheless, the aggressive reaction that order met with the angryJudge on 29.11.2019 to whom the file returned, whose conduct is under the lens, is not praiseworthy. He may never have imagined the trouble he could getinto in the High Court in revision proceedings on the reckless orders he passed relentlessly with his mind inclined towards a chosen end to act in a particular way to create a *fiat accompli* by imprisonment before an effective remedycould be sought by the respondent before him. I cannot help saying that a Judge must always remain calm, neutral, impartial and dispassionate even inthe midst of provocation. I find no cause for provocation here to be so upset with the orders of the coordinate bench releasing the petitioner from the warrants of imprisonment and letting him off, an expression used in the impugned order. In an order a Court must choose its words guardedly so as notto reveal any disquiet or bad faith. And to use words in an order which are appropriate to the decision and to the cause it represents. At all times displaying the large heartedness to acknowledge his errors with the spirit of enquiry and the capacity to

learn, by "discarding all mere pride of opinion" and to be always a gentleman to his colleagues in his remarks in a judicial order or judgment. He should not play into the hands of a party and cut his feet in a superior Court while reviewing his order. He must tread his ground carefullyas there are many thorns in the way.

(10) None of these virtues can I see in his impugned orders more so thesecond one. I am sufficiently moved to pen down my thoughts to say that the order dated 29.11.2019 is so intemperate in its language, so unworthy ofrespect, so full of injustice and so dishearteningly bad, that it deserves to be placed and read forever on the files of the Court of Record. That is why I have reproduced it at length, not to humiliate him in public for the pride in the fraternity of justice delivery and the way it is to be administered is such that everyone says with approval: "Here stands an upright Judge". I say so only to awaken and sensitize him. That is why I have withheld his name in the order, which reads, with all its flaws of language, grammar, spelling and punctuation mistakes. He did not proof read the order to sort out errors in use of upper and lower case and left one sentence incomplete while the first name of the predecessor learned Additional District Judge-cum-Family Court is misspelled "Bisham" for Shri Bishan Saroop and yet he signed the order; [and I wish I could proof read the order if the Judge himself didn't do so]. The order surprisingly imputes knowledge on the petitioner of the proceedings but disregards the *factum* of service of notice when on his own showing in the order in execution remaining unsuccessful, and still holds the petitioner to "ransom" threatening him with jail on pain of not paying the balance amount of the arrears of maintenance to the applicants. After all he was executing the decree but not the petitioner, which he was trying to do.

(11) It appears to me that for him issuing notice was enough to imprison the petitioner by invoking his "inherent powers", while peppering the order with three precedents to lend credibility to his order. It is a rudimentary principle that there exist no inherent powers contrary to the provisions of the Statute, therefore, the Judge could not have bypassed the mandatory procedure u/s 51 r/w Order XXI Rule 37 & 40 by invoking his "inherent powers" to order civil imprisonment. Even so, Court has never said, nor can say, that service of summons can ever be presumed duly effected for sending a man to civil imprisonment and judicial custody except in accordance with the relevantprovisions of Order V read with Order XXI, Rule 37 (2) of the

Code of Civil Procedure, 1908, the High Court Rules & Orders and the provisions of the Family Courts Act, 1984. That order of 29.11.2019 under serious challenge in this petition reads in verbatim as follows:

> "Present: Applicant with Sh. Sunil Dutt, Adv.
>
> None for respondent/JD.
>
> ***
>
> Rajesh Arora is not present. The execution applicationwas filed in this court for issuance of warrants to show cause why the JD should not be sent to civil imprisonment with regard to order dated 5.04.2016 by virtue of which the maintenance u/s 24, 26 of HMA was fixed by the court of Sh. Bisham Saroop, Addl. District and Sessions Judge, Ludhiana. The said court was pleased to fix maintenance to the tune of Rs.3000/- per month to minor children and Rs.8000/- permonth to the wife and in the execution application, it was requested that civil imprisonment warrants be issued.
>
> On receipt of the same, notice was ordered to be issuedand the house was lying locked and this court had directed to issue civil imprisonment warrants for one month on deposit ofone month charges. Thereafter, he was produced in the court of Sh. Ajaib Singh, on dated 18.11.2019 and it was ordered that the applicants could not show any provision of law under which the respondent can be sent to undergo civil imprisonment on default of remaining payment of maintenance granted u/s 24 and 26 of HMA and the respondent was released by giving time to arrange the remaining amount. Although, the said court was not competent to pass any order while, holding a duty work but in his wisdom, he had gone on to decide that my order forissuance of warrants for civil imprisonment u/o 21 rule 37 CPC was invalid. It was not proper for a parallel court to pass any order in the file which is only received by the said court for a duty purpose. If the said court was of the opinion he was not under obligation to decide the case of this court onmerit. I had already made a reference for transfer of the case because of propriety demanded that I should not re-decide on a issue on account of this situation.
>
> **This has compelled me to explain the law on the subject**.

First of all, from my orders it is clear that show cause notice was issued and on being satisfied that the respondent has the knowledge and intentionally not making the payment this court had ordered issuance of civil imprisonment.

The Ld. Counsel for DH has contended that the family court has got inherent jurisdiction to pass any order to advance justice. However, as far as, the law is concerned, ouron Hon'ble Punjab and Haryana High Court in a case titled as **"Suman vs. Ajit Singh, 2011 (1) HLR 291 (P&H)" Civil Procedure Code, 1908, Order 21 Rule 37 Sub-rule (2),Rule 40 and Section 51 Proviso – Warrants for arrest – Jurisdiction – Non-appearance in the Court in response to the notice to show cause – Court was well within its jurisdiction to issue warrants for his arrest in pursuance of sub-rule (2) of rule 37 – Purpose of issuance of warrants for his arrest – is to secure his presence before Executing Court so that proceedings consistent with Rule 40 could be taken** was pleased to hold that order 21 rule 37 of CPC is applicable. Further, in another pronouncement case titled as **"Baljit Kaur vs. Jasvir Singh, 2011 (1) HLR 508" Hindu Marriage Act, 1955, Sections 13 and 24**. The Hon'ble High Court has pleased to pass that **Husband hasnot paid the maintenance pendente lite and litigation expenses as ordered by High Court more than a year ago**

– Wife can file a petition under Order 21 Rule 37 Civil Procedure Code for the recovery of this amount – Husband can also be hauled up under the Contempt of Courts Act for disobedience of Court's order – Defence of husband liable to be stuck off. Further mode under the family court act 1984, the family court has got the inherent power and can formulate any procedure to advance justice. And also u/s 28 A of HMA any order passed under the HMA is liable to be enforced by exercising the civil jurisdiction andit is deemed to be decree.

The Hon'ble Punjab and Haryana High Court had again reiterated that order 21 rule 37 of CPC is applicable. In case titled as **"Ved Prakash vs. Sneh Lata, 1989 (1) PLR 161 (P&H) Civil Procedure Code, 1908, Order 21 Rule 37 Sub-rule (2), Rule 40 and Section 51 Proviso – Warrants for**

arrest – Jurisdiction – Non-appearance in the Court in response to the notice to show cause – Court was well within its jurisdiction to issue warrants for his arrest in pursuance of sub-rule (2) of rule 37 – Purpose of issuance of warrants for his arrest – is to secure his presence before Executing Court so that proceedings consistent with Rule 40 could be taken. Our own Hon'ble Punjab and Haryana High court had categorically held that non-appearance in court in response to show cause the court was well within its jurisdiction to issue warrants for his arrest in pursuance to subrule to 2 of Rule 37 of order 21. Therefore, the court of AjaibSingh was not justified in saying that there is no provision of law for execution of any order passed by family court or any other court under HMA fixing the maintenance. Since, the respondent is already let of and he is deemed to have fullshow cause notice and despite the same has not made any payment. Therefore, fresh civil imprisonment warrants be issued for 12.12.2019 on deposit of one month charges. He be produced before this court, if he fails to make the payment of the amount mentioned in the warrants of arrest."

(emphasis by under-scoring supplied. Mistakes in the order are those of the maker. The bold parts of the three cases–the catch words - are as per the attested copy, the first sentence of paragraph 3, I highlighted in bold text)

(12) The fatal flaw of improper service of the execution proceedings on the petitioner; learned counsel for the respondent as a fact is unable to deny from the record that notice issued to the petitioner was not at the correct address of the targeted recipient and was thus misdirected. The Family Court, thus, fell in grave error by introducing the concept of deemed service of notice fallaciously reasoning, in the words of the order, that "Since, the respondent is already let of (*sic*, 'off') and he is deemed to have full show cause notice and despite the same has not made any payment".

(13) If this is the conceded position, then the present respondent cannot wriggle out of her misadventure. Mr. Aalok Jagga says the petitioner had shifted base to Delhi from Ludhiana long ago and the respondent knew of this fact. She also knew it from the pleadings in the civil suit filed by the petitioner with his new address in Delhi described

in the pleadings and affidavits, but the execution application papers presented by the wife still contained the address in Ludhiana, where he could never be served even by a long shot. The address where the petitioner was earlier staying was *'11091, Street No.3 & 4, backside Sangeet Cinema, Ludhiana'* which property was mortgaged with the Central Bank of India for obtaining a business loan. The Bank had taken physical possession of the property on 14.10.2016 and sold it off in a public auction to recover default money and the sale certificate was issued on 10.8.2017 to the purchaser. The respondent was fully aware of the said sale because the Bank alleges that she had given a statement to it to proceed against the asset for recovery of outstanding amount owed to the Bank. The first respondent knew the petitioner was not staying at the address, where he was earlier staying, and therefore, despite being aware of the fresh address together with knowledge from his regular appearances in the civil court in the pending suit, she did not bring it to the notice of the Family Court and gave an impression to it as if the summons could be served at the defunct Ludhiana address and, therefore, in failing to appear, he is evading service. The Additional Family Court swallowed this falsity readily imputing deemed service of the petitioner without applying his mind to the facts of the case and the law, controlled in the matter of arrest and detention by the over-arching and fundamental principles of Article 21 of the Constitution while blindly applying the provisions of Section 51 and Order XXI, Rule 37 of the Code to bring the petitioner hurriedly to book.

(14) The Family Court has referred to two judgments which have considered Section 51 of the Code, namely, *Suman vs. Ajit* and *Ved Prakash vs.Sneh Lata* but has failed to consider the difference between warrants of arrest and warrants of imprisonment. The first is to secure presence and on failure to pay the money decreed to consider the next step of detention in prison. These two stages are delineated in the Proviso to Section 51 r/w Order XXI Rule 37& Rule 40 of the Code which guarantees offender being put to show cause [presupposing party served at the correct address] and hearing him on why he should not be committed to prison and if he fails to show cause to the satisfaction of the Court, then court has to record reasons in writing justifying civil imprisonment that one or more of the four conditions in sub-sections (a) (i) and (ii) and (b) of the Proviso are shown to exist by the decree-holder. It hasthus become necessary to visit Section 51 and its Proviso along with Rules 37 & 40 of Order XXI. The provisions are

reproduced:

"**51. Powers of Court to enforce execution.—**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 the sale without attachment of any property;

(c) by arrest and detention in prison [for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section];

(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.]"

Order XXI Rule 37

"Discretionary power to permit judgment debtor to show cause against detention in prison:

(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 showcause why he should not be committed to the civil prison: [Provided that such notice shall not be necessary if the Courtis satisfied, by affidavit, or otherwise, that, with object or effort of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of thejurisdiction of the Court.]

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

Order XXI, Rule 40

"Proceedings on appearance of the judgment-debtor in obedience to notice after arrest

(1) When a judgment-debtor appears before the Court in obedience to a notice issued under Rule 37, or 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 maybe 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.

(2) Pending the conclusion of the inquiry under sub-rule

(1) the Court may, in its discretion, order the judgment-debtorto be detained in the custody of an officer of the Court or release him on his furnishing security to the satisfaction of theCourt for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule(1) the Court may, subject to the provisions of Section 51 and to the other provisions of this Code, make an order for the detention of the judgment-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree, the Court may, before making the order of detention, leave the judgment-debtor in the custody of an officer of the Court for a specified periodnot exceeding fifteen days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) When the Court does not make an order of detention under sub-rule (3), it shall disallow the application and, if the judgment-debtor is under arrest, direct his release."

(15) A bare reading of these provisions makes the procedure for detaining a defaulting judgment-debtor amply clear:

(i) On the application of decree-holder under Order XXI Rule 37 for execution of a money decree by the arrest and detention of the judgment-debtor, the Court "shall" issue a show cause notice instead of issuing warrant for his arrest. This mandatory provision ensures the preservation of an individual's right to liberty, enshrined in Article 21 of our Constitution, by following the principle of natural justice; *audi alteram partem.* The only exception to issuing a show cause notice before issuing warrant for arrest is if on an affidavit by the decree-holder or otherwise, the Court is satisfied that the judgment-debtor is likely to abscond or leave the Court's jurisdiction with an object oreffect of delaying the execution. In which case, it is necessary for the Court to record its reasons, for a

non-speaking order is as good as an arbitrary and draconian action against a person depriving him of his fundamental right to liberty contrary to the due process of law.

(ii) Where the judgment-debtor fails to make appearance in obedience of the show-cause notice, the Court is empowered to issue a warrant of arrest on the decree-holder's application under Order XXI Rule 37(2). However, this power of the Court is limited by Order XXI Rule 40, which requires the arrested judgment-debtor to be produced before the Court and for the Court to hear the decree-holder and take all such evidence which is produced by him in support of his application. After which the Court is mandated to give an opportunity to the judgment-debtor for showing cause why he should not be committed to civil prison. Meaning thereby, that the warrants issued under Rule 37(2) are for arrest to ensure appearance, the judgment-debtor's detention in civil prison follows only after the requirements of Rule 40 are satisfied.

(iii) The inquiry as envisaged in Rule 40(1) is mandatory, pending which the Court is only authorised as far as to detain the judgment-debtor in the custody of an officer of the Court or take security from him for his appearance.

(iv) Sub-rule 3 of Rule 40 subjects the Court's power of detaining the judgment-debtor in civil prison to the provisions of Section 51. Therefore, the Court cannot order detention unless it is satisfied that any of the three conditions, in the Proviso to Section 51, exist.

(16) It is to be borne in mind that the satisfaction of these conditions does not mandate civil imprisonment, the Court has the discretion to decide against detention in civil imprisonment and order either; the judgment-debtors detention in custody of an Officer of the Court for maximum fifteen days, or release him on furnishing security for appearance on a specified date if the decree is not sooner satisfied. Thus, it is evident that there exist sufficient safeguards at each stage against the detention of the judgment-debtor, which the Court cannot circumvent.

(17) I fail to find any of these statutory reasons recorded in the ex-parte orders dated 4.10.2019 and 29.11.2019 which may justify execution of warrants of imprisonment without effective show cause

and hearing; not only are these orders pronounced in defiance of the principle of *audi alteram partem*, but they also fail to show any mala-fides in the conduct of the petitioner. On the other hand, Shri Ajaib Singh passed a reasonable order without compelling himself to explain the law on the subject. This work was left to be analysed by the court in question.

(18) The interplay of the values in the Constitution and the relevant provisions of the Code on the question whether under such circumstances personal freedom of the judgment-debtor can be held to *"ransom"* [the word used in the judgment which is referred to next] until payment of the debt, Justice V.R. Krishna Iyer sitting with Justice R.S. Pathak in the Supreme Courtin the precedent ***Jolly George Varghese*** versus ***The Bank of Cochin***[1] went back to the judgment he delivered as Judge in the Kerala High Court, quoting from it the following extract which makes the position clear to the mind. In that case, on facts, a judgment-debtor was sought to be detained underOrder XXI 21, Rule 37 CPC although he was seventy and had spent away on his illness the means he once had to pay off the decree. The observations there made are apposite and may profitably bear reproduction in answer to thequestion posed by the Supreme Court for determination: "The question iswhether under such circumstances the personal freedom of the judgment- debtors can be held in ransom until repayment of the debt, and if s. 51 read with O 21, R 37, C.P.C. does warrant such a step, whether the provision of law is constitutional, tested on the touchstone of fair procedure under Art. 21 and in conformity with the inherent dignity of the human person in the light of Art. 11of the International Covenant on Civil and Political Rights". The Court held:

> "The last argument which consumed most of the time of the long arguments of learned counsel for the appellant is that the International Covenants on Civil and Political Rights are part of the law of the land and have to be respected by the Municipal Courts. Article 11, which I have extracted earlier, grants immunity from imprisonment to indigent but honest judgment-debtors.
>
> The march of civilization has been a story of progressive

[1] AIR 1980 SC 470

> subordination of property rights to personal freedom; and a by-product of this subordination finds noble expression in the declaration that "No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation." This revolutionary change in the regard for the human person is spanned by the possible shock that a resuscitated Shylockwould suffer if a modern Daniel were to come to judgment when the former asks the pound of flesh from Antonio's bosom according to the tenor of the bond, by flatly refusing the mayhem on the debtor, because the inability of an impecunious obligee shall not imperil his liberty or person under the new dispensation proclaimed by the Universal Declaration of Human Rights. Viewed in this progressive perspective we may examine whether there is any conflict between s. 51 CPC and Article 11 of the International Covenants quoted above. As already indicated by me, this latter provision only interdicts imprisonment if that is sought solely on the ground of inability to fulfil the obligation. Section 51 also declares that if the debtor has no means to pay he cannot be arrested and detained. If he has and still refusesor neglects to honour his obligation or if he commits acts of bad faith, he incurs the liability to imprisonment under s. 51 ofthe Code, but this does not violate the mandate of Article 21. However, if he once had the means but now has not or if hehas money now on which there are other pressing claims, it is violative of the spirit of Article 11 to arrest and confine him in jail so as to coerce him into payment..."

(19) Further in the judgment in *Jolly George* the Supreme Court observed on the place of Article 21 in cases of arrest and imprisonment of debtor under Section 51 and Order XXI, Rule 37 CPC as follows:

> "Equally meaningful is the import of Art.21 of the Constitution in the context of imprisonment for non-payment of debts. The high value of human dignity and the worth of the human person enshrined in Art.21, read with Arts. 14 and 19, obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence. Maneka Gandhi's case as developed further in Sunil Batra v. Delhi Administration, Sita Ram & Ors. versus State of U.P. and Sunil Batra versus Delhi Administration lays down the proposition. It

> is too obvious to need elaboration that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is appalling. To be poor, in this land of Daridra Narayana, is no crime and to 'recover' debts by the procedure of putting one in prison is too flagrantly violative of Art.21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness. Unreasonableness and unfairness in such a procedure is inferable from Art. 11 of the Covenant. But thisis precisely the interpretation we have put on the Proviso to s. 51 C.P.C. and the lethal blow of Art. 21 cannot strike downthe provision, as now interpreted."

(20) Accordingly, parties have to be put back to the status quo ante where they stood before the order dated 4.10.2019 was passed with suitable course correction made by the applicant-respondent in the cause title by supplying the proper address for purposes of service of summons. Merely because the petitioner was produced in the Court of Shri Ajaib Singh on 18.11.2019 or has been forced to approach this court in what is an essentially civil dispute for recovery of arrears of maintenance challenging the illegal orders dated 4.10.2019 and 29.11.2019 and has thereby disclosed his whereabouts in those Courts is, in my view, not sufficient to deem service upon him to save the impugned orders by creating a fiction of service of the proceedings upon the petitioner. The argument of the respondent to this purported effect is not tenable and is rejected. Legal fictions cannot be created extensively to infringe on the liberty of a citizen and then pack him off to prison based on a presumption of service without following the due process of the law. By following the procedure as established by law in procedural safeguards, the courts are the guardians of life and liberty of the people, which they are bound to honour and obey, before and after issuing processes of the court. The Family Court acting under the Hindu Marriage Act is not exercising the powers of the Magistrate under Section 125 (3) of the Code of Criminal Procedure, 1973 who can order imprisonment for a month in default of payment of maintenance determined under that provision on failure of a warrant of arrest for levying the amount due, which presupposes due service of the order in the proceeding. Section 125 (3) provides that: "If any person so ordered fails without sufficient cause to comply with the order, any

such Magistrate may, for every breach of the order; issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:..." However, the question of putting the defaulter in prison, to be sent in the proverbial hand-cuffs, does not arise in the present proceedings in enforcement of arrears of maintenance by the ex-wife. This is not to say that the presence of the husband cannot be secured by the Family Court to enforce his attendance by suitable process as deemed fit to answer the prayers in the two execution applications. But it is unheard of to straightaway issue a warrant of imprisonment without first enforcing attendance. Family Court must avoid an identity crisis sitting as Family Court (Civil) and Magistrate (Criminal) and alternating between the two different jurisdictions from the same dais to achieve different results. The judge appears to have mixed up the two elements by a concoction and that too by following an illegal procedure *in terrorem* with an inherent defect to start with resulting from non-service of notice upon the husband.

(21) In ***Taraknath Mukherjee*** versus ***Sandhya Mukherjee***[2] the Calcutta High Court held: "It is unheard of that an order passed under Section 24 of the Hindu Marriage Act, 1955 would be executed by taking resort to the provisions of the Criminal Procedure Code."

(22) In the present petition, the petitioner has rightly prayed that warrants of imprisonment be recalled forthwith by setting aside the order dated 4.10.2019. There was no occasion to issue them whatsoever without securing legal attendance and calling for reply. In my considered view, also as in *Taraknath* (supra), the petitioner cannot be sent to civil imprisonment in violation of the due process of the law without giving him a fair opportunity of hearing on his explanation, if any, that he has to offer and that too after proper service of the execution application is duly effected on him personally by adhering to the principles of natural justice and following the steps in Order XXI, Rule 37 of the Code. This would have guaranteed to him the valuable right to defend himself and to contest the execution applications,

[2] 2018 SCC OnLine Cal 6154

whatever maybe the result on merits finally determined by the court. It would be a travesty ofjustice if the impugned order is allowed to stand when it ex facie deserves to beannulled and the petitioner set at liberty for the time being, not so much from the action in due execution of the decree but from imprisonment withoutjustification.

(23) This Court expresses its displeasure over the passing of the nasty order dated 4.10.2019 which is not only patently illegal and perverse but is alsocontrary to all the well-accepted canons of justice, fair-play and even-handed dealing by a court of law. The impugned order dated 29.11.2019 is even more notorious in its unlawful consequences. The petitioner cannot be taken by surprise for the fault of the Court. For a judge to pass such a wanton order ignorant of the rudimentary principles of law; which not only is highly improper for failing to follow the execution procedure provided u/s 51 r/w Order XXI Rule 37 & Rule 40, but is in violation of the fundamental rights implicit in a citizen conferred by Article 21 of the Constitution of India to tenaciously protect his liberty, is showing abject lack of probity, sensitivity, humanism, understanding, detachment and maintaining judicial discipline, the last being the uppermost consideration. Article 21 bats for the protection of life and personal liberty guaranteeing to the citizen that: No person shall be deprived of his life or personal liberty except according to procedure established by law. The order has the effect of tarnishing the image of the institution of justice, which a Judge is bound not to corrode, in the eyes of the public and bringing it to disrepute. Its impropriety is writ so large that it willnot be enough to just set it aside, but to also order a course correction of the Judicial Officer [name withheld] to restore him to the sublime path of venturing to do justice according to law in the future, so that litigants before him are not imperilled in their cause. The Judge should have first called upon the first respondent to supply the correct address of the petitioner instead of being agitated and upon her doing so, could have issued fresh notice to serve him. He could have also used the electronic media to notify him of the proceedings in addition to normal process. That would have been the proper thing to do. Even the excuses of everyday rush and hurry of court business or an oversight cannot save such a perverse order whose two material parts cannot coexist. Meaning thereby; notice not served but still the petitioner must go to jail. Had he not approached this Court, he would have been called an ex jailbird.

(24) No Judge ought to have passed such a terrifying order, the judicial impropriety of which disturbs the conscience of this court. It brings the judicial process to infamy in public and the Bar if it were made extensively viral, whichwould shake the confidence of the people in the institution which dispenses justice as the guardian of law and to which they look upon as their saviour. The public reposes blind faith and implicit trust in the courts of law that they will get from them justice according to law and nothing less, despite all odds and travails they may face before knocking at its door or being called in.

(25) The man was not served and still warrants of imprisonment were issued twice over [even after the curative order dated 18.11.2019 was passed by his fellow Judge for good and sufficient cause] as though he were a common criminal. I can only express my deep anguish and disbelief of the order, which has come as a shock to me, and that too, passed at the level of the superior judicial service. God have mercy on the litigants that appear in his court.

(26) At the cost of lecturing we all should remain guided. The crux of which is that a judge should try and develop an aerial vision of the case and notbe lost in the undergrowth, the fronds and the thickets and should not begrieved when every dead leaf leaves his judgment to fashion it like a sculptor or artist. Only the eloquent facts placed before him from a thick mass of printed papers ought to be selected from a hundred and one which are relevant to the conclusions. Parties plead many facts that they judge are essential but that may not be always true. Some facts are not necessary while others can't be skipped. This requires skill earned by practice, experience and patience. The skill lies in pruning the case file with deft secateurs in hand using it carefully to reveal the bare necessities or the essential core issue/s required for the best possible decision-making process in the facts and circumstances to mature into a just and proper judgment and order. This effort will yield far greater fruit the coming season to weather the litigation storms in appeal. There must be an honest effort on the dais and if they fail there is nothing to fear or fret about. To err is forgiven but seldom should the judicial work be arbitrary, whimsical or dishonest or extraneous to the cause, which should never ever be seen done consciously. By this dishonesty I do not mean just pelf, but the purpose and the objectives required to be achieved in the exploration of justice according tolaw. The Judge must know how to read precedents from the point of view to either follow or distinguish

them for reasons discussed. There are no reasons inthe impugned order dated 29.11.2019. Therefore, the facts in each case are supreme governors. Lord Alfred Thompson Denning, J. wrote in his book, 'The Discipline of Law': "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it." How to read judgments is itself a study of sorts and much work goes into it over the yearstill the reflex becomes intuitive with the deposit of law in the judicial mind collected over the years. The superior judiciary has to use this tool every day and hone the skill which this judicial officer shows lack of.

(27) To find the shortest plausible cut to the correct decision is every judge's dream. The lawyers in the case have to help find that path. This is what litigants expect in the clarity of a judgment or order from a court that governs their rights and binds them. They should not be short-changed and left unconvinced that what the Court did was not right and justice in a court of law was not obtained but was denied. A Judge's mind and heart should be larger than his distant self and much smaller than his ego. The ego of the Judge in the Family Court in this case should not have been hurt by what his fellow judge said in his order of release dated 29.11.2019, putting the case back on proper track, for him to be judicially chided by the uncharitable remarks he made in his order commenting on the work of his colleague in words he could have avoided. Learned fellow-Judge rightly queried the wife's counsel to show him the law on whether at the stage he was at, the husband "can be sent to undergo civil imprisonment on default of remaining payments of maintenance granted under section 24 and 26 of the Hindu Marriage Act" and then, on the failure of the wife's counsel to answer, judiciously granting time to the husband toarrange payment. Judge Shri Ajaib Singh had intuitively found his way to the heart of the judgment of the Supreme Court in *Jolly George* and arrivedjudiciously at the same station. But the present Judge in the Family Court did not learn his lesson well from that sound indication in the order and to the contrary has revolted against it and as a result, run into rough weather in this Court. We must understand that, "There is only one corner of the universe you can be certain of improving, and that's your own self" said Aldous Huxley. But the Family Court asserts in his order pretentiously exclaiming he knows thelaw by deriding the order dated

18.11.2019 declaring triumphantly that "...This has compelled me to explain the law on the subject". With such a large statement made by the Family Court in the rank of an Additional DistrictJudge, one would expect a thesis on the subject. The order dated 29.11.2019 is no thesis. It is only an artless badly written order with many glitches of the English language such as that any person on the street could have written in or out of law school. I have learnt nothing from it on the subject by way of explanation of the law to improve my knowledge. Fools rush in where angels fear to tread.

(28) We need to revisit and analyze the order dated 29.11.2019 more carefully, its threadbare reasoning and loud declarations made on law depending on head notes of three cases made by unknown reporters, without showing any evidence in his order of having read them to their meaning and how they apply to the case in hand. The Judge in the Family Court is by his tone and tenor in the impugned order apparently extremely hassled, feeling insulted by the order dated 18.11.2019 passed by Judge Shri Ajaib Singh of coordinate jurisdiction being one of many Family Courts functioning in Ludhiana. He actually means to say that the other learned Judge had no business to pass the order as he was on "duty work" when the petitioner was produced before him by the police on warrants of imprisonment. What a scene that must have been in humiliation of the petitioner. This is confirmed by his remarks in the order to the effect that: "... Although, the said court was not competent to pass any order while, holding a duty work but in his wisdom, he had gone on to decide that my order for issuance of warrants for civil imprisonment u/o 21 rule 37 CPC was invalid". By this observation he attacks the order dated 18.11.2019 as being "invalid' and then compounds it with the logic promoted to achieve a particular end, to anyhow send the petitioner to jail for non-payment of partial debt by recording the word "invalid" when nothing of the kind was said in the order of 18.11.2019 as that word was not employed therein. Or does he mean that an imputation is made against him and his wisdom by the wisdom of Judge Shri Ajaib Singh or that the invalidity of the order logically follows by necessary implication and thus it should be reviewed when he had no such powers which could only be exercised by a superior court. Judge Shri Ajaib Singh merely asked the wife's counsel to show him the legal position in the law if he could order judicial remand straightaway and send the respondent, the present petitioner, to serve a sentence of civil

imprisonment. If he had not passed the order, the petitioner would most certainly have been in jail and would have served out his sentence by now without determination of his rights in execution when certain amounts had been paid by him to the wife in court in the parallel proceedings under Section 125, Cr.PC claiming adjustment. There was nothing wrong in this inquisitiveness and enquiry, which is a good quality in a Judge. We all ask learned counsel to show us the law often enough. Obviously, the present Judge feels he does not need to ask for law from anyone as he knows it by heart or something to that effect in the impugned orders, and his brother Judge is a lesser mortal.

(29) The author of the impugned order then commits a blunder in his order by presuming due service of the execution proceedings on the petitioner, and if that were true, then all other things follow sequitur. He remarks rather angrily "It was not proper for a parallel Court to pass any order on the file which is only received by the said Court for a duty purpose." He accuses the intermediary Court of being a "parallel court" that should not have passed the order and free his game as if he was on a hunting trip, because it seems that he was hell bent to do it again and issues fresh warrants of imprisonment andbring back his quarry already "let of" [off with single "f"], to face the music of wrath. For one, the Family Court is not a "Court" in the true sense of the word but a court of limited jurisdiction closer to a Tribunal than a Court of law. All Tribunals are not Courts though all Courts are Tribunals. The Family Court is acreature of statute established under Section 3 of the Family Courts Act, 1984. It is a quasi-judicial forum which has the trappings of the Court with functions resembling and akin to it but not quite the same, holding which office, this court is merged with both civil and criminal powers from restitution of conjugal rights, judicial separation, *pendente lite* maintenance, permanent maintenance, alimony, divorce etc etc in civil law and coercive authority for enforcing maintenance under Section 125 Cr.PC with criminal sanctions to back it. This power is derived by virtue of Section 7 of Chapter III of The Family Courts Act, 1984 which provides that this forum shall exercise all the jurisdiction exercisable by any district court and in this pursuit be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court. The Supreme Court in ***S.D. Joshi*** versus ***High Court of Judicature at Bombay***[3] brought

[3] (2011) 1 SCC 252

out the stark reality of the status of the Family Courts and their jurisprudential character in the context of elevation of judicial officers to the Bench of the Bombay High Court from amongst aspirants manning Family Courts, the Court holding in conclusion that:-

> "For the reasons afore-recorded, we have no hesitation in holding that the Principal and other Judges of the FamilyCourt may be `Judges' presiding over such courts in its 'generic sense' but strict sensu are neither Members/integral part of the `Judicial Services' of the State of Maharashtra as defined under Article 236 nor do they hold a `judicial office' as contemplated under Article 217 of the Constitution of India. Thus, they do not have any jus legitimum to be considered for elevation to the High Court."

(30) The "Procedure generally" prescribed for this special court which is nothing but a Tribunal is contained in Section 10 of the 1984 Act which notifies the adjective law as follows:-

> "**10. Procedure generally.—**(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.
>
> (2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.
>
> (3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matterof the suit or proceedings or at the truth of the facts alleged bythe one party and denied by the other."

(31) There is an interpretational gap and visible difference between the expressions that there is nothing preventing the Family

Court "from laying down its own procedure" in Section 10 of the 1984 Act as an exception to the Code of Civil procedure, 1908 and the process of adjudication, by analogy, exercised by the Labour Courts, Tribunals and National Tribunals established under Section 7, 7A & 7B of the Industrial Disputes Act, 1947 respectively, which are also special tribunals with the trappings of the courts. Section 11 provides for the "Procedure and Power of Conciliation officers, Boards, Courts and Tribunals:" prescribing in the Section that they "shall follow such procedure as the arbitrator or other authority concerned may think fit". Accordingly, the Family Court cannot follow such procedure that it thinks fit to do whimsically whatever it likes. The Judge, who passed the impugned order, did not in the beginning, lay down its own procedure to exclude the Code under Section 10 (1) of the 1984 Act which brings them to drink from the waterhole of the Act, under which they function. Without understanding this fine distinction in law, the Family Court emphatically observed in his blanket order that it "has got the inherent power and can formulate any procedure to advance justice." In this statement he was not advancing justice but subverting it. To support this submission, he drew strength from *Baljit Kaur v. Jasvir Singh*, one of the three judgments he cited without dealing with the facts of the case and then applying them to the stage of the case in hand so that the appellate or revising court can assess the reasoning. He failed to cull out the ratio, which work he thought unfit to do except to cut, copy and paste their head notes in bold text as seen in the order, a sin considered cardinal in this Court, to refer to Head Notes of reported judgments made by reporters without citing from the reasoning within and to see what was indeed held to be binding.He then emphatically declared in his order that: "Therefore, the Court of Ajaib Singh was not justified in saying that there is no provision of law for execution of any order passed by family court or any other Court under HMA fixing the maintenance." Shri Ajaib Singh in his order of 18.10.2019 never said anything of that sort. Putting words in the mouth of Judge Shri Ajaib Singh's are of no consequence and the order cannot be interpreted to mean something other than what exists therein. He refers to his brother Judge as "Ajaib Singh". If he was taught judicial etiquette he would have said politely; "the Court of Shri Ajaib Singh" or "Mr. Ajaib Singh" for which he may consider apologizing to his colleague at the lunch table. He appears to be so irked and annoyed with Shri Ajaib Singh's order that he made an application to the learned District Judge, Ludhiana to transfer the case from him writing in his

judicial order that; "I had already made a reference for transfer of the case because of propriety demanded that I should not re-decide on a issue on account of this situation." He wrote an order on 23.11.2019 addressed to the Principal Family Court, Ludhiana which shows how troubled his mind then and on 29.11.2019. The relevant order, in which the request for transfer was made, dated 23.11.2019 is reproduced here:

> "Present: Applicant Sonia Arora with Shri Sunil Dutt, Advocate
>
> Execution application of applicant No.2 dismissed as withdrawn vide order dated 18.11.2019.
>
> ***
>
> I have seen the order dated 18.11.2019 passed by the court of Shri Ajaib Singh, learned Duty/Addl. Principal Judge, Family Court, Ludhiana. In this case, the execution application was pending before the undersigned and this court had ordered for issuance of warrants on deposit of Civil Imprisonment charges as the matter pertains to execution of order passed in a civil case. Request for conditional warrants was declined. After the deposit of civil imprisonment charges, show cause notice was issued and the respondent was produced before the learned Duty Judge, who in his own wisdom, not only varied the order passed by this Court, but had given a clear finding as per his own wisdom. Therefore, it would be more appropriate that the matter should be disposed off by the same Court or by the learned Principal District Judge, Family Court, Ludhiana. Under thecircumstances, I do not deem it appropriate to hear the matter further. As such, the present file is sent to learned Principal District Judge, Family Court, Ludhiana for 25.11.2019. The parties are directed to appear before the learned Court of Principal District Judge, Family Court, Ludhiana at 10.00 am on 25.11.2019. Ahlmad of this Court is directed to send the file to the concerned Court, immediately." (emphasis added)

(32) His request was declined by the learned Principal Judge, Family Court, Ludhiana. The relevant order of the Principal Judge dated 25.11.2019 reads:

> "Present: Applicant with Shri Sunil Dutt, Advocate.

Respondent Rajesh Arora in person.

***

Reference perused, which has been made in the light of the order passed by the court of Shri Ajaib Singh, learned Additional Principal Judge (Family Court), Ludhiana on 18.11.2019, when Shri R.K.Sharma, learned Additional Principal Judge (Family Court), was on leave. Without expressing anything on the propriety and legality of the order dated 18.11.2019, the undersigned is of the considered view that the matter should be decided by the same court, where it was originally pending. Therefore, the request for transfer of the case is declined and the case is referred back to the court of Shri R.K.Sharma, learned Additional Principal Judge (Family Court), Ludhiana, for disposal in accordance with law. The parties shall appear before the court of Shri R.K.Sharma, Additional Principal Judge (Family Court), Ludhiana on 29.11.2019. Ahlmad is directed to send the file, complete in all respects, to the court concerned, well before the date fixed."

(33) If propriety demanded, according to him not to re-decide on an issue which led to the release of the warrants of imprisonment without law in support, he breached that propriety by reviewing that order *suo motu* holding resolutely: **"**Therefore, the Court of Ajaib Singh was not justified in saying that there is no provision of law for execution of any order passed by family court or any other Court under HMA fixing the maintenance. Since, the respondent isalready let of and he is deemed to have full show cause notice and despite the same has not made any payment. Therefore, fresh civil imprisonment warrants be issued for 12.12.2019**"** He should have quoted the provisions of law under which he was acting in the order for this Court to appreciate the order. None of the three judgments even remotely apply. In none of them warrants of imprisonment were involved. Two of them dealt with striking off defence for avoiding filing written statement. Moreover, judgments are not provisions of law, they reveal the law. In this manner, he concludes that because the petitioner was let off by Shri Ajaib Singh and appeared before him on production by the police on warrants, therefore, he is deemed to have notice of the execution and can be sent to prison even when he was not served at his address known to the wife.

(34) The Judge then makes, at about the end of paragraph 2 of the impugned order, a rather tall, daunting and pompous statement that the order of his coordinate Family Court has "compelled" him "to explain the law on the subject". Explain the law on the subject? How can a person explain the law when he does not show any signs of understanding or respecting the law to review the order dated 18.11.2019 and order warrants of civil imprisonment without an application before him or an order of a superior court setting it aside. Or should I issue notice to him to personally appear in my court to explain his order and ask him a few inconvenient questions on law. That would be preposterous which I cannot even venture to think. Writing an essay in a school competition or a paper in a law school examination is not writing a judgment or a judicial order which is open to challenge. Explaining the law on the subject with the help of three judgments without mentioning case facts and what was ruled therein to be binding law and what those three judgments have actually held by matching them to the facts of this case, is looking in the impugned order dated 29.11.2019 for three needles in a haystack. He cites just the catch words of those three judgments presumably made by hired reporters of the law journal reproducing them complete with hyphens and telegraphic words in his order in bold text without any discussion. Those three cases are titled "*Suman vs. Ajit'*, "*Baljit Kaur vs. Jasvir Singh*" and "*Ved Prakash vs. Sneh Lata,* which are apparently distinguishable on law and facts. In fact one can cite any number of judgements of this Court relevant to the issue at hand which support the view taken by me. Here are some of them, namely, ***Tehal Singh*** versus ***Shivji Ram***[4] and ***Col. Ajaib Singh*** versus ***PNB***[5]. In *Tehal Singh,* this Court observed:

> "7. It is plain from a reading of the above provisions thatan executing Court can order the execution of a decree by arrest and detention in prison of the judgment-debtor if it is satisfied (i) 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; or (ii) has, after the institution of the suit in which the decree was passed, dishonestly, transferred or concealed any part of his

[4] 1985 (2) PLR 564
[5] 1991(1) PLR 231

property or committed any other act of bad faith in relation to that, or (iii) that the judgment-debtor has had since the date ofthe decree the means to pay the amount of the decree or substantial part thereof and refuses or neglects or has refused or neglected to pay the same. Unless and until any of these conditions is satisfied, the executing Court cannot order the detention of the judgment-debtor even if he fails to satisfy the decree. In the present case, the learned executing Court has only mentioned that the judgment-debtor had been trying to delay and defeat the execution proceedings. He had filed frivolous objections and had also got filed such objections from his relations. He has not given a finding that judgment- debtor had been guilty of any acts of omission and commission enumerated above. From the tenor of the impugned order, it will be seen that the decree-holder has not pleaded any of the grounds mentioned in (a), (b) or (c) of proviso to Section 51, enumerated above. This is a condition precedent for invoking jurisdiction under Order 21 Rule 37 and 40, Civil Procedure Code. The order of detention of the petitioner to civil prison for 75 days is thus unsustainable in law. The learned executing Court acted with material irregularity in exercise of its jurisdiction. The order is, therefore, liable to be quashed. I order accordingly."

(35) In *Col. Ajaib Singh*, a case of recovery, this Court held:

"The warrant of arrest is liable to be quashed, in the considered view of this court, on the short ground that the petitioner has not been heard before ordering his arrest. It has been laid down in Order 21, Rule 37 of the Code of Civil Procedure that notice should be issued before ordering the detention of the judgment debtor in civil prison until and unless a finding is recorded to the effect that the judgment- debtor, with intent to delay and obstruct the execution of the decree, is likely to abscond from the local limits of the jurisdiction of the court. No such finding has been recorded. In view thereof, the warrant of arrest could not have been issued by the executing court."

(36) Similarly, in ***Didar Singh*** versus ***SBI*** [6] ***this Court held:***

> "Application Annexure P/1 was moved on 8.10.2010 and impugned order was passed on the same day without issuing notice of the application to the JD and without granting him opportunity of hearing. Section 51 CPC providesthat where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after givingthe judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons to be recorded in writing, is satisfied as to the conditions mentioned in the aforesaid provision. Thus, it was mandatory for the executing court to have given show cause notice to the JD against his proposed detention in prison. However, executing court passed the impugned order without giving any such opportunity to the JD. The impugned order is thus completely perverse and illegal and suffers from jurisdictionalerror.
>
> In addition to the aforesaid, even Order 21 Rule 37 CPC stipulates that the court shall instead of issuing a warrant for arrest of judgment debtor issue a notice calling upon him to appear before the court and to show cause why he should not be committed to the civil prison. Thus, both under section 51 as well as under Order 21 Rule 27 CPC, it was mandatory for the executing court to have required the JD to show cause against his proposed detention but no such opportunity to show cause was given to the JD. No notice of the application Annexure P/1 was issued to him."

(37) But I can risk observing even without reading those three judgments relied on by the Court below in its order dated 29.11.2019, that noneof them could ever say, as no Court would, that without due service of notice and show cause, no man can be proceeded against and sent to civil jail straightaway for recovery of debt. The duty to explain those cases has fallen onthis Court to understand the casual approach in relying on them.

(38) In *Ved Prakash*, the petitioner came to court against warrants of arrest of the judgment debtor in execution for production

---

[6] 2013 (1) PLR 859

in court so that on that date he pays the decretal amount in alimony along with interest to show cause why he should not be committed to civil prison. JD argued that none of the conditions in Section 51 of the Code is satisfied nor any such satisfaction has been recorded by the executing court. This court observed in paragraph 4as follows:

> "4. I have considered the rival contentions of the learned counsel for the parties. It is evident that the warrants for arrest of the petitioner have been issued through the impugned order on his non-appearance in the Court in response to the notice to show cause served on him, which was evidently issued under Order 21 Rule 37 of the Civil Procedure Code. So, when he did not appear in the Court in obedience to the said notice, the Court was well within its jurisdiction to issue warrants for his arrest in pursuance of sub-rule (2) of Rule 37 ibid, the purpose of issuance of warrants for his arrest to secure his presence before the Executing Court so that proceedings consistent with Rule 40 ibid could be taken. It is in the course of such subsequent proceedings that the Court has to record its satisfaction as regards requirement contained in proviso to Section 51 of the Civil Procedure Code..."

(39) I cannot see my way to apply this case to the present one. It is in the subsequent stage of the proceedings after warrants of arrest have been issued that the Court has to record its satisfaction as regards requirements in proviso to Section 51. The Family Court has breached this law and misapplied it to the stage he was at. And he was expounding the law but did not record the elementary satisfaction. Apart from the fact the summons at either of the stages were not served on the petitioner even assuming he had crossed the stage of warrants of arrest, which he had not in his tearing hurry.

(40) In *Suman* [2011] the Court was dealing with a case under HMA in appeal against an order allowing the husband's divorce petition. In appeal the wife filed an application for *pendente lite* maintenance and to strike off the defence of the respondent for non-payment of arrears and consequently to set aside the divorce decree. The Family Court skipped the Head Note 'A' and fell on 'B' reproduced in his order dated 29.11.2019 to concentrate on an observation of the Court that a husband can be hauled up for contempt

of court for disobedience of the order of the High Court on maintenance without applying his mind to the judgment or caring to read it. Husband had not paid maintenance for years and his defence was struck off resulting in success of the appeal and setting aside of the decree. The facts of the case have no connection with the facts of this case even by remote degree.

(41) In *Baljit Kaur* [2011] the Court again considered a similar situation as in *Suman* on striking off defence in a matrimonial matter in execution of decretal amount of maintenance which had not been paid to the wife. The judgment has nothing to do with the power of arrest and detention or any other provision of the Code of Civil Procedure including Order XXI, Rule 37, Sections 51 or 40 and thus the ruling is clearly distinguishable on law and facts which are not even remotely connected with this case except that a wife claimed maintenance under a decree. The Additional Family Court cobbled together these three judgments taken out of the hat and based his order not on them, in his wisdom, but drawn from the cut copy paste of Head Notes of those judgments reported in law journals, unlike the "wisdom" of Shri Ajaib Singh, the learned Additional Principal Judge, Family Court; by failing to use his mental faculties clouded by a magnificent obsession of sending the petitioner to civil imprisonment to keep him at bay, as though that were a solution to the money issue before him in execution. In this he threw the law to the winds while "explaining" it in his order. And ironically, it was the order of Shri Ajaib Singh, learned Additional Principal Judge, Family Court, Ludhiana that had compelled him to explain the law on the subject, a rather tall claim, when he has not even demonstrated in the order even the rudimentary knowledge of what he was doing with the law by turning it upside down. He passed orders behind the back of the petitioner and that is the worst thing a Judge can do.

(42) In the circumstances I am left with, however much I would like not to believe, with a distinct feeling of dismay which has crept in my thinking of the worst scenario, and that is; was he mixed up with the applicant with his mind set in the beginning to send the petitioner to prison on considerations other than law. The impugned orders are its tell-tale signs.

(43) The question is how to read judgments for the law and principle/s laid down therein in the context of key facts and relevant

circumstances of a case decided and how they are treated by the Judge and what it means to apply its ratio decidendi [the reason for the legal decision] as a precedent in another case, while distinguishing its obiter dictum and non-essential facts recorded in the narration of facts upon which the ratio may not be based. The head-note made by a reporter in a law journal of reported cases indicates only the broad outlines of the case or the type it falls in and is the last thing to rely on in a judgment or order. Determining the true ratio of a case is not as simple as identifying the reason for the decision in a complex case. There are cases without ratio but with conclusions. A conclusion does not constitute precedent. The Additional Principal Judge, Family Court, Ludhiana fell in grave error in blindly relying on the head-notes. The case law on the subject in hand was not a complex one presenting difficulty in understanding. The field was covered by statutory provisions which are well accepted which the court below failed to read and apply. If he had, he would not have passed the impugned orders. The principles of reading judgments have been elucidated in several dicta, the most oft-quoted of which is, per Lord Halsbury in ***Quinn*** versus ***Leathem***[7], which was applied by the Constitution Bench in ***State of Orissa*** versus ***Sudhansu Sekhar Misra & others***[8], quoting a passage from *Leathem*, which reads as follows:

> "Now before discussing the case of Allen vs. Flood, (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions, which may be found there are not intended to be expositions of the whole law, but governed or qualified by theparticular facts of the case in which such expressions are to befound. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge thatthe law is not always logical at all."

---

[7] 1901 AC 495
[8] AIR 1968 SC 647

(44) In ***Herrington*** versus ***British Railways Board***[9] Lord Morris spoke on the issue of how judgments are to be read:

> "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made inthe setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."

(45) The following words of Lord Denning in the matter of applying precedents have become locus classicus. The extract is as follows:

> "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colourof one case against the colour of another. To decide therefore,on which side of the line a case falls, the broad resemblanceto another case is not at all decisive."

(46) Closer home, our Supreme Court explained the position in application of precedents to future cases in a bench of three Judges in ***Union of India*** versus ***Dhanwanti Devi & others*** [10] **,** K. Ramaswamy, J. observing:

> "A decision is only an authority for what it actually decides. What is of the essence in decision is its ratio and not every observation found therein not what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to

[9] 1972 (2) WLR 537
[10] (1996) 6 SCC 44

> extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding between the parties to it, but it, is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi. Therefore, in order to understand and appreciate the binding force of a decision is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent in the use of precedents."

(47) In the oft-quoted passage in ***Haryana Financial Corporation Jagdamba Oil Mill*** [11] on the point of guidance to courts that the tendency of placing blind reliance on judgments should not be the judicial reflex, as they have to be applied carefully to the fact situation from case to case since only the ratio binds and one different material point or relevant fact can alter the entire aspect. The Supreme Court observing thus:

> "Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems

[11] (2002) 3 SCC 496

> nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussionis meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes."

(48) As a result of the afore-stated reasons coming from the discussion that has followed, the petition is accepted. The caveat is discharged. Theimpugned orders dated 4.10.2019 and 29.11.2019 with their copies at Annex P-7 & P-14 are quashed. The case is remanded. Fresh service is ordered to be done by the Family Court on the petitioner at the correct address by following the due process of the law. I do not propose to bind the parties to a date of appearance fixed by this Court, as then, the fatal flaw would continue to run its length on the judicial record of the executing Court, which is presently being erased from the file of the Court below. After appearance, the petitioner will have a right to contest the proceedings without fear. The rights of the respondents shall stand preserved and open to be pressed in their applications. This order has nothing to do with the successor Family Court to whom the matter will be put up, who shall remain uninfluenced by anything said in this order for him to start with a clean slate and an open mind and do whatever that law dictates.

(49) The learned District Judge, Ludhiana shall transfer the matter to another learned Family Court in Ludhiana [other than the two noticed in this order to save the other one from any inter-personal embarrassment] as also to maintain the present judge's personal wish in his order dated 23.11.2019 seeking transfer of case, in order to maintain neutrality in decision-making in the Family Court well versed with the law taking fair and proper steps by the transferee court in the execution proceeding, after issuing fresh process to the petitioner at the correct address to be supplied by the present contesting respondents. It is made clear that whatever is found due according to decree must be paid in accordance with law.

(50) The Learned Registrar General of this Court shall get examinedthe conduct of the Judicial Officer, who passed the impugned orders, on the administrative side as is deemed fit and proper and to

take measures including withdrawal of matrimonial work from him, including never to be posted again in a Family Court as he appears to lack the judicial temperament and the desired approach. Or other such steps may be taken as are found desirable.

(51) Note: If the officer requests a personal hearing from me through proper channel, I would have no hesitation in doing so, as I have not heard him before passing the order and relied only on his work as is apparent on the face of the record presented before me, to which the caveator raised no objection as to its authenticity. If he has any plausible written explanation to offer, such that I could not foresee or the remarks are unjustified, he can always be directed for a chamber or in camera court room hearing till I hold office. I assure him of a patient, unprejudiced and unbiased hearing for a fair decision on his explanation, if worthy of acceptance.

Dr. Sumati Jund