

CPC, Order 21 Rule 37 – Execution – Arrest of the JD – If Section 51 CPC is read in consonance with Order 21 Rule 37 CPC, then it implies that a show cause notice is required to be issued calling upon the judgment debtor with regard to the payment of decretal amount, failing which the judgment debtor was liable to be arrested -In the entire process the Court has to record its satisfaction – The executing Court is required to record a positive finding as there is no possible way to satisfy the decree except by way of arrest of the judgment debtor – This satisfaction is to be recorded as per the requirement of Section 51 CPC – Merely because it appeared to the Court that there is no possibility to satisfy the decree, is not equivalent to the ‘satisfaction’ statutorily required under Section 51 read with Order 21 Rule 37 CPC to be recorded by the Court before proceeding to resort to arrest and detention of the judgment debtor – The judgment debtor can only be placed under detention after recording of satisfaction by the executing Court in terms of Section 51 CPC that the judgment debtor has intentionally and by way of mala fides avoided and neglected to pay the decretal amount despite having means to pay – Means to pay is a factual plea for that satisfaction has to be recorded by the executing Court in consonance with the requirement of law as explained above – To the extent of not recording satisfaction by the executing Court on the aforesaid parameter, the impugned order is illegal.

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