

**Mohd. Sayed Through Legal Representatives Sayabanu Wife and ors. Vs. NizamuddIn and ors.**

**Mohd. Sayed Through Legal Representatives Sayabanu Wife and ors. Vs. NizamuddIn and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/767376](http://sooperkanoon.com/767376)

**Court :** Rajasthan

**Decided On :** Jan-21-1985

**Reported in :** 1985WLN(UC)19

**Judge :** G.M. Lodha, J.

**Appeal No. :** S.B. Civil Execution Second Appeal No. 19 of 1976

**Appellant :** Mohd. Sayed Through Legal Representatives Sayabanu Wife and ors.

**Respondent :** NizamuddIn and ors.

**Judgement :**

G.M. Lodha, J.

1. In a decree for a petty amount of Rs. 823/- the judgment debtor was directed to be sent in civil prison in the year 1973, by an order dated the 21st March, 1973 of the Civil Judge, Nagpur. In an appeal before the District Judge, Merta, it was of the opinion that the direction of the Executing Court to send the judgment debtor to the civil prison cannot be sustained under Section 51, Code of Civil Procedure.

2. The question which was considered was, whether it was approved that judgment-debtor has sufficient means to pay the decretal amount and still refused or neglected to pay the amount, under Section 51 CPC. The evidence of Mangilal has been discarded on the ground that even if the judgment debtor is doing business, it is of very petty nature.

3. It appears that in addition to the evidence produced by the decree-holder, the judgment-debtor, himself, in his affidavit marked as Ex. 2 mentioned that he possessed two buffalos of the value of Rs. 18000/-, the learned counsel for the parties did not agree to the satisfaction of the court that the 'amount may be paid by the instalments.

4. In view of the circumstances of the case, mentioned above, I arts of the opinion that the judgment debtor should be allowed an opportunity to pay the amount by easy instalments of Rs. 50/-per month. If he fails to pay the above amount of Rs. 50/-per month by committing two defaults successively, the Executing Court should again allow opportunity to the parties to adduce fresh evidence regarding condition of the judgment debtor, and whether now the prayer for sending him into civil jail can be accepted under Section 51 CPC. In that case, both the parties would be allowed opportunity of adducing fresh evidence because, whatever might have been the condition of the judgment debtor upto 1976 years, now We are in the year 1985, and no amount has been paid so far, if the judgment debtor persists on non-payment even in instalments, the decree holder should be allowed to prove that any of the conditions mentioned in Section 51 CPC are now fulfilled.

5. In the result, this appeal is partly allowed and the judgment of the first appellate court is set aside with the following directions, as indicated above:

The instalment would become payable on the 1st day of March, 1985, and the Executing Court should intimate the judgment debtor by giving a notice for the same. Later on, by 10th of every subsequent month, instalment of Rs. 50/- per month should be paid till the entire decretal amount is realised.

The above directions are being given for doing substantial justice between the parties without putting the judgment debtor in any hardship. The execution application is being sent to the Executing court, i.e. Civil Judge, Nagaur for further compliance of the directions, as indicated above.

6. There would be no order as to costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**