

Civil Court's power to issue arrest warrants: by Rakesh Kumar Singh

There have been certain unfounded confusion in some quarter of legal fraternity that the power to issue arrest warrant lies only with the court having criminal jurisdiction and a civil court cannot issue warrant for arrest. The law however does not contemplate absence of such power with the civil courts, though naturally the mode and manner thereof is slightly different and police authorities are not involved for a civil dispute of the private parties. This paper is humble attempt to search and collect the provisions which empowers the court to issue or provides for issuance of warrants.

2. We know that even the Code of Criminal Procedure does not contemplate the nomenclature such as bailable warrant (popularly called as BW) or non-bailable warrant (popularly called as NBW). However, BW and NBW are frequently used in the courts and legal circles. BW simply means that the court is giving an opportunity to the person to be arrested to provide for an assurance through another about his appearance in court on the hearing date. NBW on the other hand does not provide any such concession and there is a mandate in such cases to arrest the person and bring him before the court.

3. Interestingly, even the Code of Civil Procedure also does not contemplate such nomenclature, but the code sometimes has provided for the mode of situational BW or NBW. A bare glance to the CPC will show that the first substantive provision is available in Section-32 where issuance of warrant has been mentioned. Section-32 reads as “*Penalty for default.- The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may-(a) issue a warrant for his arrest..*”

3.1. The pre-requisite of this provision is that such warrant can be issued only against a person against whom summons has been issued under Section-30. We are therefore required to look into Section-30 which to the relevant extent reads as “*Power to order discovery and the like.- Subject to such conditions and limitations as may be prescribed, the Court may, at any time,*

either of its own motion or on the application of any party,- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid..”

3.2. The provision aforesaid clearly indicates that the person mentioned here is a person who is required to give evidence or to produce anything. A court can issue summons to such person to secure his appearance. If the court has issued summons to such person, it can certainly issue warrant for his arrest under Section-32. What is however interesting is to note that Section-32 does not guide as to in what circumstances, the court can issue the warrant. It simply provides a pre-requisite that the court must have issued summons, be it noted that the expression used is “*to whom a summons has been issued*”. It does not show as to when, how & why the court will issue the warrant if it has already issued the summons. The answer lies somewhere else.

3.3. It is Order-16 Rule-10 which really provides the answer. Rule-10(3) to the relevant extent reads as “*In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12*”.

3.4. The aforesaid contemplates three stages when the court can issue a warrant for arrest. First, in lieu of a proclamation; second, at the time of issuing the proclamation; third, after issuance of proclamation. One would surely ask, if we were talking about summons, how we reached to some different concept like proclamation. To know this we have to go through Rule-10(2) which reads as “*Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides*”.

3.5. The provision aforesaid shows that if the required person fails to appear or to produce the document or avoided the service of summons, the court is empowered to issue a proclamation indicating that he is required to appear or to produce the document. Rule-10(2) connects the concept of summons and proclamation. Rule-10(3) in turn connects the concept of proclamation and warrant for arrest. All the three concepts then become inter-connected.

3.6. Meaning thereby that in a case of “first situation” where warrant can be issued in lieu of proclamation, the court can immoderately, on ascertaining the fact that person has avoided the service of summons, issue a warrant for his arrest or on the other hand, the court can do so once it is satisfied that despite service the person failed to appear or to produce the document. Other two situations (warrant at the time of or after the issuance of proclamation) are clearly an additional mode to compel the required person.

3.7. One more thing is required to be noted. Rule-10(3) has used an expression “*issue a warrant, either with or without bail*”. This clearly indicates that the warrant can beailable or non-bailable popularly so-called.

3.8. A proper format of warrant for arrest is given in Form-17 of Appendix-B of CPC. A bare glance will clarify that it is addressed to the Bailiff of the court and not to a police officer. As such, a civil court cannot in any circumstances issue the warrant for arrest addressed to a police officer. Equally important is the fact that the use of warrant of criminal cases should be strictly prohibited.

3.9. What is however clear from the reading of Section-30, 32, and Order-16 is that the warrant for arrest under these provisions cannot be issued against the defendant unlike the criminal cases where warrants can be issued against the accused persons and witnesses alike. There can however be some rare exception. The CPC does not prohibits calling one or the other defendant as a witness of the plaintiff and in that case, such defendant really becomes a witness at that particular point of time and as such, to ensure his presence for that particular purpose, the court can issue warrant.

4. The other substantive provision providing for warrant of arrest is Section-94 which to the relevant extent reads as *“Supplemental proceedings.- In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,- (a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison”*.

4.1. The aforesaid provision contemplates that a court can issue warrant of arrest even against a defendant. But this provision is subjected to a caveat that the court can do so only if it is so prescribed. The term “prescribed” is a defined concept in CPC. Section-2(16) defines it as “means prescribed by rules”. In turn, the term “rules” has been defined in Section-2(18) as “means rules and forms contained in the First Schedule or made under section 122 or section 125”.

4.2. Meaning thereby that if there is some rule in the first schedule which prescribes for issuance of warrant against a defendant, the court can do so under Section-94. The first schedule of CPC contains several Orders. Order-38 is having rules in respect of warrant against defendant. Rule-1 reads as *“Where defendant may be called upon to furnish security for appearance.- Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise,- (a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him,- (i) has absconded or left the local limits of the jurisdiction of the Court, or (ii) is about to abscond or leave the local limits of the jurisdiction of the Court, or (iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or (b) that the defendant is about to leave India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance”*.

4.3. This provision is simply to avoid hardship to the plaintiff in case he ultimately succeeds. No doubt, a defendant is required to protect his interest and therefore, the court cannot compel him to do so by issuing warrant. In cases where a defendant does not appear in the court despite service of summons, the court can proceed against him ex-parte and pass a proper decree. However, there may be a situation where the non-appearance of defendant is deliberate with a view to frustrate the entire legal proceeding by creating a situation where the plaintiff even if he succeeds will not be able to enjoy his legal success. To deal with such situation, the Parliament thought it fit to empower the court to compel the appearance of a defendant through coercive mode of warrant.

4.4. Being a drastic power in a civil matter, the courts need to exercise the same with all due caution and only for the cases mentioned in the rule and not otherwise. Any expensive interpretation of the rule needs to be avoided. Be it noted that entire philosophy behind enactment of Section-94 is that the court would be exercising such powers only with a view to prevent the ends of justice from being defeated.

4.5. Additionally, if the court demands security from the defendant, every surety (for appearance of defendant) shall binds himself. Naturally, such surety may change his mind in future and may seek for discharge. It is not uncommon. We know that even in criminal law, there is a concept of surety and such surety is also granted liberty to seek discharge. It is Rule-3 which deals with such situation and to the relevant extent reads as “*Procedure on application by surety to be discharged.- (1) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation. (2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest in the first instance.....*” This provision also contemplates issuance of warrant against the defendant.

4.6. A proper format of warrant for arrest is given in Form-1 and Form-3 of Appendix-F of CPC. A bare glance will clarify that it is addressed to the Bailiff of the court and not to a police officer. As such, a civil court cannot in any circumstances issue the warrant for arrest

addressed to a police officer. Equally important is the fact that the use of warrant of criminal cases should be strictly prohibited.

5. Another substantive provision empowering a civil court to arrest a person is available in Section-51 which is basically related to the execution matters. To the relevant extent, it reads as “*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- (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*”.

5.1. Here again, the power is subject to the conditions & limitations prescribed. We know that Order-21 deals with the process of execution. Rule-11 talks about the requirement of decree holder to apply for the arrest. Rule-11A requires that every such application shall state the grounds on which arrest is sought for. It is then that Rule-37 comes into picture and requires the court to issue a notice prior to warrant. Rule-37 reads as “*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 show cause why he should not be committed to the civil prison: Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court. (2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor*”.

5.2. It is clear that the court is duty bound to first issue a notice to the judgment debtor instead of directly issuing a warrant. However, if the JD does not appear in obedience to such notice, the court can then issue a warrant. Additionally, the court is not obliged to issue notice

where there is a probability of JD frustrating the execution by his specific conduct mentioned in the proviso aforesaid.

5.3. Order-21 Rule-38 says that warrant shall direct that the JD should be brought before the court. Rule-39 is another precondition in a way that unless the DH deposits the subsistence allowance, warrant shall not be issued. Section-56 prohibits arrest of woman in execution of money decree. (Here one thing is required to be noted. Traditionally, there has been a misconception that woman cannot be arrested in civil cases. It is however not the law. The prohibition is confined to the money decree only). Section-132(2) clarifies the position that if provided, women can also be arrested.

5.4. A proper format of warrant for arrest is given in Form-13 of Appendix-E of CPC. A bare glance will clarify that it is addressed to the Bailiff of the court and not to a police officer. As such, a civil court cannot in any circumstances issue the warrant for arrest addressed to a police officer. Equally important is the fact that the use of warrant of criminal cases should be strictly prohibited.

6. There are certain other ancillary matters. In terms of Section-134, the provisions available in Section-55, 57, 59 are to be applied to the relevant extent to all arrests made under the Code of Civil Procedure. There are certain class of persons who are exempted from arrest under Civil Procedure. Further, Section-136 deals with the situation where the person to be arrested does not reside within the local limit of the court. It reads to the relevant extent as *“Procedure where person to be arrested or property to be attached is outside district.- (1) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue, a warrant of arrest of make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment”*.

7. In view of the above discussion, following points emerge:

- A civil court can issue warrant for arrest against certain persons and in some special circumstances;
- Witnesses are generally the persons who can be arrested under CPC;
- Normally, a warrant cannot be issued against the defendant;
- A defendant may or may not appear in obedience to the summons issued in a civil suit but the court has no power generally to compel his appearance;
- It is for the defendant to protect his interest in a civil case. The court, if finds that a defendant has not put appearance despite service of summons or that he deliberately avoided the service, can proceed in the matter ex-parte;
- Warrant for arrest can be issued against a defendant if he has been called as a witness or to produce a document;
- In execution of decree, a warrant for arrest can be issued against a judgment debtor;
- A warrant for arrest can be issued even against a defendant in certain exceptional situation where there is probability of his abscondence with a view to frustrate the purpose of the suit;
- All the warrants for arrest issued under the CPC are to be addressed to bailiff of the court;
- A civil court cannot direct the police to arrest a person for its proceeding under the CPC;
- Before issuance of warrant, preconditions for issuance of notice and subsistence allowance have to be complied with;
- Women cannot be arrested in execution of a money decree;
