

(1992) 03 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : C.I.M. Appeal No. 61 of 1980

Devinder Kumar Sehgal & Anr.	Vs	APPELLANT
State of J&K and Ors.		RESPONDENT

Date of Decision : 23-03-1992

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 21 Rule 10

Citation : (1993) JKLR 363 : (1992) KashLJ 679 : (1994) 2 SriLJ 347 : (1994) SriLJ 347

Hon'ble Judges : B.A.Khan, J

Bench : Single Bench

Advocate : J.P.Singh, Advocates appearing for the Parties

Judgement

A money decree was passed by this court in appeal and sent to District Judge, Kathua for execution. From there it was transferred to learned

District Judge, Jammu, who held the decree as having been satisfied. He also rejected the execution proceedings on the ground that decree holders

had not filed a fresh application for execution before him in terms of Order 21, Rule 10 CPC and Appellants decree holders are aggrieved of this

order on a number of grounds.

Mr. J.P. Singh, learned counsel for appellants submits that the executing court had fallen in error on both counts. According to him it was not

necessary for appellants to file a fresh application for execution, as they had already filed one before this court, which had passed the decree.

Secondly, the decree could not have been held to have been satisfied, as appellants had not been paid the decrals amount in full.

I have considered the matter. There can be no dispute with the proposition that a decrees holder is obliged to make an application seeking

execution of the decree. The execution proceedings can't be set in motion without such application having been made by the decree holder. Nor

can the executing court. Embark on execution of a decree suomoto. But Order 21 rule 10 CPC gives him different options. He may make it to the

court, which has passed the decree, or to the court where the decree stands transferred for execution. Where it has been made before the court

passing the decree, it need not be made before transferee executing court. Therefore, a transferee executing court can't reject proceedings on that

ground. Viewed thus, it is not difficult to hold that since appellants had made the requisite application before this court, they were not required to

file any further application before the executing court and rejection of proceedings on this count was not justified.

It is also evident from the terms of order impugned that the decree had not been satisfied as some amount still remained to be paid to the

appellantsdecree holders. If that position transpires from record, decree could not be held to have been satisfied.

In the circumstances, I deem it proper to require learned District Judge, Jammu to have a fresh look at the matter and to find out from record if the

decree stands wholly or partially satisfied. In the later case, he shall proceed with the execution of the decree in accordance with law. This appeal

is allowed to the extent indicated. Record be returned to the court concerned.