

**(2024) 07 OHC CK 0072**

**In the Orissa High Court**

**Case No : Civil Revision Petition No.37 Of 2023**

D.K. Enterprisers

APPELLANT

Vs

Jyoti Sanjay Agrawal

RESPONDENT

**Date of Decision : 18-07-2024**

**Acts Referred:**

Code of Civil Procedure, 1908 — Section 39, 47, 115, Order 9 Rule 13, Order 11 Rule 14, Order 17 Rule 3, Order 21 Rule 2, Order 21 Rule 11, Order 21 Rule 22

**Citation : (2024) 07 OHC CK 0072**

**Hon'ble Judges : Murahari Sri Raman, J**

**Bench : Single Bench**

**Advocate : Amit Prasad Bose, D.J. Sahu, S. Swain,**

**Final Decision : Dismissed**

## **Judgement**

Murahari Sri Raman, J

1. Assailing the Order dated 10.08.2022 passed by the learned Civil Judge, (Senior Division), Bhubaneswar in I.A. No.01 of 2018 (arising out of Execution Case No.40 of 2016), the petitioner approached this Court by way of filing this Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908.

2. It is unfurled from the pleadings and documents available on record that Special Civil Suit No.76 of 2014 was filed against the D.K. Enterprisers represented by its partners and same was decreed in favpur of the opposite party-Decree Holder (DHr). After registration of the Execution Case, being M.A.N.R.J.E Case No.34 of 2015, it was transferred from 3rd Jt. Civil Judge, Senior Division, Nagpur for execution of the decree.

3. The petitioner has filed an Interlocutory Application being I.A. No.01 of 2018 before the learned Civil Judge, (Senior Division), Bhubaneswar under Section 47 of the Code of Civil Procedure, 1908 ("CPC", for brevity) challenging the Execution Proceeding on the ground that notice was served on neither D.K. Enterprisers nor Sunita Agarwal or Ramavatar Sharma by the trial Court in

connection with the Special Civil Suit No.76 of 2014. It was pleaded that the JDr after getting the information about the ex parte decree in the above noted suit contemplated steps for setting aside such ex parte judgement. It is alleged that the execution petition being completely silent about the proposed attachment of the property allegedly belonging to the JDr, the judgement and decree passed by the trial court was not enforceable.

3.1. Objecting to such pleading, the opposite party-DHr refuted the contention that no notice was served on the parties arrayed in the Special Civil Suit. The ground of attack against the judgment and decree could be raised at appropriate forum and vague allegation of fraud has been made by the petitioner-JDr. Any such irregularity should have been raised in the Special Civil Suit during the trial, but not by way of interlocutory application in the execution proceeding being Execution Case No.40 of 2016. It is, therefore, submitted by the DHr that the decree is neither a nullity nor unenforceable in the eye of law.

3.2. The opposite party-DHr claimed that he is entitled to recover the entire decretal amount of Rs.25,96,822/-with interest till the date of filing of the execution petition. Therefore, it is stated that the interlocutory application filed at the behest of the petitioner-J Dr under Section 47, CPC was liable to be rejected.

4. The learned Executing Court at Bhubaneswar having considered the averments in the Interlocutory Application and objection thereto has come to decide the enforceability of decree, which was sought to be executed by the Court of the learned 3rd Jt. Civil Judge, Senior Division, Nagpur by way of transfer. Having taking into consideration, the relevant provisions and case laws, the Executing Court, i.e., the learned Civil Judge, (Senior Division), Bhubaneswar came to hold that,

"In view of such settled principle of law so also the statutory provision itself vide Section 39 of CPC after a careful appreciation of the materials on record, it is found out that there is no defect at all in transfer of the execution by the Court of 3rd Jt. Civil Judge, Senior Division, Nagpur (Maharashtra) to this Court directly. Accordingly, the plea of petitioner/J.Dr regarding to non-observation of the procedure to be followed is found to be without any basis.

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There were every opportunities for the defendants under Order 9, Rule 13 of CPC to set aside the ex parte decree. But instead of availing such recourses they have filed present petition under Section 47 of CPC in the execution proceeding.

\*\*\* But in an interim application under Section 47 of the CPC such prayers are not to be entertained where there are specific forum for redressal of the grievance of the aggrieved parties. As such, it is being concluded that the petitioner/Judgment Debtor has not succeeded in proving the judgment and decree passed in Special Civil Suit No.76 of 2014 as bad in the eye of law or not

enforceable and accordingly the interim application is found to be not maintainable.”

5. Perusal of the record, it appears that this Court vide Order dated 02.11.2023, issued notice to the opposite party in I.A. No.53 of 2023, filed in the present proceeding by the petitioner for condonation of delay of 346 days in filing the Civil Revision Petition. On 11.07.2024, when the matter was taken up, the office note reflected that on account of insufficient address the notice on the petition for condonation of delay issued to opposite party has been received back. Therefore, none appeared for the opposite party on the said date to participate in the proceeding before this Court.

5.1. However, Mr. Amit Prasad Bose, learned counsel for the petitioner instead of taking fresh step in the matter for service of notice in the Civil Revision Petition, very fairly submitted that the suit decreed in favour of the opposite party by the learned 3rd Jt. Civil Judge, Senior Division, Nagpur is executable by the learned Civil Judge (Senior Division), Bhubaneswar.

6. The question posed in the present case whether decree passed by 3rd Jt. Civil Judge, Senior Division, Nagpur is executable by the learned Civil Judge (Senior Division), Bhubaneswar in respect of property situated within his jurisdiction?

7. Sri Amit Prasad Bose, learned counsel for the petitioner has brought to the notice of this Court the decision rendered in the case of Rajendra Prasad Bose Vrs. Late J.P. Bose, represented by his legal representatives Monimala Bose and 3 others, 1992 (II) OLR 22, in which the question of jurisdiction of the Executing Court where the property was situated arose. The following was the observation:

“2. A preliminary decree for partition of property located in the districts of Cuttack, Puri and Balasore was passed on 19.02.1955 by the Subordinate Judge, Cuttack, in Title Suit No. 64 of 1949. Pursuant to a partial final decree passed on 27.08.1963 in respect of the residential houses at Cuttack and Puri possession was taken in Execution Case No.10 of 1963. Another partial final decree for mesne profits was passed on 11.07.1973 and in Execution Case No. 80 of 1984 properties located in the districts of Cuttack, Puri and Balasore were attached. Another partial final decree was passed on 28.07.1981 in respect of the remaining properties situate in the districts of Cuttack and Balasore. Execution Case No.101 of 1986 was dropped as the properties were situate at Balasore. Execution Case No.52 of 1987 was filed on 14.05.1987 and the impugned order dropping the execution case as not maintainable and directing the decree-holder to take certificate of non-satisfaction of the decree to the Court of Subordinate Judge, Balasore, where the property is situate, for execution of the decree was passed. Aggrieved by the said order, the decree-holder has filed this revision.”

7.1. After taking note of divergent views expressed by different Courts, this Court has made the following observation:

“8. Part I of the Code of Civil Procedure deals with place of suing. Section 16

provides that suits for recovery of immovable property, for partition of immovable property, for foreclosure, sale or redemption, for determination of any other right to or interest in immovable property for compensation for wrong to immovable property and for recovery of movable property actually under distraint or attachment shall be instituted in the Court within the local limits of whose jurisdiction the property is situate. Provided that suit to obtain relief respecting, or compensation for wrong to, immovable property, held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain. Section 17 provides that suits may be instituted in any Court within the local limits of which any property is situate. Section 18 provides that where there is uncertainty as to within the local limits of the jurisdiction of which two or more Courts any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, may entertain and dispose of the suit. Section 19 provides for jurisdiction in suits for compensation for wrong to person or movables and Section 20 deals with residuary cases providing that such suits may be instituted in a Court within the local limits of whose jurisdiction the defendants each of the defendants, actually and voluntarily resides, or carries on business, or personally works for gain, etc., or the cause of action, wholly or in part, arises. The provisions contained in Part II of the Code deal with execution of decree. The relevant sections for the present purpose are Sections 37, 38 and 39, which reads as under:

‘37. Definition of Court which passed a decree.—

The expression ‘Court which passed a decree’, or words to that effect, shall in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,

(a) Where the decree to be executed has been passed in the exercise of appellate Jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have Jurisdiction to try such suit.

EXPLANATION.—

The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the Jurisdiction of that Court to the jurisdiction of any other Court; but in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the

decree it would have jurisdiction to try the said suit.

38. Court by which decree may be executed.—

A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

39. Transfer of decree.—

(1) The Court which passed a decree may, on the application of the decree holder, send it for execution to another Court of competent jurisdiction,—

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the Jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court,

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

(3) For the purposes of this section a Court shall be deemed to be a Court of competent jurisdiction i.e. at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.'

9. The explanation to Section 37 was inserted with a view to setting at rest the doubt created by conflict of decisions as to whether the Court of the first instance ceases to have jurisdiction to execute a decree on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree an area has been transferred from the jurisdiction of that Court to the jurisdiction of another Court and whether that Court to which the subject-matter has been transferred, could on its own authority, that is to say, without any formal order of transfer by the Court which passed the decree, execute the decree. Section 38 contains the general provision of law. Section 39 lays down the condition for transfer of a decree to another competent Court for execution. Section 39 is an enabling provision and is not in derogation of the provisions contained in Section 38. It does not curtail the ambit and scope of the general principle. It permits transfer of a decree in the contingencies stated in Clauses, (a), (b), (c) and (d). Section 39 contains principle of expediency for the convenience of the Court executing a decree and parties— the decree-holder, the judgment-debtor and even third parties who may lay claim to the property in

respect of which execution is sought. The legislature deliberately used the expression 'may' both in sub-sections (1) and (2) which should not be construed as 'shall' or 'must' casting an obligation on Court to transfer. The provision is directory in nature and not mandatory. It is not incumbent on the Court which passed the decree to send it for execution to another Court because it has ceased to possess or does not possess territorial jurisdiction either over the person or over the property of the judgment debtor. It was held by the Full Bench of the Rajasthan High Court in Tarachand's case (supra) [Tarachand Vrs. Misrimal, AIR 1970 Rajasthan 53], the word 'may' cannot be construed as 'shall' or 'must', and it was also observed:

'Section 39 has been enacted for the purpose that it will be more convenient for a Court which passed a decree to get it executed by a Court within local limits of whose jurisdiction the person resides or the property is situate in cases mentioned in Clauses (a) to (c), but it does not debar a court which passed a decree itself to execute if the circumstances of the case so warrant or it has the means to do so.'

10. I do not agree with the contrary view "the word 'may' used, in Section 39 does not mean that it is in the discretion of the Court which passed the decree either to execute the decree itself or to send the application for execution to another Court where the property against which execution is sought is situated outside the Jurisdiction of the Court which passed the decree" taken in Hari Das Basu Vrs. National Insurance Company Ltd., AIR 1932 Calcutta 213. I would with respect follow the view taken in Tarachand's case (supra) for if 'may' is construed as 'shall' or 'must', then the impact and scope of Section 30 would stand curtailed by Section 39. No doubt, Section 39 vests discretion in the Court in the matter of transfer of a decree for execution to another competent Court, but the discretion so vested has to be judiciously exercised having regard to all facts and circumstances, namely, conveniences of the Court and of the parties, expediency, the difficulties that would be faced by the Court and the parties, etc.\*\*\*"

7.2. This Court in the case of Rajendra Prasad Bose (supra) held that simultaneous execution decree at different places is permissible under the Code of Civil Procedure unless the relief sought in the execution application are not the same or the identical. It has been observed as follows:

"12. The next contention of the counsel for the petitioner that simultaneous execution in Courts at Cuttack and Balasore is impermissible, is untenable, it has been held by a Full Bench of the Patna High Court in Radheshyam Vrs. Devendra, AIR 1952 Patna 213, that there can be simultaneous execution of a decree. The same view has been taken by a Full Bench of the Punjab High Court in Mehar Singh's case (supra). It is well-established that it is open to the decree holder to try for execution of his decree simultaneously in various Courts provided the relief claimed is not identical. The same view has been taken by a Full Bench of the Mysore High Court in S. Sundara Rao Vrs. B. Appaih, AIR 1954 Mys. 1 (FB) and a Division Bench of the Allahabad High Court in Bhagwan Das Vrs. Gomti

Bai, AIR 1962 Allahabad 619. In Premalata Agarwal Vrs. Lakshman Prasad Gupta and Ors., AIR 1970 Supreme Court 1525, it has been stated:

'Simultaneous execution proceedings in more places than one can be allowed in exceptional cases by imposing proper terms so as to avoid hardship to the judgment-debtors.'

I am, therefore, of the view that simultaneous execution of decree is permissible under the Code unless the reliefs sought in the execution application are not the same or identical. I respectfully differ from the view taken by the Calcutta High Court in Kusum Karmini Devi Vrs. Sailesh Chandra Chakravarty and Ors., AIR 1935 Calcutta 118, that there is no provision in the Civil Procedure Code under which a decree-holder who has obtained a decree can divide a decree into several parts and execute them piecemeal in different Courts or in the same Court. I would rather say that there is no provision prohibiting simultaneous execution."

7.3. In Rajendra Prasad Bose (supra) with respect to requirement of filing application for exercise of jurisdiction under Section 39 of the CPC, repelling the contention that in the absence of an application by the DHR the Court cannot transfer the decree for execution to another subordinate Court, this Court made the following observation:

"I may simply observe that the Court has also been vested with suo motu jurisdiction under the sub-section (2), which reads as under:

'39(2). The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent Jurisdiction.'

Convenience of the decree-holder alone is not the sole consideration, for transfer. That may be one of the considerations. Convenience and difficulties of the Court executing the decree, the hardships that may be faced by the parties' and the third parties also in the course of execution are also legitimate factors. That is why, suo motu jurisdiction has been vested in the Court to judiciously exercise its discretion and direct transfer having regard to the facts and circumstances of the case."

7.4. It has been held in the case of Merla Ramanna Vrs. Nallaparaju, AIR 1956 SC 87 = (1955) 2 SCR 938, the Court which actually passed the decree does not lose its jurisdiction to execute it, by reason of the subject-matter thereof being transferred subsequently to the jurisdiction of another Court.

8. The Hon'ble Supreme Court of India has observed the difficulty faced in execution of decree in Messer Griesheim GMBH (now called Air Liquide Deutschland GMBH) Vrs. Goyal MG Gases Pvt. Ltd., 2022 LiveLaw (SC) 95 as follows:

"It is an old saying that the difficulties of the litigant in India begin when he has obtained a decree. The evil was noticed as far back in 1872 by the Privy Council

in relation to the difficulties faced by the decree holder in execution of the decree (MIA p.612) [General Manager of the Raj Durbhunga Vrs. Coomar Ramaput Sing, (1871-72) 14 MIA 605 : 20 ER 912]. After more than a century, there has been no improvement and still the decree holder faces the same problem what was being faced in the past. A litigant coming to Court seeking relief is not interested in receiving a paper decree when he succeeds in establishing his case. What he primarily wants from the Court of Justice is the relief and if it is a money decree, he wants that money what he is entitled for in terms of the decree, must be satisfied by the judgment debtor at the earliest possible without fail keeping in view the reasonable restrictions/rights which are available to the judgment debtor under the provisions of the statute or the Code, as the case may be."

8.1. The Hon'ble Supreme Court made following further observations in the context of resistance to deliver possession to the DHr in the case of Jini Dhanrajgir Vrs. Shibu Mathew, (2023) 5 SCR 551:

"2. More than a century and a half back, the Privy Council (speaking through the Right Hon. Sir James Colville) in The General Manager of The Raj Durbhunga, Under the Court of Wards Vrs. Maharajah Coomar Ramaput Singh, (1871-72) 14 Moo IA 605 lamented that the difficulties of litigants in India indeed begin when they have obtained a decree. A reference to the above observation is also found in the decision of the Oudh Judicial Commissioner's Court in Kuer Jang Bahadur Vrs. Bank of Upper India Ltd., Lucknow, AIR 1925 Oudh 448. It was ruled there that the Courts had to be careful to ensure that the process of the Court and the laws of procedure were not abused by judgment-debtors in such a way as to make the courts of law instrumental in defrauding creditors, who had obtained decrees in accordance with their rights.

3. Notwithstanding the enormous lapse of time, we are left awestruck at the observation of the Privy Council which seems to have proved prophetic. The observation still holds true in present times and this case is no different from cases of decree-holders' woes commencing while they are in pursuit of enforcing valid and binding decrees passed by civil courts of competent jurisdiction. The situation is indeed disquieting, viewed from the perspective of the decree-holders, but the law, as it stands, has to be given effect whether the court likes the result or not. In Martin Burn Ltd. Vrs. Corporation of Calcutta, AIR 1966 SC 529, this Court held that a court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

8.2. In the case of Rahul S Shah Vrs. Jitendra Kumar Gandhi, (2021) 4 SCR 279, following is the observation of the Hon'ble Supreme Court in connection with delay in the execution proceedings and abuse of process of execution court:

"23. This court has repeatedly observed that remedies provided for preventing injustice are actually being misused to cause injustice, by preventing a timely implementation of orders and execution of decrees. This was discussed even in the year 1872 by the Privy Counsel in The General Manager of the Raja

Durbhunga Vrs. Maharaja Coomar Ramaput Sing, (1871-72) 14 Moore's I.A. 605 which observed that the actual difficulties of a litigant in India begin when he has obtained a decree. This Court made a similar observation in Shub Karan Bubna @ Shub Karan Prasad Bubna Vrs. Sita Saran Bubna, (2009) 9 SCC 689, wherein it recommended that the Law Commission and the Parliament should bestow their attention to provisions that enable frustrating successful execution. The Court opined that the Law Commission or the Parliament must give effect to appropriate recommendations to ensure such amendments in the Code of Civil Procedure, 1908, governing the adjudication of a suit, so as to ensure that the process of adjudication of a suit be continuous from the stage of initiation to the stage of securing relief after execution proceedings. The execution proceedings which are supposed to be handmaid of justice and sub-serve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice.

24. In respect of execution of a decree, Section 47 of CPC contemplates adjudication of limited nature of issues relating to execution, i.e., discharge or satisfaction of the decree and is aligned with the consequential provisions of Order XXI. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind.

Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree.

Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.

25. These provisions contemplate that for execution of decrees, Executing Court must not go beyond the decree. However, there is steady rise of proceedings akin to a re-trial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the Executing Court and the decree holder is deprived of the fruits of the litigation and the judgment debtor, in abuse of process of law, is allowed to benefit from the subject matter which he is otherwise not entitled to.

26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the Courts first issue show cause notice asking the judgment debtor as to why the decree should not be executed as is given under Order XXI Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgement debtor sometimes misuses the provisions of Order XXI Rule 2 and Order XXI Rule 11 to set up an oral plea, which invariably leaves no option with the Court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.

27. This is anti-thesis to the scheme of Civil Procedure Code, which stipulates that in civil suit, all questions and issues that may arise, must be decided in one

and the same trial. Order I and Order II which relate to Parties to Suits and Frame of Suits with the object of avoiding multiplicity of proceedings, provides for joinder of parties and joinder of cause of action so that common questions of law and facts could be decided at one go.

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40. In *Ghan Shyam Das Gupta Vrs. Anant Kumar Sinha*, AIR 1991 SC 2251, this Court had observed that the provisions of the Code as regards execution are of superior judicial quality than what is generally available under the other statutes and the Judge, being entrusted exclusively with administration of justice, is expected to do better. With pragmatic approach and judicial interpretations, the Court must not allow the judgment debtor or any person instigated or raising frivolous claim to delay the execution of the decree. For example, in suits relating to money claim, the Court, may on the application of the plaintiff or on its own motion using the inherent powers under Section 151, under the circumstances, direct the defendant to provide security before further progress of the suit. The consequences of non-compliance of any of these directions may be found in Order XVII Rule 3.

41. Having regard to the above background, wherein there is urgent need to reduce delays in the execution proceedings we deem it appropriate to issue few directions to do complete justice. These directions are in exercise of our jurisdiction under Article 142 read with Article 141 and Article 144 of the Constitution of India in larger public interest to subserve the process of justice so as to bring to an end the unnecessary ordeal of litigation faced by parties awaiting fruits of decree and in larger perspective affecting the faith of the litigants in the process of law.

42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned directions:

1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third
2. party interest and further exercise the power under Order XI Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.
3. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.
4. After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

5. Under Order XL Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.
6. The Court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.
7. In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.
8. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.
9. The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.
10. The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.
11. The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A.
12. Under section 60 of CPC the term "...in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.
13. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.
14. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution

of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.

15. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the Court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts.”

8.3. Bearing in mind such effect and impact of execution of decree, from a plain reading of Section 47 of CPC, it is amply clear that at the stage of execution, the powers of the executing court are very limited. Section 47 of the CPC contemplates that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of decree, have got to be determined by the court executing the decree and not by a separate suit. The scope of Section 47 is that it empowers the court executing the decree to determine all questions arising between the parties to the suit or their representatives relating to the execution, discharge or satisfaction of the decree and not the questions which ought to have been raised during trial, at the time of filing written statement, framing of issues or arguments. Section 47 of the CPC has been enacted for the beneficial object of checking needless litigation and eliminating unnecessary delay. The Supreme Court in *Merla Ramanna Vrs. Nallaparaju*, AIR 1956 SC 87 = (1955) 2 SCR 938 has observed that for Section 47 to apply the following conditions must be satisfied:

(i) The questions must be one arising between the parties to the suit in which the decree is passed, or their representatives; and

(ii) It must relate to the execution, discharge or satisfaction of the decree.

Thus, the condition for the applicability of Section 47 is that the question must relate to execution, discharge or satisfaction of the decree. Any question, which hinders or in any manner affects execution of the decree, are covered by Section 47.

8.4. In *State of Punjab Vrs. Mohinder Singh Randhawa*, AIR 1992 SC 473 = (1993) Supp.(1) SCC 49, it has been laid down that in the absence of any challenge to the appellate decree in further proceedings, in execution this is not open to challenge.

8.5. There is no quarrel with the general proposition of law and indeed, it is unexceptionable that a court executing a decree cannot go behind the decree; it must take the decree according to its tenor; has no jurisdiction to widen its scope and is required to execute the decree as made. [*Century Textiles Industries Ltd. Vrs. Deepak Jain*, (2009) 5 SCC 634 = (2009) 4 SCR 750].

8.6. Said principle has been reiterated in *Kanwar Singh Saini Vrs. High Court, Delhi*, (2011) 15 Addl. SCR 972 = (2012) 4 SCC 307 and it has been held that it

is a settled legal proposition that the executing court does not have the power to go behind the decree. Thus, in absence of any challenge to the decree, no objection can be raised in execution. When a statute gives a right and provides a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act. When an Act creates a right or obligation and enforces the performance thereof in a specified manner, that performance cannot be enforced in any other manner. Thus for enforcement of a right/obligation under a statute, the only remedy available to the person aggrieved is to get adjudication of rights under the said Act.

9. Such being the position, it is now examined whether the learned Executing Court has considered the petition under Section 47 of the CPC in true perspective. Said Section 47 of the CPC stands thus:

“47. Questions to be determined by the Court executing decree.—

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) [\*\*\*]

[Sub-section (2) has been omitted by Act 104 of 1976, with effect from 01.02.1977]

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation I.—

For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.—

(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.”

9.1. In the present case, the validity of the ex parte decree being questioned on the ground of fraud, the petitioner is not remediless to raise such issue before the competent Court. Unless the decree is set aside the Executing Court cannot go beyond the decree.

9.2. In *Vasudev Dhanjibhai Modi Vrs. Rajabhai Abdul Rehman*, (1971) 1 SCR 66, a decree for possession was passed by the Court of Small Causes which was confirmed in appeal as well as in revision. In execution proceedings, it was contended that the Small Causes Court had no jurisdiction to pass the decree and, hence, it was a nullity. Rejecting the contention, the Court stated:

"The High Court was of the view that where there is lack of inherent jurisdiction in the Court which passed the decree, the executing Court must refuse to execute it on the ground that the decree is a nullity. But, in our judgment, for the purpose of determining whether the Court which passed the decree had jurisdiction to try the suit, it is necessary to determine facts on the decision of which the question depends, and the objection does not appear on the face of the record, the executing Court cannot enter upon and enquiry into those facts."

9.3. Therefore, taking cue from the above judgment, it can safely be said that the plea of fraud being played or otherwise, as contended by the petitioner, cannot be decided in an application under Section 47 of the CPC. In the instant case, it seems there was no material available with the petitioner to prove that the decree was obtained by the opposite party by practising fraud in the original suit. Since no step has been taken by the petitioner to set aside the ex parte decree, there was no occasion for the learned Civil Judge (Senior Division), Bhubaneswar to go beyond the decree and the Executing Court has rightly dismissed the Interlocutory Application filed under Section 47 of the CPC on contest as against the opposite party.

9.4. The petitioner admittedly did not challenge the judgment and decree despite having knowledge about the same and wished to stall the execution proceeding. The Civil Judge (Senior Division), Bhubaneswar cannot undo the decree passed by the 3rd Jt. Civil Judge, Senior Division, Nagpur at the stage of execution.

10. Having found no infirmity in the decision of the learned Civil Judge (Senior Division), Bhubaneswar in rejecting the Interlocutory Application, i.e., 01 of 2018 (arising out of Execution Case No.40 of 2016 connected to Special Civil Suit No.76 of 2014, this Court is not inclined to condone the inordinate delay of 346 days (as pointed out by the Registry of this Court) in preferring the civil revision petition.

10.1. In order to appreciate the reason for condonation of delay the contents petition being I.A. No.53 of 2023 require to be taken note of, which are extracted hereunder:

"1. That, petitioner filed this civil revision in this Hon'ble Court and there is a delay of 446 days in filing the Civil Revision due to document misplaced by the previous advocate hired by the present petitioner. The present civil revision is filed on delay after recollecting certified copy of those documents.

2. That the petitioner has a strong prima facie case and has every chance of success in this case. The averments made in the main application be read and

treated as part and parcel of this petition for clarity and brevity.

3. That the delay in filing the Civil Revision is neither intentional wilful but due to the good and sufficient reason shown herein above. Interest of justice demand that the present petition may be allowed and delay in filing civil revision may be condoned so that the matter can be adjudicated upon its merit.

4. That unless delay of 446 days is condoned to file civil revision, the petitioner will be highly prejudiced.”

10.2. In absence of material particulars with respect to time consumed for obtaining documents as contended by the petitioner, the petition does not reveal any good ground to consider condonation of inordinate delay in approaching this Court. No sufficient and reasonable cause being shown in the petition for condonation of delay filed under Section 5 of the Limitation Act, 1963, I.A. No.53 of 2023, is dismissed.

11. In the result, this Court is not persuaded to show any indulgence in the matter and interfere with the Order dated 10.08.2022 passed by the learned Civil Judge (Senior Division), Bhubaneswar in I.A. No.01 of 2018 (arising out of Execution Case No.40 of 2016 in connection with the Special Civil Suit No.76 of 2014). Accordingly, the Civil Revision Petition as well as the Interlocutory Application stands dismissed, but in the circumstances, there shall be no order as to costs.

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