
(1963) 07 GUJ CK 0003
In the Gujarat High Court

Jashwantlal Manilal Shah

APPELLANT

Vs

Bai Kamala Deceased By Her Heirs

RESPONDENT

Date of Decision : 31-07-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 10, Order 21 Rule 10, Order 21 Rule 11, Order 21 Rule 22, Order 21 Rule 23

Citation : (1963) 4 GLR 1017

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

V.B. Raju, J.—This appeal arises out of the dismissal for default of an execution application presented by the appellant. The order

dismissing the application for execution for default of the appearance of the decree holder must be set aside. There is no provision for dismissing

such an application for default. Order 21 Rules 10 to 23 C.P. Code deal with application for execution. Order 21 Rules 24 and 25 deal with

process for execution. Order 21 Rules 26 to 29 deal with stay of execution. The following rules of Order 21 C.P.Code deal with the mode of

execution. Rule 11 of Order 21 C.P.Code deals with oral and written applications by the decree-holder for execution of the decree passed. It is

not necessary to refer to Order 21 Rules 12 13 14 15 and 16 C.P.Code as they deal with special subjects. Order 21 Rule 17 deals with the

procedure on receiving application for execution of decree and reads as follows:

(1) On receiving an application for the execution of a decree as provided by Rule 11 Sub-rule (2) the Court shall ascertain whether such of the

requirements of Rules 11 to 14 as may be applicable to the case have been complied with; and if they have not been complied with the Court may

reject the application or may allow the defect to be remedied then and there or within a time to be fixed by it.

(2) Where an application is amended under the provisions of Sub-rule (1) it shall be deemed to have been an application in accordance with law

and presented on the date when it was first presented.

(3) Every amendment made under this rule shall be signed or initialed by the Judge.

(4) When the application is admitted the Court shall enter in the proper register a note of the application and the date on which it was made and

shall subject to the provisions hereinafter contained order execution of the decree according to the nature of the application:

2. It is therefore clear from Sub-rule (4) of Rule 17 that an application for execution which has been admitted must be followed by an order for

execution of the decree subject to the provisions contained in Order 21 Rules 18 19 20 21 22 and 23 C.P.Code. Rules 18 19 20 and 21 are not

relevant for the purpose of this matter and need not be referred to. Order 21 Rule 22 C.P. Code requires the issue of notice to the judgment

debtor to show cause against execution in certain cases and such a notice has been issued in this case. After such a notice is issued the procedure

to be followed is stated in Order 21. Rule 23 which reads as follows:

(1) Where the person to whom notice is issued under the last preceding rule does not appear or does not show cause to the satisfaction of the

Court why the decree should not be executed the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree the Court shall consider such objection and make such order as it thinks

fit.

3. It is for the person to whom notice is issued to show cause to the satisfaction of the Court why the decree should not be executed. At the time

of showing such a cause it is not necessary that the decree-holder should be present. The Court must decide whether the person to whom notice

has been issued under Order 21 Rule 22 C.P.Code has shown cause to the satisfaction of the Court or not. If it decides in the affirmative then the

execution application shall have to be dismissed. If the Court gives a finding in the negative the Court must order the decree to be executed. It is of

course stated in Sub-rule (2) of Rule 23 that when a person offers any objection to the execution of the decree the Court shall consider such

objection and make such order as it thinks fit. The expression make such order as it thinks fit has reference to the objection raised by the person to

whom notice has been issued. If the person to whom notice has been issued offers any objection the Court should consider such objection and

pass an order with reference to that objection either upholding the objection or negating the objection or upholding the objection in part. In all

these cases the Court may make such order as it thinks fit with reference to the objection. If the Court considers the objection and does not find

any merit in the objection the only course left to the Court is to order the decree to be executed. Order 21 Rule 23 C.P.Code does not require the

presence of The decree-holder. He may be present but it is not obligatory that he should be present. Merely because he is absent the Court cannot

dismiss the execution application on the ground of default on his appearance. There is therefore no provision for passing an order as is passed in

this case.

4. The appeal is therefore allowed and the Court is directed to pass an order under Order 21 Rule 23 C.P.Code after restoring the Darkhast. No

order as to costs.