

(2011) 12 BOM CK 0053
In the Bombay High Court
Case No : W. P. No. 473 of 2009

Pandurang Sazo Gaonkar

APPELLANT

Vs

Adolfo Gomes and others

RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, Order 21 Rule 1(2), Order 21 Rule 1(3), Order 21 Rule 2, Order 21 Rule 2(1)
Limitation Act, 1963 — Article 125

Citation : (2012) 4 ALLMR 662 : (2012) 3 MhLj 265

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : S.D. Lotlikar, with Ms. Sudha Pai Kir, for the Appellant; J.E. Coelho Pereira, with S. Karpe, for the Respondent

Judgement

F.M. Reis, J.—Heard Shri S. D. Lotlikar, learned Senior Counsel appearing for the Petitioner and Shri J. E. Coelho Pereira, learned Senior Counsel appearing for the Respondents. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondents, waive service.

2. The above Petition challenges the Order dated 12-3-2009 passed by the learned Civil Judge, Senior Division, in Execution Application No. 5/1999/B, whereby the execution proceedings initiated by the Petitioner came to be dismissed.

3. Briefly, the facts of the case are that the Petitioner filed a Civil Suit bearing No. 75/1976/B, in the Court of the learned Civil Judge, Senior Division at Panaji, for declaration and permanent injunction in respect of an immovable property consisting of two pieces of land adjoining one another known as "Horta De Seminario Chora" or "Quinta De S. Januario Ou Jeronimo", registered in the Land Registration Office of Ilhas, under No. 276 and 407 and enrolled in the Taluka Revenue Office under Nos. 2510 and 2216 situated at Chora Village of Ilhas Taluka, admeasuring about 39525 square metres, which is surveyed in the

Record of Rights under Survey No. 172, sub-divisions 1 and 2 of Chorao Village. The said suit was filed against the Judgment Debtors who were the owners of the said property. During the pendency of the said suit, the parties had arrived at a settlement and consequently an agreement was executed on 20-8-1982 by virtue of which said Judgment Debtor Adolfo Gomes for self and on behalf of the other co-owners of the suit property agreed to sell the suit property for a total consideration of Rs. 1,25,000/-. After the execution of the said Agreement, the Petitioner and the said Judgment Debtor acting on behalf of himself and the other co-owners filed a pursis setting out the fact that the said Judgment Debtor/ Adolfo Gomes and others had agreed to sell the suit property to the Petitioner for a total consideration of Rs. 1,25,000/-. The consent terms as well as the Agreement were produced which disclosed that sum of Rs. 20,000/- was paid by the Petitioners to the said Judgment Debtor by way of earnest money and part payment of the purchase price and the remaining sum of Rs. 1,05,000/- was agreed to be paid in five equal installments on 20th day of August of the years 1983, 1984, 1985, 1986 and 1987 which installment was of the sum of Rs. 21,000/- each. It was further stipulated that the Petitioner was also liable to pay along with each of the installment, interest at the rate of 10 percent per annum accrued on the balance amount due on the relevant date. According to the Petitioner, the said sum of Rs. 1,05,000/- including the interest of the last installment of Rs. 23,100/- was paid on 1-8-1987. After receiving the said last and final installment, the Judgment Debtor delayed in the execution of the sale deed on one pretext or the other and, consequently, the Petitioner on 4-1-1999 filed the application for execution of the consent decree under Order XXI, Rule 34 of the Civil Procedure Code.

4. The Respondents/Judgment Debtors filed their reply to the execution proceedings opposing the prayer for executing the consent decree. It was the case of the Respondents that the Decree Holder had failed to pay the sale price in accordance with the consent terms. By an Order dated 31-8-2001, the Executing Court dismissed the Execution Application holding that the compromise decree did not contemplate execution of any sale deed in favour of the Decree Holder.

5. Being aggrieved by the said Order passed by the Executing Court, the Petitioner preferred a revision challenging the said Order before this Court being Civil Revision Application No. 55/2002 which was allowed and the Order of the Executing Court dismissing the Execution Application came to be set aside. This Court remanded the matter to the Executing Court with a direction to hold an inquiry to ascertain the correctness of the objections raised by the Respondents regarding the non-performance of the consent terms by the Decree Holder. Pursuant to the said directions by this Court, the Executing Court conducted an inquiry wherein both the parties led evidence and by the impugned Order dated 12-3-2009, the learned Executing Court dismissed the Execution Application. Aggrieved by the said Order, the Petitioner has preferred the present Petition.

6. Shri S.D. Lotlikar, learned Senior Counsel appearing for the Petitioner has assailed the impugned Order being totally erroneous as according to him, the total amount payable by the Petitioner in terms of the consent terms has been duly paid by the Petitioner to the Respondents. The learned Senior Counsel has pointed out that the payment effected by the Petitioner have been admitted in writing by the Respondent and, as such, the learned Judge has wrongly failed to accept the said payment whilst passing the impugned Order. Learned Senior Counsel has taken me through the provisions of Order XXI, Rule 1 and 2 of the CPC and pointed out that considering that the payments effected by the Decree Holders are admitted in writing by the Judgment Debtor, the question of certifying such payments under the said provisions of law does not arise at all. Learned Senior Counsel has pointed out that the learned Judge has erroneously appreciated the evidence on record and has come to the conclusion that there was deficit of a sum of Rs. 186/- payable by the Respondents (sic). Learned Senior Counsel has taken me through the receipts which have been signed by the Judgment Debtor/Respondents and pointed out that as per the receipt, it clearly establishes that the amount received by the Respondents was the last installment along with interest accrued thereon. Learned Senior Counsel further pointed out that though the decree was passed in November and the first installment was payable in the month of August of the subsequent year, the Respondents (sic), whilst paying the first installment has paid the interest for a period of one year on the balance amount payable by the Petitioner. The learned Senior Counsel further pointed out that as per the accounts made by the Petitioner, in fact, the Petitioner has paid an excess sum of Rs. 10/-. Learned Senior Counsel has pointed out that the learned Judge has misappreciated the evidence on record and has come to an erroneous conclusion that the payments made by the Petitioner cannot be accepted as the same were not duly recognised/certified by the Court in accordance with the provisions of Order XXI, Rule 1 and Rule 2 of the Civil Procedure Code. Learned Senior Counsel further pointed out that it is well settled that the Decrees passed by the Courts have to be honoured and complied with and the same cannot be defeated on such mischievous and erroneous contentions as sought to be raised by the Respondents to wriggle out from the Decree for specific performance in favour of the Petitioner. The learned Senior Counsel further submits that the impugned Order passed by the learned Judge dismissing the Execution Application deserves to be quashed and set aside.

7. On the other hand, Shri J.E. Coelho Pereira, learned Senior Counsel appearing for the Respondents, has supported the impugned Order. The learned Senior Counsel has pointed out that under Order XXI, Rule 1 of the Civil Procedure Code, the procedure specifically provides the manner in which payment of money is to be made under a Decree. Learned Senior Counsel has taken me through the provisions of Order XXI, Rule 1 of the CPC and pointed out that admittedly the payments payable as per the consent Decree were not deposited in the Court but paid out of Court and, as such, according to learned Senior Counsel such payments have to meet the requirements as contemplated under Order XXI, Rule

2 of the Civil Procedure Code. The learned Senior Counsel has pointed out that unless and until the payments effected out of Court have been certified/ recognized by the Executing Court in accordance with the provisions under Order XXI, Rule 2 of the Civil Procedure Code, the question of accepting such payments in compliance with the terms of the consent Decree does not arise at all. Learned Senior Counsel has laid lot of emphasis to the provisions of Order XXI sub-Rule (3) of Rule 2 of the CPC which, according to him, contemplates that any payment or adjustments which has not been certified or recorded as aforesaid shall not be recognised by any Court executing the Decree. Learned Senior Counsel further pointed out that as such payment has not been recognised in accordance with the said provisions of law the question of accepting such payments by the Executing Court does not arise at all. The learned Senior Counsel further relied upon Article 125 of the Indian Limitation Act of 1963 and pointed out that considering that the payments have not been certified within the period of thirty days from the date of such payment, the question of recognizing such payment within the provisions of Order XXI, Rule 2 of the Civil Procedure Code, does not arise at all. Learned Senior Counsel has further relied upon the Judgment of the Apex Court reported in Sultana Begum Vs. Prem Chand Jain, , Damodaran Pillai and Others Vs. South Indian Bank Ltd., , the Judgment of the learned Single Judge of this Court reported in Manuraj Chandrakant Babar Vs. Bapusaheb Babasaheb Deshmukh, Judgment of the Apex Court reported in 1999 AIR SCW 4810 in the case of Badamo Devi and ors. vs. Sagar Sharma.

8. Upon hearing the learned Counsel and on perusal of the records, the short point for determination in the above Petition is as to whether the payment which have been admitted in writing by the Respondents, cannot be recognised as payment by the Executing Court. Before I go into the rival contentions on merits with that regard, it would be appropriate to consider the relevant provisions of Civil Procedure Code. Order XXI, Rule 1 of the CPC provides that all monies payable under the Decree shall be paid as follows:

[1. Modes of paying money under decree.-

(1) All money, payable under a decree shall be paid as follows, namely:-

(a) by deposit into the Court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or

(b) out of Court, to the decree-holder by postal money order or through a bank, or by any other mode wherein payment is evidenced in writing; or

(c) otherwise as the Court, which made the decree, directs.

(2) Where any payment is made under clause (a) or clause (c) of sub-rule (1), the judgment-debtor shall give notice thereof to the decree holder either through the Court or directly to him by registered post, acknowledgment due.

(3) Where money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule (1), the money order or payment through bank, as

the case may be, shall accurately state the following particulars, namely :-

(a) the number of the original suit;

(b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;

(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(d) the number of the execution case of the Court, where such case is pending; and

(e) the name and address of the payer,

(4) On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).

(5) On any amount paid under clause (b) of sub-rule (1), interest, if any, shall cease to run from the date of such payment:

Provided that, where the decree-holder refuses to accept the postal money order, or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be.]

9. Sub-Rule (2) and (3) of Order XXI Rule 1 of the Civil Procedure Code, inter alia, provides that where any payment is made under clause (a) or clause (c) of sub-rule 1, the Judgment Debtor shall give notice to the Decree Holder either through the Court or directly to him by registered post. In the present case, the case sought to be made out by the Respondents does not come either under clause (a) or clause (c) of sub-rule 1 of Order XXI of the Civil Procedure Code. The Petitioner seeks to make out his case within the provisions of clause (b) of Order XXI, Rule 1 of the Civil Procedure Code. Sub-rule (3) of Order XXI, Rule 1 contemplates that when money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule (1), the money order or payment through Bank as the case may be, shall be accompanied by specific documents. In the present case, it is nobody's case that any such payment was either paid by money order or Bank receipts. Hence, Order XXI, Rule 1, sub-rule (3) of the CPC also would not be applicable. In the present proceedings which have been effected by the Petitioner, is a case in which the payment is evidenced in writing. It is not in dispute that the amount to be paid as per the Consent Decree was by five specific installments of Rs. 21,000/- each payable in the month of August of each year together with interest at the rate of 10 percent per annum on the balance payment on the respective dates. The Petitioner has produced seven

receipts admittedly signed by the Respondents admitting the payments of amount in terms of the Consent Decree. The first receipt is dated 30-6-1983 whereby a sum of Rs. 20,000/- was paid and it was stipulated therein that a further sum of Rs. 1,000/- and Rs. 8,850/- was payable by the Petitioner before August, 1983 in terms of the Decree. Accordingly, the said amount was paid on 27-8-1983, the acknowledgment thereof has been duly admitted by the Respondents. Thereafter, on 20-6-1984, the Petitioners have paid the next installment of Rs. 21,000/- which was also accepted by the Respondents/Judgment Debtors. Subsequently, the interest on Rs. 8,400/- also acknowledged to have been received by the Respondents by receipt dated 5-9-1984. Another receipt for a sum of Rs. 27,300/- was received as a third installment which included a sum of Rs. 21,000/- towards the principal amount and a sum of Rs. 6,200/- towards interest. The next installment paid by the Petitioner is a sum of Rs. 25,200/- which included Rs. 21,000/- towards the principal amount and Rs. 4,200/- and Rs. 3,000/- towards the interest. The next installment in accordance with Decree paid by the Petitioner was a sum of Rs. 23,100/- which was the last installment paid on 2-8-1987. The said receipts confirming that the Respondents have received the amounts in accordance with the Consent Decree and have also accepted the interest payable in accordance with the Consent Decree on the relevant dates. It is also not in dispute that the Respondents at the time of receiving the last installment by the receipt dated 2-8-1987, did not raise any dispute with regard to the amount payable by the Petitioner in terms of the Consent Decree. Only after the execution proceedings came to be filed by the Petitioner to direct the Respondents to execute the Sale Deed in view of the fact that the amount in terms of the Consent Decree had already been paid by the Petitioner, the Respondents raised a contention that the amounts which had to be paid were not in accordance with the Consent Terms.

10. With the assistance of the learned Counsel appearing for the Petitioner and the Respondents, I ascertained the amount payable by the Petitioner as the first installment. Admittedly, the Consent Decree was passed in November, 1982. As per the Consent Decree, the Petitioner was liable to pay first installment of Rs. 21,000/- on or before August, 1983. In fact the Petitioner paid the amount much in advance i.e. on 30-6-1983 when a sum of Rs. 20,000/- was paid by the Petitioner. The Petitioner, no doubt, was liable to pay a sum of Rs. 1,000/- towards the principal amount and a sum of Rs. 8,850/- as evidenced in the receipt dated 30-6-1983. It is not in dispute that the said sum of Rs. 1,000/- and Rs. 8,850/- was duly paid by the Petitioner which was duly acknowledged by the Respondents by the receipt on 19-8-1983 as stated in the receipt dated 27-8-1983. Hence, it cannot be said that the first installment was effected belatedly. In fact, the payment of interest was in accordance with the amount as calculated by the Respondents themselves and it is not in dispute that the amount as mentioned in the receipt has been duly received by the Respondents in terms of the Consent Decree. This has also been admitted by the Respondents in the cross examination though it is now alleged that there was an error in the

calculation which was never mentioned to the Petitioner by the Respondents. The conduct of the Respondents estops them from raising such contentions.

11. The payment of the amounts by the Petitioner and the interest thereon have in fact not been disputed by the Respondents. On the basis of the overwhelming evidence as mentioned above and as recorded hereinabove, it establishes that the amount was paid in terms of the Consent Decree. The only point to be considered is whether merely because the said payments were not recognised by the Court within the provisions of Order XXI, Rule 2 of the Civil Procedure Code, the same cannot be accepted by the Executing Court. As already stated hereinabove, the payments effected by the Petitioner are evidenced in writing within the provisions of Order XXI, Rule 1 sub-rule (b) of the Civil Procedure Code. The contention of the learned Senior Counsel appearing for the Respondents is that any money payable under the Decree paid out of Court in whole or in part to the satisfaction of the Decree Holder, the Decree Holder shall certify such payments or adjustments to the Court whose duty it is to execute such Decree. Admittedly, the Decree which was being executed is a Consent Decree. The Consent Decree does not in any way contemplate that such payments were to be paid only through the Court. The Decree does not prohibit the Petitioner to pay the amounts to the Respondents directly. As such, payments by the Petitioner to the Respondents cannot be said to be contrary to the terms of the Consent Decree.

12. In the present case, there is no question of any adjustment or satisfaction of Decree as sought to be contended by the learned Senior Counsel appearing for the Respondents. The payment which have been effected by the Petitioner are in accordance with Order XXI, Rule 1 clause (b) of the CPC and the payments have been affected in accordance with the Consent Decree. It is not the case wherein the Respondents have received any smaller amount in satisfaction of the Consent Decree passed by the Court. In any event, there is no period of limitation under the provisions of the Indian Limitation Act, 1963, whereby such payments have to be satisfied within the provisions of Order XXI, Rule 2 of the Civil Procedure Code. Article 125 of the Limitation Act sought to be relied upon by the learned Counsel appearing for the Respondents, is not at all applicable to the present facts of the case. The period of limitation contemplated therein in cases in which adjustments or satisfaction of decree are to be recorded is within a period of thirty days. In the present case, after the payment of the amount by the Petitioner to the Respondents, there was no question of satisfaction of the Decree or adjustment to be recorded. As such, the reliance by the learned Senior Counsel appearing for the Respondents in Article 125 of the Limitation Act to contend that such adjustments or satisfaction has not been recorded within the period of thirty days, cannot be accepted. Article 125 of the Limitation Act, 1963 does not prescribe any period of limitation for the purpose of recognising the payments paid in accordance with the Decree. In the present case, there was clear averment in the execution application that the amounts have been paid in accordance with the Consent Decree. There was no bar even at this stage for the

Executing Court to recognise the payment if it was so required. The Division Bench of this Court in the Judgment reported in Dilipkumar Chimanlal Maniar and Others Vs. Industrial Credit and Development Syndicate Limited and Others, . has held at para 8 thus :-

8. It is true that under Order XXI, Rule 2, sub-rule (3) of the CPC it is provided that a payment or adjustment which has not been certified or recorded shall not be recognised by any Court executing the decree. However, in the present case, we find a categorical admission made on behalf of the plaintiff in the affidavit of their Advocates Managing Clerk dated 20-10-1982. This affidavit was filed for the purpose of allowing the Court Receiver to take possession and the order passed on the basis of this affidavit is clearly an order passed to facilitate the process of execution of the decree. The Executing Court was therefore, clearly informed about the payments of Rs. 4,00,000/- and Rs. 4,50,000/- made by the defendants to the plaintiff. On being so informed, it was the duty of the Court to record the adjustment under Order XXI, Rule 2 of Civil Procedure Code. This has however, not been done. In our view, such an admission made by the plaintiff before the Executing Court is tantamount to the decree holders certifying such payment to the Court. It was further the duty of the Court under Order XXI, Rule 2(1) of the CPC to Act and record the same accordingly. In such a case, the maxim "Actus Curiae Neminem Gravabit" would apply in full force. The defendants cannot be made to suffer merely because the Court has failed to record the second payment of Rs. 4,50,000/-. It is true that under Order XXI, Rule 2(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree. However, we cannot allow this procedural requirement to result in injustice and for this purpose, in order to meet ends of justice, we propose to direct the Executing Court to record the payment of Rs. 4,50,000/- admitted by the plaintiff to have been made to them, on the decree. It was contended by the Advocate for the appellants that under Article 125 of the Schedule to the Limitation Act, 1963, the application to record an adjustment or satisfaction of a decree would have to be made within 30 days of the payment being made. In our view, no such application was required to be made as once the Executing Court was intimated about the receipt of such payment by the decree-holders, it was the Court's duty to record the same and that there is no period of limitation prescribed for the Court to perform its duty. It may be mentioned here that the judgment debtor also can inform the Court regarding any payment or adjustment by making an application under Order XXI, Rule 2(2) and Clause 125 of the Schedule to the Limitation Act would apply to such an application.

Hence, once the Respondents admit the payment, it tantamounts to the Decree Holder certifying such payments to the Court. In the present case, as held herein above, the Respondents by signing the receipts have accepted the payments of the money in accordance with the Consent Terms. Apart from that, in the reply filed to the execution proceedings, the fact of the payment of the said amount has not been disputed, such admission itself would tantamount to the fact that

the Respondents have accepted the payment made by the Petitioners.

13. Dealing with the Judgments relied upon by the learned Senior Counsel appearing for the Respondents, I find that the Judgments are not applicable to the facts of the present case. In the Judgment of the learned Single Judge of this Court in the case of Manuraj Chandrakant Babar vs. Bapusaheb Babasaheb Deshmukh (supra), it was a case wherein it was the contention of the Judgment Debtor that the Decree holder had agreed to receive a lesser amount in satisfaction of the Decree. This is not the case in the present proceedings. The next Judgment of the Apex Court relied upon by the learned Senior Counsel in the case of Damodaran Pillai and ors. vs. South Indian Bank Ltd., is also in peculiar facts and circumstances of the case therein. The Judgment of the Apex Court in Padma Ben Banushali and Another Vs. Yogendra Rathore and Others, . is also not applicable to the facts of the present case. The Apex Court at para 18 of the said Judgment has held thus :

18. The expression "or the decree of any kind is otherwise adjusted" are of wide amplitude. It is open to the parties namely, the decree-holder and the judgment-debtor to enter into a contract or compromise in regard to their rights and complications under the decree. If some contract or compromise amounts to an adjustment of the decree, it has to be recorded by the court under Rule 2 of Order XXI. It may be pointed out that an agreement, contract or compromise which has the effect of extinguishing the decree in whole or in part on account of decree being satisfied to that extent will amount to an adjustment of the decree within the meaning of the Rule and the Court, if approached, will issue the certificate of adjustment. An uncertified payment of amount or adjustment which is not recorded by the Court under Order XXI, Rule 2 cannot be recognised by the executing court. In a situation like this, the only enquiry that the executing court can do is to find out whether the plea taken on its face value, amounts to adjustment or satisfaction of decree, wholly or in part, and whether such adjustments or satisfaction had the effect of extinguishing the decree to that extent. If the executing court comes to the conclusion that the decree was adjusted wholly or in part but the compromise or adjustment or satisfaction was not recorded and/or certified by the court, the executing court would not recognise them and will proceed to execute the decree.

In the present proceedings, this is not a case where any adjustment would result in the extinguishment of the decree as the decree would be satisfied only after the Sale Deed was executed by the Respondents in favour of the Petitioner.

14. From the conduct of the Respondents, it appears that the whole exercise is to defeat the compliance of the Consent Decree indulged in only after the Execution Proceedings came to be filed against the Petitioner. Spacious pleas were raised by the Respondents initially that there were no directions to execute the Sale Deed. The said contention found favour with the Executing Court and the execution proceedings were dismissed by Judgment dated 31-8-2001 but this Court in the Civil Revision filed by the Petitioner, had to set aside the said Orders

though this Court had also directed to ascertain the correctness of the receipts of the payments of the amount as the Respondents had sought to raise the contention that there was a shortfall of a sum of Rs. 1,000/-. This shortfall is only an afterthought on their part after the proceedings came to be filed by the Petitioner. The calculation sought to be made by the Chartered Accountant examined by the Respondents cannot be accepted. The said calculations are not in accordance with the Consent Decree passed in the Court. As stated above, the amount of interest payable by the Petitioner was duly accepted by the Respondents and even the calculations thereof were made by the Respondents before receiving the respective amounts.

15. The whole exercise on the part of the Respondents is to erroneously interpret the provisions of the CPC to defeat the execution of the Consent Decree. It is well settled that procedural law is not a tyrant nor an obstruction but an aid to justice. Procedural prescriptions are the handmaid of justice but not a mistress. It is only a lubricant and not a clog in the administration of justice. In the present case, the Petitioner cannot raise such untenable contentions on the basis of the CPC only to defeat the rights which crystallize in favour of the Petitioner pursuant to the Consent Decree. There is nothing pointed out by the Respondents to the effect that the Petitioner has not complied with the terms of the Consent Decree. As such, considering the facts and circumstances of the case, I find that the learned Judge has erroneously dismissed the Execution Proceedings. The learned Judge failed to consider that payments of the installments were as per the Consent Decree. The question of refusing the relief to the Petitioner on the ground that there was breach of clause (e) of the agreement does not arise at all as there was no breach in the payment of any installments nor did the Respondents call upon the Petitioner to pay all the installments on account of such default. Even assuming there was a mistake on the part of the Respondents to calculate the interest, it does not mean that the decree gets extinguished. The learned Judge has exercised its jurisdiction with material irregularity in dismissing the Execution Proceedings. The learned Judge has failed to consider the well settled principles of law that the Decree has to be executed in terms thereof.

16. In view of the above, I find that the impugned Order cannot be sustained and deserves to be quashed and set aside. Hence, I pass the following :

ORDER

(i) The impugned Order dated 12-3-2009 is quashed and set aside. Execution Application No. 5/1999/B is restored to the file of the Executing Court.

(ii) The learned Executing Court is directed to proceed with the said Execution Application in the light of the observations made hereinabove in accordance with law.

(iii) Rule is disposed of in the above terms.

(iv) The Petition stands disposed of accordingly with no orders as to costs.

17. At this stage, the learned Senior Counsel appearing for the Respondents seeks stay of the Order passed today. The learned Counsel appearing for the Petitioner objects to the same. Considering the facts and circumstances of the case, the impugned Order passed is stayed for a period of ten weeks.