
(1963) 07 GUJ CK 0006
In the Gujarat High Court
Case No : Appeal No. 1069 of 1960

Shah Jashwantlal Manilal

APPELLANT

Vs

Bai Kamala and Others

RESPONDENT

Date of Decision : 31-07-1963

Acts Referred:

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

Citation : AIR 1965 Guj 69 : (1963) GLR 1017

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

Bench : Single Bench

Advocate : A.H. Mehta and P.P. Medh, for the Appellant; P.V. Nanavaty, for the Respondent

Judgement

(1) This appeal arises out of the dismissal for default of an execution application presented by the applicant. The order dismissing the application for execution of 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 to 25 deals with "process" for execution ". O.21 Rule 26 to 29 deal with "stay of execution". The following rules of O.21, C.P. Code dealt 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 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 dealt with special subjects. Order 21,Rule17 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 provision 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 intialled 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 provision hereinafter contained order execution of the decree according to the nature of the application"

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 provision 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 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 execution of the decree, the Court shall consider such objection and make such order as it thinks fit ".

It is for the person 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 not 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 a Court gives a finding in the negative, the Court must give a decree to be executed. It is of course stated in sub-rule (2) of R. 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 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.

(2)The appeal is, allowed, and the Court is directed to pass an order under order 21, Rule 23,C.P.Code, after restoring the Darkhasst. No costs.

(3) Appeal allowed.