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**(2002) 09 AHC CK 0250**

**In the Allahabad High Court**

**Case No : C.M. Contempt Petition No. 1205 of 2002**

Wasim Ahmad and Others

APPELLANT

Vs

Ram Saroop Gupta, Chief Treasury Officer and Another

RESPONDENT

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**Date of Decision : 27-09-2002**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 56

**Citation : (2002) 5 AWC 4347**

**Hon'ble Judges : Sushil Harkauli, J**

**Bench : Single Bench**

**Advocate : Bhagwati Prasad Singh and Vivek Kumar Singh, for the Appellant;**

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## **Judgement**

Sushil Harkauli, J.—To satisfy a decree of the Court, certain amounts lying in the treasury in the salary account of the C.M.O., Allahabad, were attached by the executing court. Subsequently, the executing court directed the Chief Treasury Officer to draw and make payment of certain amounts out of that attached amount to the decree holder. The said direction was not complied with and accordingly, this contempt petition was filed.

2. The counter-affidavit filed in this contempt petition by Sri Ram Swarup Gupta, Chief Treasury Officer, Allahabad, states by way of defence that the amount could not be paid pursuant to the order of the executing court because the C.M.O., Allahabad, who was the Drawing and Disbursing Officer (D.D.O.), did not submit the bill. According to the contention advanced on behalf of the Chief Treasury Officer, he is the custodian of funds allocated by the State Government to the particular account of the D.D.O., to be drawn and disbursed in accordance with the financial rules. Hence, he finds himself unable to comply with the orders of the executing court.

3. Having considered the matter, I am of the opinion that the contention of the Chief Treasury Officer is based upon a misconception of the legal position. Firstly, Order XXI Rule 56 of the Code of Civil Procedure, which is a statutory provision,

will override the financial rules. Secondly, when the Court attaches any fund lying with the Chief Treasury Officer and directs for payment of the same under Order XXI Rule 56 of the Code of Civil Procedure, the Court to the extent of those amounts directed to be paid, steps into the shoes of drawing and disbursing officer.

4. The position is somewhat similar to the case where the Defendant in a suit for specific performance does not execute the required sale deed and the Court steps into the shoes of judgment debtor and executes the sale deed on his behalf, which is valid as if the same has been executed by the judgment debtor himself.

5. Thus, the Chief Treasury Officer will treat the executing court as the drawing and disbursing officer and will accordingly draw and pay the amount to the decree holder within three weeks from today.

6. In view of what has been stated above, I am of the opinion that the disobedience of the order of the executing court on part of the Chief Treasury Officer was not "deliberate", and thus apart from the direction given above, no further action in this contempt petition is called for.

7. Therefore, with the aforesaid direction this contempt petition is disposed of finally.