

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT GWALIOR**

***BEFORE***

**HON'BLE SHRI JUSTICE ANAND PATHAK**

**ON THE 18<sup>th</sup> OF OCTOBER, 2023**

**MISC. PETITION No. 5654 of 2023**

**BETWEEN:-**

**DHARMENDRA KUMAR JAIN S/O LATE  
SHRI KEHSRI CHAND JAIN, AGED  
1. ABOUT 51 YEARS, OCCUPATION:  
BUSINESS DHARAMSHALA ROAD,  
SHIVPURI (MADHYA PRADESH)**

**SMT MANOJ KUMARI W/O SHRI  
LAKSHMI NARAYAN D/O LATE SHRI  
2. KESHRI CHAND JAIN, AGED ABOUT 55  
YEARS, R/O OPPOSITE GANDHI PARK,  
SHEOPUR (MADHYA PRADESH)**

**SMT SAROJ JAIN W/O SHRI VISHNU D/O  
LATE SHRI KESHRI CHAND JAIN, AGED  
3. ABOUT 59 YEARS, R/O SUTHALIA,  
BIAORA, RAJGARH (MADHYA  
PRADESH)**

**.....PETITIONER**

***(BY SHRI AKSHAT KUMAR JAIN - ADVOCATE)***

**AND**

**HARPAL SINGH S/O SHRI GHASIRAM  
CHANDORIYA, AGED ABOUT 72 YEARS,  
OPPOSITE GANESH BHOJNALAYA,  
SHIVPURI (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI O.P. SHRIVASTAVA - ADVOCATE )***

*This petition coming on for admission this day, the court  
passed the following:*

**ORDER**

1. The present petition is preferred by petitioners under Article

227 of the Constitution taking exception to order dated 13.09.2023, whereby application preferred by respondent under Order XXI Rule 26 CPC was allowed and respondent/judgment debtor was directed to produce order of stay/injunction from the appellate court on or before next date of hearing.

2. Counsel for petitioners placed following dates and events in the matter to advance arguments:-

S.No.	Date	Event
1	25/03/1981	Bhawanishankar who was a sale tax officer, by way of sham transaction convinced the father of petitioner that in case house of father of petitioner was going to be sealed by the department and auctioned. To save the same, petitioner's father caused a paper sale deed of house to Urmila, wife of Bhawanishankar, without any consideration.
2	12/02/96	Civil Suit was filed by petitioners against Urmila, for declaration of sale deed dt. 25/03/1981 as null and void as Civil Suit No.RCSA 06/96.
3	14/05/1999	Civil Suit decreed in favours of plaintiffs/petitioners. Sale deed dt.25/03/1981 was declared as null and void. (I.A.No.
4	12/07/99	First Appeal (FA 94/1999) was filed by Urmila aggrieved by judgment and decree of trial Court.
5	2003	Application under Order 1 Rule 10 of CPC was filed by Respondent Harpal (Who was a tenant of Father of petitioner in the disputed premises), alleging that Urmila had further sold the disputed property to him through registered sale deed dt.10/12/1986 and he wanted to be a party to the proceedings.
6	08/01/03	Application under Order 1 Rule 10 was dismissed by Hon'ble Court stating that Harpal was neither a proper party nor a necessary party to the case (I.A.No.9058/23)
7	02/11/15	Appeal was withdrawn by Urmila before Hon'ble Court hence the judgment and decree of trial Court attained finality. (I.A. No.9058/23)
8	2015-2017	When petitioner showed the judgment and decree to Harpal (respondent) he stated that the judgment and decree dt. 14/05/1999 and judgment of High Court

		dt.02.11.2015 is not binding on him and started creating chaos.
9	21.02.2017	Petitioners filed a civil suit (RCSA 260/2017) against Harpal for declaration of title, recovery of possession and for declaration of sale deed dt.10/12/1986 as null and void.
10	14/08/2018	The issues that were framed were decided in favour of petitioners, however, the suit was dismissed on the point of limitation. (Annexure P-4 page 97)
11	10/09/18	First Appeal (RCA 74/2018) was preferred by petitioners/plaintiffs. Cross objections was preferred by the respondent Harpal.
12	14/07/2022	The suit was decreed in favour of petitioner/plaintiff by reversing the finding on limitation. Suit was held to be within limitation. Cross objection of respondent Harpal was dismissed (Annexure P-3 page 50)
13	19/09/2022	Execution proceedings were initiated by petitioners/plaintiff against respondent Harpal (Page No.26).
14	10/02/23	I.A. No.2 filed by respondent before Executing Court stating that since his Second Appeal 2255/2022 is pending before Hon'ble High Court and next date for hearing is fixed as 02/01/2023 and there is a possibility of granting stay by High Court hence prayed for stay of execution proceedings till decision of Second Appeal. Same was dismissed by Executing Court citing Rule 121(3) of the M.P. Civil Court Rules 1961. (page 32)
15	08/07/23	Order 21 Application of petitioners/plaintiff was allowed and warrant of possession was issued by executing court.
16	28/07/2023	Nazarat Department made an endorsement that there exist possibility of nuisance as Respondent Harpal was ready to fight and cause hindrance in execution of warrant of possession, and sought for police help.
17	28/08/2023	Petitioners deposited Rs.14,650/- the requisite amount for police help in execution of warrant of possession. However, at this stage, respondent filed one application under Order 21 Rule 26 of CPC stating that since his second appeal is pending before High Court and application for stay is also pending and till hearing of the second appeal, warrant of possession be stayed.
18	13/09/2023	Learned Executing Court allowed the application

		under Order 21 Rule 26 of CPC and stayed the warrant of possession for a period of 30 days without any basis and contrary to settled position of law.
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3. It is the submission of learned counsel for petitioners that scope of Order XXI Rule 26 CPC has been wrongly considered by the Executing Court. Purpose of Order XXI Rule 26 CPC is not such which is reflected in the impugned order. He prayed for setting aside of impugned order and for expedite hearing of execution proceedings.

4. *Per contra*, learned counsel for respondent opposed the prayer and submits that petition is not filed in proper format. Therefore, an application vide I.A. No. 9219/2023 has been filed for dismissal of petition. He supported the impugned order.

5. Heard the learned counsel for the parties at length and perused the documents appended thereto.

6. So far as law regarding conduct of execution proceeding is concerned, it has been delineated by the Hon'ble Apex Court in the case of **Rahul S. Shah vs. Jinendra Kumar Gandhi & Others, (2021) 6 SCC 418** which reads as under:-

*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 v. Maharaja Coomar Ramaput Sing 14 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 v Sita Saran Bubna, 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 12 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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42. *All Courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned directions:*

*42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third 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 13 third party interest in such properties.*

*42.2. 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.*

*42.3. 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.*

*42.4. 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.*

*42.5. 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.*

*42.6. 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.*

*42.7. 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.*

*42.8. 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.*

*42.9. 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.*

*42.10. 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 35-A.*

*42.11. 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.*

*42.12. 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.*

*42.13. 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.*

*42.14. 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.*

*43. We further direct all the High Courts to reconsider and update all the Rules relating to Execution of Decrees, made under exercise of its powers under Article 227 of the Constitution of India and Section 122 of*

*CPC, within one year of the date of this Order. The High Courts must ensure that the Rules are in consonance with CPC and the above directions, with an endeavour to expedite the process of execution with the use of Information Technology tools. Until such time these Rules are brought into existence, the above directions shall remain enforceable.”*

7. While considering the spirit of the order as referred above, it is incumbent upon the Executing Court to take the execution proceedings with promptitude and no undue leniency be shown towards judgment-debtor while conducting such proceedings. Reason is obvious. Plaintiffs and defendants contested the case tooth and nail before trial Court and when judgment and decree is passed plaintiff is usually exhausted because of consumption of time taken into the litigation. Thereafter, appellate remedies are available to the judgment-debtor. Thereafter, decree holder usually find hard to get decree executed because of cobweb of delay created by judgment-debtor on the pretext or the other. That cobweb deserves to be dismantled so that decree holder may reap the fruits of decree.

8. In the present case, scope of Order XXI Rule 26 is not such as interpreted by the Court below. Incidentally, Second Appeal has been preferred by the judgment-debtor before this Court vide S.A. No.2255/2022. There is no stay operates in proceedings in second appeal and appeal has not been admitted so far. Once appeal is pending for almost a year then scope of Order XXI Rule 26 constricts. Beside that, no security has been taken by the Court from the judgment-debtor nor any condition has been imposed in

this regard as per Order XXI Rule 26 (3) of CPC. Such premium cannot be given to the judgment-debtor.

9. Even otherwise, 11.10.2023 is already over and as submitted no stay order has been produced by the respondent before this Court to substantiate his arguments. He was just raising a technical issue that too is not maintainable in view of the Format No.9 (Chapter X), rule 30 (1)) of High Court Rules and Orders.

10. Resultantly, impugned order dated 13.09.2023 is hereby set aside and Executing Court is directed to hold execution proceeding with utmost promptitude and take day to day proceedings and take strict action if any dilatory tactics is adopted by the counsel for respondent/judgment-debtor.

11. Petition stands **allowed** and disposed of in above terms.

(ANAND PATHAK)  
JUDGE

VAN