

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE
M.P. No.1318 of 2021
Ashok Vs. Smt. Gyan

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: Hon'ble Shri Justice Subodh Abhyankar

Miscellaneous Petition No.1318 of 2021

Ashok S/o Nemichand Patni

Versus

Smt. Gyan W/o Late Dr. Indra Bhargav

(Case was heard on 16/06/2021)

Counsel for the petitioner : Shri Yogesh Mittal, Counsel for the petitioner.

Whether approved for reporting : Yes

Law laid down :

Compliance of under Order 21 Rule 34 of CPC.

8.So far as the compliance of Order 21 Rule 34 of CPC is concerned, it was necessary, had there been no representation at all in the Executing Court, however, when the order-sheet itself reveals that the judgment debtor appeared before the Court through her Counsel Shri Ratnesh Pal on 04.10.2019, and thereafter vanished from the scene, there is no point in again sending a notice to the judgment debtor and prolong the execution of the decree any further. It is also found that it cannot be said that the judgment debtor had no knowledge of such proceedings as she has contested the matter throughout till the Supreme Court and was well aware of the execution proceedings pending before the Executing Court, hence, her absence in the Executing Court appears deliberate. In such circumstances, this court is of the considered opinion that as provided under sub-rule (2) of Rule 21 of Order 22 of CPC, issuance of notice under Order 21 rule 34 at this juncture would cause not only unreasonable delay but would also defeat the ends of justice because furnishing a draft sale deed under Order 21 Rule 34 (2) of C.P.C. to the respondent/judgement at this stage would only be an empty formality and can be dispensed with.

Significant paragraph numbers : 8

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J U D G M E N T

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Post for

01/07/2021

(SUBODH ABHYANKAR)
JUDGE

Pankaj

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Shri Yogesh Mittal, Counsel for the petitioner.

* * * * *

ORDER

(Passed on 01/07/2021)

Heard through video conferencing.

Heard on the question of admission.

1. This petition has been filed by the petitioner/deGREE holder seeking the following reliefs:-

“A. It is therefore humbly prayed that to issue appropriate direction/order to the Executing Court to execute the sale deed in favour of the petitioner without any further procedural compliance or delay treating that respondent has no objection in execution thereof as respondent failed to appear in the proceeding.

B. To take the execution case on daily basis and to execute the decree with further direction to the Learned District Judge, Indore to observe the compliance of this Hon'ble Court direction and if necessary than to take appropriate steps to transfer the case in his Court for such compliance.

C. Costs of the Petition be awarded to the petitioner from the respondents.

D. Any other relief which this Hon'ble Court may deem just in the facts of the present case be granted in the favour of the petitioner.”

2. The case of the petitioner/plaintiff is that he had filed a suit for specific performance of contract in respect of an agreement executed

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between the parties in the year 1997, wherein the decree was passed on **29.09.2000** and it was ordered that the plaintiff shall tender the balance sale consideration of Rs.2,65,000/- to the defendant and in case of refusal by the defendant, the amount shall be deposited in the Court with 12% interest on the remaining amount and after this condition being complied with, the defendant shall execute the sale deed of House No.148 of Jaora Compound in favour of the plaintiff/decreed holder and also participate in the registration process before the Sub-Registrar Property Assurance Office. The aforesaid decree was assailed by the judgment debtor in First Appeal No.855 of 2000 before this Court, which came to be dismissed on 20.09.2018 and an S.L.P. No.23686 of 2019 preferred against the aforesaid judgment in the first appeal has also met with the same fate on 27.09.2019..

3. The case of the petitioner is that in the meantime, i.e. on **09.07.2019**, an execution proceeding bearing No. EXA/82/2019 was also initiated by the petitioner/decreed holder and on 04.10.2019, the Counsel for the respondent/judgment debtor appeared before the Executing court and also obtained the copy of the execution application and the next date was fixed on 06.11.2019 but after 04.10.2019, the Counsel for the judgment debtor stopped appearing in the Executing Court where a draft sale deed was also filed by the decreed holder as provided under Order 21 Rule 34 of C.P.C. However, the grievance of the petitioner is that the learned Judge of the

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Executing Court, instead of proceeding further with the execution of the sale deed has issued notice to the respondent/judgment debtor as to why the sale deed of the suit property should not be executed by the Court in favour of the decree holder in terms of sub-rule (2) of Order 21 Rule 34 of C.P.C.

4. Counsel for the petitioner has submitted that the judgment debtor Smt. Gyan W/o Late Dr. Indra Bhargav, after appearing through her Counsel in the Executing Court on 04.10.2019, has deliberately not appeared before the Court with a view to further delay the execution of the sale deed and after 06.11.2019, the matter has been fixed on 07.01.2020, 28.01.2020, 11.02.2020, 18.02.2020 and 04.03.2020 as the draft sale deed was not approved by the judgment debtor.

5. Counsel has submitted that after 20.03.2020 lockdown commenced on account of Covid-19 and again the proceedings have come to a halt. Counsel has submitted that the suit was filed in the year 1997 and the decree was passed in the year 2000 and thus it has been almost 23 to 24 years since the filing of the suit, and around 20 years since the decree was passed in favour of the petitioner/Decree holder. Counsel has submitted that the petitioner is also 77 years old and if the execution proceedings continuous with the same pace, it is unlikely that he would ever live to see the fruits of the decree which was passed in his favour. It is reiterated that the learned Judge of the Executing Court be directed to proceed further with the execution of

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the sale deed and dispensed with the provisions of Order 21 Rule 34 (2) of C.P.C. by furnishing a copy of the sale deed to the judgment debtor, who has deliberately not appeared in the Court despite tendering her appearance through her Counsel.

6. Heard Counsel for the petitioner and perused the record.

7. From the record, this Court finds that the undisputed facts of the present case are that the Civil suit No.41A/1999 was filed in the year 1997, which was decreed on 29.09.2000, and the First Appeal No.855 of 2000, filed by the respondent/judgment debtor also came to be dismissed by this Court on 20.09.2018 and again, the SLP preferred by the respondent/judgment debtor met with the same fate of dismissal on 27.09.2019. Thus, it is apparent that the respondent/judgement debtor has tried her luck in just about every court in the country including the Supreme Court and now she has no option but to execute the decree originally passed by the civil court on 29.09.2000. So far as the issuance of notice in an execution proceeding is concerned, Order 22 rule 21 of C.P.C. provides for the same, and reads as under:-

“Order 21 Rule 22. Notice to show cause against execution in certain cases

22. Notice to show cause against execution in certain cases.— (1) Where an application for execution is made—

- (a) more than two years after the date of the decree, or
- (b) against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of Section 44-A, or
- (c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent,

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the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution if the application is made within two years from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.”

(emphasis supplied)

This court is of the considered opinion that sub-rule (2) of Rule 21 of Order 22 of CPC has been enacted with a view to deal with such cases only.

8. There appears to be no dispute regarding the compliance of the procedural aspect of the decree by the petitioner is concerned. In such circumstances, taking note of the age of the petitioner, who is also 77 years old and the fact that the judgment debtor Smt. Gyan Bhargav W/o Late Dr. Indra Bhargav was also represented by her Counsel in the Executing Court on 04.10.2019, this Court finds force with the contentions raised by the Counsel for the petitioner that in such circumstances actual furnishing of the draft sale deed to the judgment debtor can be dispensed with. So far as the compliance of Order 21 Rule 34 (2) of CPC is concerned, it was necessary, had there been no representation at all in the Executing Court, however, when the order-sheet itself reveals that the judgment debtor appeared before the Court through her Counsel Shri Ratnesh Pal on

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04.10.2019, and thereafter vanished from the scene, there is no point in again sending a notice to the judgment debtor and prolong the execution of the decree any further. It is also found that it cannot be said that the judgment debtor had no knowledge of such proceedings as she has contested the matter throughout till the Supreme Court and was well aware of the execution proceedings pending before the Executing Court, hence, her absence in the Executing Court appears deliberate. In such circumstances, this court is of the considered opinion that as provided under sub-rule (2) of Rule 21 of Order 22 of CPC, issuance of notice under sub-rule (2) of Order 21 rule 34 at this juncture would cause not only unreasonable delay but would also defeat the ends of justice because furnishing a draft sale deed under Order 21 Rule 34 (2) of C.P.C. to the respondent/judgement at this stage would only be an empty formality and can be dispensed with.

9. As a result, the petition stands allowed and the learned Judge of the Executing Court is directed to proceed further by executing the draft sale deed as furnished by the petitioner without waiting for the service of notice on the respondent/judgement debtor. The aforesaid exercise be completed within a further period of three weeks from the date of receipt of certified copy of this order.

10. With the aforesaid, the petition stands allowed and disposed of.

C. c. as per rules.

(SUBODH ABHYANKAR)
JUDGE

Pankaj