

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 28th OF FEBRUARY, 2024

MISC. PETITION No. 1894 of 2022

BETWEEN:-

**RAJESH VERMA S/O LATE RAMESH VERMA,
AGED ABOUT 40 YEARS, OCCUPATION: TAILRING
SHOP, ADDRESS BUNGLAW NO. 125, SIMROL
ROAD, MHOW (MADHYA PRADESH)**

.....PETITIONER

(BY MS. REKHA SHRIVASTAVA - ADVOCATE)

AND

**LATE. SHOBHNA TRIVEDI W/O P. RAMBU
TRIVEDI, AGED ABOUT 49 YEARS, OCCUPATION:
SERVICE, ADDRESS HALL MUKAM 38, SAMPAT
FORM 5 CROSS ROAD, BICHOLI MARDANA,
TEHSIL AND DISTRICT INDORE (MADHYA
PRADESH) THROUGH AAM MUKHTIYAAR
DARMENDRA S/O. RAMESHCHANDRA VERMA,
R/O. LAVESH VILLA, MHOW – PITHAMPUR
ROAD, MAHOWGAON TEHSILD MHOW,
DISTRICT INDRE**

.....RESPONDENTS

(BY SHRI R.R. TRIVEDI - ADVOCATE)

Reserved on :-23.1.2024

Pronounced on :-28.2.2024

This petition having been heard and reserved for orders, coming on for pronouncement this day, Hon'ble Justice Pranay Verma, pronounced the following :

ORDER

1. With the consent of the learned counsel for the parties, the matter is finally heard.

2. This petition under Article 227 of the Constitution of India has been preferred by the petitioner / judgment debtor against the order dated 24/3/2023 passed by the Executing Court whereby his objection to the maintainability of the execution proceedings under Order 21 Rule 10 and Order 21 Rule 22 of the CPC has been rejected.

3. The proceedings have been instituted for execution of the decree dated 7/12/2015 passed in Civil Suit No.237-A/2011 by the trial Court whereby, the original decree holder has been held entitled for recovery of a sum of Rs.1,20,000/- and arrears of Rs.96,000/-. The execution proceedings have been filed by Dharmendra S/o. Rameshchandra Verma as power of attorney holder of son of the deceased decree holder.

4. Objection was raised by the judgment debtor that the original decree holder Shobhna Trivedi has expired in June, 2020. Her only son Rajdeep Trivedi is residing abroad for quite sometime and was not present in the town on 21/2/2022 when the execution proceedings were filed. No power of attorney has been produced. No particulars have been mentioned in the execution application as regards death of Shobhna Trivedi and the date on which the power of attorney was executed by Rajdeep Trivedi in favour of Dharmendra Verma. It is also not clear that Dharmendra Verma is in fact the power of attorney holder entitled to institute the proceedings which have not been instituted in terms of Order 21 Rule 10 and Rule 11 (2) of the CPC.

5. The provisions of Order 21 Rule 11(2) of the CPC are as under :-

“(2) **Written application.** - Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely :-
-----”

6. As per the aforesaid provision an execution application can be filed not only by the decree holder but also by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. Even if the execution proceedings have not been instituted by Rajdeep Trivedi, the legal heir of deceased decree holder Shobhna Trivedi, then also the same instituted by Dharmendra Verma who is stated to be his power of attorney holder would be deemed to have been properly instituted. It is not the case of the judgment debtor that Dharmendra Verma is not a person who is not acquainted with the facts of the case. The execution application has been filed and entertained by the executing Court hence there would be a presumption that Dharmendra Verma is so acquainted with the facts of the case.

7. Moreover, the execution application has been filed by Dharmendra Verma on the basis of power of attorney executed in his favour by Rajdeep Trivedi which is on record of the executing Court. There is no reason to disbelieve the same. Pertinently in the execution application, Rajdeep Trivedi

has also put his signatures hence the defect, if any, as pointed out by the judgment debtor pales into insignificance. It is not denied by the judgment debtor that Rajdeep Trivedi is the heir of Shobhna Trivedi. Merely for non-mentioning the date of death of Shobhna Trivedi the execution proceedings would not be vitiated in any manner.

8. Thus, the execution application filed by Dharmendra Verma as power of attorney holder of Rajdeep Trivedi which has also been signed by Rajdeep Trivedi cannot be said not to have been duly instituted. The executing Court hence has not committed any error in rejecting the application filed by the judgment debtor. As a consequence, the impugned order is affirmed. The petition is dismissed.

(PRANAY VERMA)
JDUGE

SS/-