IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.1579 of 2018

==========

Nirmala Devi, W/o Late Upendra Prasad Ambasth, R/o-Marufganj, Ward No.22, P.S.+ P.O+District-Saharsa.

... ... Petitioner/s

Versus

1. Hira Lal Swarnkar, S/o Ramkrishan Swarnkar
2. Rajendra Swarnkar, S/o Ramkrishan Swarnkar

   Both are residents of Sonevarsha Bazar, P.S.+ P.O.-Sonevarsha, District-Saharsa.
3. Santosh Kumar Sinha
4. Ajit Kumar Sinha @ Rajeev Kumar
5. Sinku Kumar Sinha

   All sons of Late Upendra Prasad Ambashth, Resident of Marufganj, Ward No. 22, P.O+ P.S.+ District-Saharsa.

... ... Respondent/s

==========

Acts/Sections/Rules:

- Bihar CCA Rules, 2005

Application - filed against the order passed by learned Single Judge in whereunder writ petition filed by the present appellant has been dismissed.

Appellant was engaged by the respondent as a Dresser on daily wages. After a few years, his service was regularized. Appellant, aggrieved regarding payment of salary, represented before the concerned authority, which was rejected. Appellant filed writ challenging the rejection order which was dismissed.

Appellant did not produce any appointment letter or any other document which shows that his service was regularized on particular date and he has also not produced any document to show that he was appointed on particular post. (Para 8)

In the absence of any document regarding appointment or regularization of his service, the appellant has not made out a case so as to interfere with the impugned order. (Para 9)

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1579 of 2018

==========

Nirmala Devi, W/o Late Upendra Prasad Ambasth, R/o-Marufganj, Ward No.22, P.S.+ P.O+District-Saharsa.

... ... Petitioner/s

Versus

1. Hira Lal Swarnkar, S/o Ramkrishan Swarnkar
2. Rajendra Swarnkar, S/o Ramkrishan Swarnkar
   Both are residents of Sonevarsha Bazar, P.S.+ P.O.-Sonevarsha, District-Saharsa.
3. Santosh Kumar Sinha
4. Ajit Kumar Sinha @ Rajeev Kumar
5. Sinku Kumar Sinha
   All sons of Late Upendra Prasad Ambashth, Resident of Marufganj, Ward No. 22, P.O+ P.S.+ District-Saharsa.

... ... Respondent/s

==========

Appearance :
For the Petitioner/s : Mr.Aditya Prakash Sahay, Advocate
Mr. Piyush Tiwari, Advocate
For the Respondent/s : Mr.Diwakar Prasad Singh, Advocate

==========

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 07-05-2024

The instant petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India for quashing the order dated 05.07.2018 passed by the learned Munsif, Saharsa in Execution Case No. 2 of 2003 whereby and whereunder objection petition filed by the petitioner has been rejected by the learned executing court.

2. Briefly stated, the facts of the case are that one Ramkrishan Swarnkar, father of respondent nos. 1 and 2, executed a registered mortgage deed of conditional sale in

favour of one Upendra Prasad Ambashth, husband of the petitioner on 11.08.1983. On 07.08.1986, the mortgagor Ramkrishan Swarnkar filed a petition under Section 83 of the Transfer of Property Act (hereinafter referred to as 'the TP Act') before the learned Munsif which was numbered as Misc. Case No. 08 of 1986. On 30.09.1986, the learned Munsif passed an order in Misc. Case No. 08/1986 that it was not possible to conduct hearing for eviction of mortgagee Upendra Prasad Ambashth. Thereafter, again on 01.10.1986, the mortgagor Ramkrishna Swarnkar filed a fresh petition under Section 83 of the TP Act against the mortgagee which was numbered as Misc. Case No.10/1986. In the said Misc. Case No.10/1986, vide order dated 30.06.1987, the learned Munsif passed an order directing the mortgagee to vacate and give possession of the disputed property to the mortgagor within one month from the date of order, failing which the mortgagor could obtain the possession of the property through the process of the court. Being aggrieved by the order dated 30.06.1987 passed in Misc. Case No. 10/1986, the mortgagee, the husband of the petitioner filed Civil Revision No. 956 of 1987 before this Court. Though in the said civil revision, no stay order was passed, but due to admission of the said civil revision, further proceeding of Misc.

Case No. 10 of 1986 was stayed by the learned trial court. On 10.07.1991, the mortgagee withdrew the aforesaid Civil Revision No. 956/1987. Thereafter, on 08.01.1996, the learned Munsif dismissed Misc. Case No. 10 of 1986 in default. After dismissal of aforesaid Misc. Case No.10/1986, the mortgagor filed Misc. Case No.05 of 2002 for setting aside the order of dismissal for default dated 08.01.1996 and for restoration of Misc. Case No. 10/1986 along with the petition under Section 5 of the Limitation Act for condonation of delay. However, Misc. Case No. 05 of 2002 was rejected vide order dated 29.11.2002 by the learned Munsif. Thereafter, on 09.07.2003, the Execution Case No. 02 of 2003 was filed by the respondent nos. 1 and 2 for execution of order dated 30.06.1987 passed in Misc. Case No. 10 of 1986. But the learned Munsif, Saharsa dismissed the said execution case filed by the decree-holders vide order dated 12.11.2003 on the ground that earlier application for execution filed by the decree-holders has been dismissed and this fact was suppressed by the decree-holders. Being aggrieved and dissatisfied with the order dated 12.11.2003 passed in Execution Case No. 02 of 2003, the respondent no. 1 approached this Court by filing Civil Revision No. 206 of 2004 which was finally heard and disposed of by this Court vide order dated

13.12.2004 allowing the aforesaid civil revision petition. Thereafter, on 07.01.2005, the husband of the petitioner/judgment-debtor filed Civil Review No.04 of 2005 for review of order dated 13.12.2004 passed in Civil Revision No. 206 of 2004 which was finally heard and dismissed by this Court vide order dated 13.09.2005. Against the dismissal order dated 13.09.2005, the petitioner approached the Hon'ble Supreme Court by filing SLP (C) No. 20854 of 2006. Thereafter, on 30.09.2013, the aforesaid SLP (C) No.20854 of 2006 was dismissed as withdrawn with liberty to the petitioner to raise the question of maintainability of execution petition before the learned executing court. Pursuant thereto, the petitioner filed an objection petition regarding maintainability of execution case before the learned executing court which has been dismissed by the learned Munsif, Saharsa vide order dated 05.07.2018 and the said order has been challenged by the petitioner in the present civil miscellaneous petition.

3. The learned counsel appearing on behalf of the petitioner submitted that the learned executing court has overlooked certain material facts and failed to apply the law in proper manner and for this reason, it has committed illegality and error of jurisdiction. The learned trial court did not consider

the fact that an order passed under Section 83 of the TP Act is a ministerial order and the same cannot be executed. Since it is not an executable order, under Section 83 of the TP Act, the court has no jurisdiction to adjudicate any *lis* pending between the parties. Only miscellaneous case under Section 83 of the TP Act was filed by the mortgagor and, as such, any order passed therein cannot be treated to be heard and finally decided. Admittedly, mortgagor did not file any petition under Sections 60 and 91 of the TP Act wherein the *lis* could have been finally adjudicated. Mortgagor should have filed a suit for redemption under Sections 60 and 91 of the TP Act, but he chose to file a miscellaneous case under Section 83 of the TP Act and for this reason, no decree was ever prepared by the learned trial court. In absence of any decree, the execution case is not maintainable. The learned counsel further submitted that it is an admitted fact that the mortgagor/decree holder/respondent nos. 1 and 2 filed their execution petition without any decree and affidavit. The learned counsel further submitted that the learned Munsif did not appreciate the law as laid down by the Hon'ble Supreme Court in the case of ***Bishwanth Prasad Singh vs. Rajendra Prasad Singh and others***, reported in ***(2006) 4 SCC 432*** wherein it has been held that the proceeding initiated under

Section 83 of the TP Act is only ministerial in nature and it cannot be considered that the matter was heard and finally decided. It has also been observed that in the event of mortgagee refusing to accept the deposit, the mortgagor has no option but to institute a suit for redemption in terms of Section 91 of the TP Act. The learned counsel further pointed out that the mortgagor/decree holder did not file any petition supported with affidavit. Neither the petition filed under Section 83 of the TP Act was supported by affidavit nor the Execution Case No. 02 of 2003 was supported by an affidavit and such act clearly violates of Order 6 Rule 15 (4) of the Code of Civil Procedure (hereinafter referred to as 'the Code'). Further, the learned Munsif missed the point that the order dated 30.06.1987 passed in Misc. Case No. 10 of 1986 cannot be executed as order dated 30.06.1987 was not in force as on 08.01.1996. The Misc. Case No.10 of 1986 was dismissed for default and Misc. Case No. 05 of 2005, which was filed for restoration of Misc. Case No. 10 of 1986 and for setting aside the order of dismissal, was also dismissed on 29.11.2002 and, as such, the order of dismissal in default dated 08.01.1996 attained finality. The learned counsel further submitted that the learned Munsif did not appreciate the fact that the Execution Case No. 02 of 2003 was barred by law

of limitation and doctrine of merger would not be applicable. The limitation of 12 years would not be counted from 10.07.1991, the date on which the civil revision petition filed by the petitioner's husband was dismissed as withdrawn, rather limitation would start from 30.06.1987 and the order dated 30.06.1987 cannot be merged with the order of dismissal as the same has not been decided on merits. The learned counsel further submitted that the learned Munsif did not appreciate the fact that the Hon'ble Supreme Court vide order dated 30.09.2013 passed in SLP (C) No. 20854 of 2006 has granted liberty to the petitioner to raise the question of maintainability of the execution proceeding before the learned executing court and, as such, the petitioner filed objection regarding maintainability of execution case, but the learned Munsif ignored the liberty granted by the Hon'ble Supreme Court and has rejected the petition of maintainability merely on the basis of order passed by the High Court. The learned counsel further submitted that the petitioner is the wife of mortgagee and she has been staying in the disputed property for which the execution is being sought and her contention was not taken into consideration by the learned executing court. Thus, learned counsel submitted that the impugned order is illegal, arbitrary

and malafide and the same needs to be set aside.

4. Per contra, learned counsel appearing on behalf of the respondents vehemently opposed the submission made on behalf of the petitioner. The learned counsel for the respondents submitted that mortgagee is a lawyer and taking advantage of his position, he has been dragging on the matter for last 37 years. The learned counsel further submitted that there is no infirmity in the impugned order and all the grounds taken by the petitioner in the present petition has been dealt with by this Court earlier in Civil Revision No. 206 of 2004 and the husband of the petitioner even agitated the matter before the Hon'ble Supreme Court by filing SLP (C) No.20854 of 2006, but did not get any relief. The learned counsel further submitted that the respondents have been made to run from pillar to post by the shenanigans of the husband of the petitioner and as the case of the respondents has been upheld up to the Hon'ble Supreme Court, nothing remains in the matter. The learned counsel further submitted that mere technicalities cannot be allowed to obstruct the cause of substantive justice and absence of decree would not come in the way of execution of orders passed in Misc. Case No. 10 of 1986 which is for handing over the vacant possession of the property for which execution case has been

filed. Thus, learned counsel submitted that there is no illegality in the impugned order and the objection petition of the petitioner has been rightly rejected by the learned executing court.

5. I have given my anxious consideration to the rival submission of the parties. First and foremost submission which came up from the side of the petitioner is that the order which is being sought to be executed is not executable at all for the reasons being it is a ministerial order. However, from the facts as discussed earlier, it appears that initially Misc. Case No. 08/1986 was instituted under Section 83 of the TP Act by the mortgagor submitting that the period of mortgage was coming to an end, but the mortgagee refused to accept the mortgaged amount and, therefore, the mortgagor wanted to deposit the amount of mortgage money in the court and further prayed redemption of mortgage deed and handing over the residential property to the mortgagor. However, from the record, it further appears that subsequently, an application was filed in Misc. Case No. 08/1986 by the mortgagor, with prayer that the mortgagee be ordered to vacate the mortgaged house and if the mortgagee would cause any obstruction, appropriate orders be passed for vacating the premises. It further appears that this

petition was treated as separate miscellaneous case and Misc. Case No.10/1986 was instituted in which order dated 30.06.1987 was passed which is subject matter of the execution case before the learned executing court vide Execution Case No. 02 of 2003. It is pertinent to mention that the mortgagee/judgment-debtor filed Civil Revision No.956 of 1987, which was dismissed as withdrawn on 10.07.1991. It means the order dated 30.06.1987 attained finality.

6. Thereafter, the execution case filed by the mortgagor was dismissed on 12.11.2003 for being time barred. The mortgagor being aggrieved by the said order preferred Civil Revision No. 206 of 2004 before this Court and this Court vide its order dated 13.12.2004 allowed the aforesaid civil revision petition of the mortgagor. The judgment-debtor, thereafter, filed Civil Review No.04 of 2005 before this Court and the said civil review petition came to be dismissed by this Court vide order dated 13.09.2005. The SLP (C) No. 20854 of 2006 filed by the mortgagee/judgment-debtor against the order dated 13.12.2004 passed in Civil Revision No.206 of 2004 and order dated 13.09.2005 passed in Civil Review No.04 of 2005 was dismissed as withdrawn with liberty to the petitioner to raise the question of maintainability of execution petition before the

learned executing court.

7. The discussion of the chronology of the events and orders of different courts has been made to consider the submission advanced on behalf of the petitioner that the order passed in Misc. Case No. 08 of 1986 was not executable as the order being a ministerial order and on decree was ever prepared by the learned trial court. However, I find such submission to be fallacious. The order dated 30.06.1987 passed in Misc. Case No. 10 of 1986 could not be said to be a ministerial order as it was not part of Misc. Case No. 08 of 1986, but it was a separate proceeding. The nomenclature or mentioning or wrong mentioning of provision in petition would not come in the way of appreciation of the merits of the case, if the same is based on its contents and on consideration of relief sought before the court. So, merely on the ground that certain provisions like Section 83 of TP Act was mentioned in the initial petition and the order in which the execution is being sought was passed on some other application without mentioning any provision would not be a hurdle and it is the cause of furtherance of justice which is always to be kept in mind. The Hon'ble Supreme Court in the case of ***Pruthvirajsinh Nodhubha Jadeja v. Jayeshkumar Chhakaddas Shah & Ors.*** reported in ***(2019) 9 SCC 533*** held

that mere mentioning of an incorrect provision is not fatal to the application if the power to pass such an order is available with the court. Further, law is well settled that the court has inherent power to consider an application wherein a wrong provision has been mentioned and it is trite that quoting a wrong statutory provisions does not create a bar and stand in the way of considering the application. The order dated 30.06.1987 was challenged by the mortgagee/judgment-debtor in Civil Revision No.206 of 2004 and the same was upheld. Thereafter, the execution proceeding initiated for execution of the order dated 30.06.1987 passed in Misc. Case No. 10 of 1986 has been held to be proper by a learned Single Judge of this Court in Civil Revision No. 206 of 2004, rather the learned Single Judge directed the learned executing court to continue with the execution case till its logical conclusion. Thus, the execution proceedings were also held to be proper and legal and such finding of the learned Single Judge of this Court has not been challenged and SLP (C) No. 20854 of 2006 was also dismissed as withdrawn. So challenge to execution proceeding is mainly with regard to the fact that there is no decree which could be executed.

8. The Hon’ble Supreme Court in the case of ***Sir***

Sobha Singh & Sons (P) Ltd. vs. Shashi Mohan Kapur (Deceased) through legal representative reported in **(2020) 20 SCC 798,** has held in paragraph no. 39 as under:

> ***"39.*** *This takes us to examine the next question, namely, what is the effect of not filing the copy of the decree along with the execution application filed by the appellant. In our view, even though the appellant did not file the certified copy of the decree along with the execution application for the reason that the same was not passed by the court, yet the execution application filed by the appellant, in our view, was maintainable. Indeed, so long as the formal decree was not passed, the order dated 1-6-2012 was to be treated as a decree during the interregnum period by virtue of Order 20 Rule 6-A(2) of the Code. In other words, notwithstanding the fact that the decree had not been passed, yet by virtue of principle underlined in Order 20 Rule 6-A(2) of the Code, the order dated 1-6-2012 had the effect of a decree till the date of actual passing of the decree by the court for the purposes of execution or for any other purpose. This empowered the executing court to entertain the execution application and decide the objections raised by the respondent on merits"*

So execution can proceed even if formal decree is not drawn.

9. Further, it is the settled law that process of court and the law of procedure could not be allowed to be abused by the

judgment-debtors. The fact is also not to be lost sight of that it is the duty of the court to see that the process of court and the law of procedure are not abused by judgemnt-debtors in such a manner as to defraud creditors, who have obtained decree in accordance with their legal rights. (***Kuer Jang Bahadur Vs. Bank of Upper India Ltd.,*** reported in ***AIR 1925 Oudh 448).***

10. The Hon'ble Supreme Court in the case of ***Collector, Land Acquisition & Anr. v. Mst. Katiji & Ors***. reported in ***(1987) 2 SCC 107*** has held in paragraph 3 as under :

> ***"3.*** *The legislature has conferred the power to condone delay by enacting Section 5 [Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.] of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in*

matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize

injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on

merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides".

So the approach of the courts should be justice oriented and injustice could not be allowed to be perpetuated on technical grounds.

11. Further, the Hon'ble Supreme Court in the case of ***Sardar Amarjit Singh Kalra v. Pramod Gupta*** reported in ***(2003) 3 SCC 272*** has held in paragraph 26 as under :

"26. *Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were*

devised to ensure their continuation and culmination in an effective adjudication and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in the jamabandi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even dehors the cause for the delay in filing the applications keeping in view the serious manner in which it would otherwise jeopardize an effective adjudication on merits, the rights of the other remaining appellants for no fault of theirs. Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttled the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation

and bringing on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of the Court to do real, effective and substantial justice. Viewed in the light of the fact that each one of the appellants had an independent and distinct right of his own not interdependent upon one or the other of the appellants, the dismissal of the appeals by the High Court in their entirety does not constitute a sound, reasonable or just and proper exercise of its powers. Even if it has to be viewed that they had a common interest, then the interests of justice would require the remaining other appellants being allowed to pursue the appeals for the benefit of those others, who are not before the Court also and not stultify the proceedings as a whole and non-suit the others as well".

12. The conjoint reading of two decisions of the Hon'ble Supreme Court ***[Collector, Land Acquisition & Sardar Amarjit Singh Kalra*** (supra)] goes on to show that endeavour of the courts should be towards removal of injustice and the procedural laws could not be and never intended to hamper the cause of justice or sanctify miscarriage of justice.

13. Since the orders were passed in way back 1987, the decree-holders have been made to run from pillar to post and at this stage when the facts are not disputed regarding mortgage

and its redemption, only because the petition of the mortgagor did not contain the correct nomenclature of its subject matter cannot be a ground to deny him the relief which he became entitled since 1987.

14. Regarding the plight of the decree-holders, the Hon'ble Supreme Court has taken note of their condition in the cases of ***Jini Dhanrajgir and Anr. Vs. Shibu Mathew and Anr.,*** reported in ***2023 SCC OnLine SC 643*** and ***Predeep Mehra Vs. Harijivan J. Jethwa (Since Deceased Thr. LRS.) & Ors.,*** reported in ***2023 SCC OnLine SC 1395*** while taking note of Privy Council decision in the case of ***The General Manager of the Raj Durbhunga, Under the Court of Wards vs. Maharajah Coomar Ramaput Sing), (1871-72)14 MIA 605,*** also reported in ***(1872) SCC OnLine PC 16.*** There is no gainsaying the fact that even after lapse of so much time, the woes of decree-holders have not subsided and execution proceedings are being used by judgment-debtors with impunity who exploit every provision to their benefit to the fullest extent possible to frustrate the execution proceedings making the whole process look like a farce and the courts become unwitting tools in the shenanigans of unscrupulous litigants.

15. Absence of decree is not a big handicapped. The

Hon'ble Apex Court, in the cases of ***Topanmal Chhotamal Vs. Kundomal Gangaram & Ors.,*** reported in ***AIR 1960 SC 388 Rajinder Kumar Vs. Kuldeep Singh & Ors., Mohinder Kumar Gupta vs. Kuldeep Singh & Ors. and S.K. Gupta (Dead) Through Legal Representatives & Ors. Vs. Kuldeedp Singh & Ors.*** reported in ***(2014) 15 SCC 529, Meenakshi Sexena & Anr. Vs. ECGC Limited & Anr.,*** reported in ***(2018) 7 SCC 479*** and ***Sanwarlal Agrawal & Ors. Vs. Ashok Kumar Kothari & Ors.,*** reported in ***(2023) 7 SCC 307,*** made the proposition very clear that in case of ambiguity, the executing court can seek guidance from the judgment and can even refer to the pleadings.

16. In the present case, there could not be any ambiguity as the order dated 30.06.1987 is very clear and specific and there could be no occasion before the learned executing court for any confusion how the order was to be executed.

17. Further, argument advanced on behalf of the petitioner is about execution case being barred by law of limitation and no application of doctrine of merger, but I am afraid, the argument advanced on this point is without any substance since both the issues were already considered by the learned Single Judge in Civil Revision No. 206/2004 vide order

dated 13.12.2004 and negated. The learned Single Judge held that execution case filed on 09.07.2003 was well within the statutory provision of limitation of 12 years since the limitation was counted from 10.07.1991 when the order of the learned trial court was affirmed by the High Court in its revisional jurisdiction.

18. The contention that the order dated 30.06.1987 passed in Misc. Case No.10/1986 was an interlocutory order and did not merged with the final order dated 08.01.1996, again the learned Single Judge observed that dismissal of Misc. Case No. 10/1986 on the ground of default has no bearing upon the execution case in question as the Execution Case No. 02/2003 has been filed for execution of order dated 30.06.1987 passed in Misc. Case No. 10/1986 which continued for other reasons and was dismissed for default much later on on 08.01.1996. The learned Single Judge further held that since main final order has already been passed and was affirmed by the High Court, the continuation of miscellaneous case for some other reasons or its dismissal was not at all material for the purpose of the execution case. Thus, reliance placed by the learned counsel for the petitioner on the case of ***Bishwanath Prasad Singh*** (supra) is of no help in the peculiar facts and circumstances of the case.

19. In the light of discussions made hereinbefore, I do not find any infirmity in the impugned order dated 05.07.2018 passed by the learned Munsif in Execution Case No. 02 of 2003 and hence, the same is affirmed.

20. As a result, the present petition stands dismissed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	05.04.2024
Uploading Date	07.05.2024
Transmission Date	NA