

THE HIGH COURT OF JUDICATURE AT PATNA

Memo No. 38729...../A.D. (Rules) Dated 14th May., 2024

CIRCULAR ORDER NO. 04 /2024

Subject : Order dated 22.04.2021 passed in Civil Appeal Nos. 1659-1664 of 2021 (Rahul S. Shah Vs. Jinendra Kumar Gandhi & Ors.) by the Hon'ble Supreme Court of India.

The Hon'ble Supreme Court of India in its order dated 22.04.2021 passed in Civil Appeal Nos. **1659-1664 of 2021 (Rahul S. Shah Vs. Jinendra Kumar Gandhi & Ors.)** has issued directions to all the High Courts to reconsider and update all the Rules relating to execution of decrees with an endeavour to expedite the process of execution of decrees.


Accordingly, this Court, in exercise of its powers under Article 227 of the Constitution of India, Section 122 of the Code of Civil Procedure, 1908 and the resolution dated 02.04.2024 of the Rules Committee (under Section 123 of the Civil Procedure Code, 1908 and under Rule- 3 (viii) Part-A, Part-I, Chapter-1 of the Rules of Patna High Court, 1916 hereby issues the following directions for its strict adherence :-

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 third party interest in such properties.
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.
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.
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.
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.
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.

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.
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.
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.
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 35A.

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.
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.
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.
14. The Bihar Judicial Academy, Gaighat, Patna 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.

By order of the Court


Registrar General

(38730-38782)

Memo No. _____/AD (Rules) Dated, the 14th May, 2024

Copy forwarded to the :-

1. Secretary General, Supreme Court of India, New Delhi
2. Principal Secretary to Govt. Of Bihar, Home Deptt., Patna
3. Principal Secretary to Govt. Of Bihar, Law Deptt., Patna
4. Director General of Police, Bihar, Patna
5. I.G. (Prison) and Director, Correctional Services, Bihar, Patna
6. Director, Public Prosecution, Bihar, Patna
7. Director, Bihar Judicial Academy, Patna
8. Advocate General, Bihar, Patna
9. Additional Solicitor General, Patna High Court, Patna
10. Member-Secretary, BSLSA, Patna
11. Secretary, Bar Association, Patna
12. Secretary, Advocate Association, Patna
13. Secretary, Lawyers' Association, Patna
14. Chairman, Bar Council of Bihar, Patna to forward this letter to all the Bar Associations of the State.
15. All District & Sessions Judge, with regard to circulate this notification amongst all the Judicial Officers working in their respective Judgeships.

For information and necessary action.


Registrar General

(38783-38913)

Memo No. _____ /AD (Rules) Dated, the 14th May, 2024.

Copy forwarded to the :-

1. All Officers of the Court.
2. The Registrar -cum- P.P.S. to the Hon'ble the Chief Justice;
3. The Joint Registrar-cum-Additional P.P.S.s/ D.R.-cum-Senior Secretaries/ Assistant Registrar-cum-Secretaries attached to Hon'ble Judges of the Court for placing the same before their Lordships' for kind information;
4. Joint Registrar I/c, Civil Matters Pending; J.R. I/c, Criminal Appeal; J.R. I/c, Criminal and Civil Disposal; J.R. I/c Purchase, Stationery and Library; Joint Registrar I/c, Criminal Departments except Criminal Appeal; D.R. I/c, Criminal (Miscellaneous), Original & Election Deptt., M.J.C., M.A.; D.R. I/c, Criminal (Miscellaneous) Quashing.
5. Senior Programmer (—) for kind information please.


Registrar General

(—) To upload it on the official website.