

08.01.2025

Present: Ld. Counsel for DH through VC.
Ld. Counsel for JD.
Ld. Counsel for objector through VC.

Order on objections filed by JD.

It is submitted that present execution petition is not maintainable and barred in law as being premature. It is further submitted that decree/order can be executed only after the expiration of period of limitation for preferring an appeal and not any time before such period. It is further submitted that as per Article 116 (a) of the Limitation Act, 1963, the period of limitation for preferring an appeal to the High Court from any order or decree is 90 days which is to be reckoned from the date of order/decreed. It is further submitted that in the present matter, the period of 90 days was to expire on 06.05.2024, however, the DH instituted the present execution petition on 12.04.2024 i.e. much before the expiration of the prescribed period of limitation for preferring the appeal by the JD. As such the DH has violated the statutory right of the JD for preferring an appeal. The present execution petition being filed in contravention to the law of limitation is premature in nature and bad in law and has to be dismissed in limine. It is further submitted that judgment and order dated 05.02.2024 suffers from mistakes of law and as such suffers from patently incorrect position of law as laid down in the said judgment and order dated 05.02.2024. It is further submitted that it is no more

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resintegra that in the suit for recovery of money or debt against a legal representative, it can be resisted on the plea that the deceased left no assets, he can have no legal representative and it would not be correct to leave the matter to the execution stage. It was time and again reiterated or not from the estate of deceased to be decided in the suit itself and not to be left in execution, therefore, the judgment and order dated 05.02.2024 is inexecutable. It is further submitted that JD was sued in the capacity of being a legal representative of late Sh. Nandlal Anand. It is also submitted that late Sh. Nandlal Anand had left no estate which would have come to the hands of the JD herein. It is trite law that the expression legal representative has reference to some estate and does not mean merely a relation who would have been the heir if any property had been left. A legal representative is one who deals with and in whose hands the estate of the deceased person comes. In the present case, since there is no estate left behind by late Sh. Nandlal Anand. The JD is the wife of original defendant. She has not received any assets/ movable/ immovable properties from the estate of her late husband and accordingly is not the legal heir of the original defendant and therefore the decree sought to be executed against her cannot be executed in terms of the settled principles of law. It is further submitted that JD is not liable to pay anything to the DH in the present execution petition. The deceased late Sh. Nandlal Anand has not left any estate which would have come in the hands of or received by the JD in the capacity of legal representative. Further, by virtue of Section 0 and section 52 CPC, a legal representative is not liable to more than what such person would have received or come into his

hands in the capacity of being a legal representative. Such person would only be liable to the extent of property of the deceased which has come to his hands as a legal representative from the estate of the deceased person. Availability of the property of the deceased in the possession of the legal representative is the condition precedent for the enforcement of the decree against a legal representative and hence, JD is not liable to the DH in the present execution petition. It is further submitted that DH by filing the present execution petition is doing nothing more than a fishing and roving inquiry and is only hoping that the JD is the beneficiary of the estate of her deceased husband without placing on record even a single documentary evidence to the effect that the JD has been beneficiary of any estate from the demise of her husband. JD has sought the assistance of the court by way of civil imprisonment of the JD, which cannot be sought since she is female legal representative of the original defendant. DH is deliberately trying to pressurize the JD and is trying to mislead the court by seeking reliefs which they are not entitled in law to seek from the court. DH is seeking payment for their maintenance which again cannot be sought in execution proceedings against a recovery suit that too against a legal representative, who has not received anything from the estate of her late husband. It is therefore prayed that present execution petition be dismissed.

Reply to the objections has been filed on behalf of DH. It is submitted that present objection of the JD is liable to be dismissed with heavy cost because same was filed with ulterior motive to harass, linger the present execution petition by the JD. JD has not filed any appeal

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before concern court and no stay against the present execution petition. The period of 90 days completed on 06.05.2024, and the JD present in person with his counsel on 17.05.2024 and no any appeal filed by the JD till 06.05.2024, therefore, the present execution petition is liable to be executed. JD has not filed any documentary proof. JD has mentioned baseless reason and facts and wants to linger the present execution petition. DH has further denied all the other allegations as alleged in the objections.

Heard. Record perused and considered.

The objector contended that she is legal representative of late Sh. Nandlal Anand and he had not left with any estate which would have come to the hand of JD. It is further contended by the objector that by virtue of section 50 and section 52 of CPC, a legal representative is not liable to more than what such person would have received or come into his hands in the capacity of being a legal representative. Availability of the property of the deceased in the possession of the legal representative is the condition precedent for the enforcement of the decree against a legal representative of the deceased. It is further contended that property bearing no.A-385, Gali no.1, Ganesh Nagar-II, Shakarpur, Delhi-92 is the personal property of the JD and is duly registered under her name much prior to the death of the deceased late Sh. Nandlal Anand and movable assets mentioned in the list filed by DH are belonged to personally to the JD therefore cannot be attached. It is pertinent to mention here that present execution petition has been filed by DH against the JD for money recovery. In view of above observation as well as considering the facts

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and circumstances of the present case, objector has to prove that she has not inherited any movable or immovable property from her deceased husband for satisfying the present money decree by adducing the evidence / documentary evidence. Hence, the following issues arise for consideration:

- I) Whether the objector (Shashi) has not inherited any property from her deceased husband?(onus to prove on objector)**
- II) Whether the objector (Shashi) has duly applied property inherited from her deceased husband? (onus to prove on objector)**

Put up for evidence to be led by objector on 23.01.2025.

(Pooja Jain)
District Judge-03/NB
East/KKD Courts/Delhi
08.01.2025