

	<p style="text-align: center;"><u>ORDER PASSED BELOW EXH.115 IN</u> <u>Regular Darkhast No.32/2008</u> <u>(Deceased Damodar Through Legal heirs Vs.</u> <u>Deceased Kantilal Through Legal heirs)</u></p>
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A. Read application under section 47 of C.P.C. filed by judgment debtor and say filed by decree holder vide Exh. 117. Heard advocate N. M. Mule for judgment debtor and advocate P. R. Bang for decree holder.

B. The Judgment Debtors (J.Ds.) submit that:

1. Execution proceedings are being carried out in respect of decree passed in R.C.S. No. 37/1990, wherein the defendant was directed to return gold and silver ornaments to the plaintiff on receiving ₹10,000/-.
2. The transaction in question was actually a money-lending transaction, and the defendant (original J.D.) was carrying on money-lending business without a valid license.
3. The original J.D. has expired, and his legal representatives (present J.Ds. – widow and sons) have been brought on record.
4. Under Section 6(4) of the Hindu Succession (Amendment) Act, 2005, sons cannot be made liable for recovery of their father's debt merely on the ground of pious obligation.
5. Hence, the present execution against the sons is illegal, untenable and not maintainable in law, since the debt arose out of illegal money-lending business carried on without license.

6. Therefore, the execution proceedings be stopped against the present J.Ds., and costs be saddled on the Decree Holder.

C. Decree Holder's filed say vide Exh. 117 as under :-

1. The J.Ds. have raised a ground that the transaction was money-lending in nature. However, the suit, appeal and second appeal have already been decided up to the Hon'ble High Court, and at no stage was this ground accepted. Hence, the J.Ds. cannot now compel this Court to go behind the decree in execution.
2. The reliance by J.Ds. on Section 6(4) of the Hindu Succession (Amendment) Act, 2005 is misconceived. The case was decided during the lifetime of Judgment Debtor Kantilal, execution (Darkhast) was also filed against him in his lifetime, and his residential house property was attached while he was alive. Thus, proceedings are against the property of the original Judgment Debtor Kantilal, not against his heirs for recovery of debt.
3. The present objection has been raised by L.Rs. only to delay and prolong proceedings. Earlier, even the writ petition filed by the J.D. was dismissed by the Hon'ble High Court with exemplary costs of ₹50,000/-. The suit is instituted in 1990 and the Darkhast since 2008.
4. Therefore, the objection is wholly frivolous, baseless and untenable, and liable to be rejected with exemplary costs.

D. It is settled law that an executing court cannot travel behind the decree or question its correctness. It must execute the

decree as it stands, unless it is shown to be a nullity for want of jurisdiction. The decree here is explicit that return of specific ornaments on payment of ₹10,000/-. Any plea that the transaction was of a particular character (money-lending/pledge) was or could have been agitated in the suit/appeals. The suit, first appeal and second appeal have been decided up to the Hon'ble High Court. No case of nullity is pleaded or made out. Hence, the objection seeking to reopen merits of the decree is impermissible under Section 47 C.P.C.

E. Section 6(4) bars a court from recognising a pious-obligation-based right to proceed against a son/grandson/great-grandson for recovery of a debt of the ancestor. The present execution, however, is not based on any pious obligation nor is it a fresh proceeding against the sons for an ancestor's debt. Rather, this is a continuation of execution of a pre-existing decree passed against the original J.D., attachment of his property was effected during his lifetime. Upon his death, the LRs are on record and are answerable only to the extent of the estate of the deceased in their hands under Section 50 C.P.C. This statutory liability of LRs to satisfy a decree from the estate is distinct from the doctrine of pious obligation. Additionally, the decree is for return of specific movables (ornaments) on payment, and its enforcement lies under Order XXI Rule 31 C.P.C. which permits attachment and in default, sale of the J.D.'s property to compel compliance. Section 6(4) has no bearing on such execution mechanics. The objection, therefore, is untenable.

F. Moreover, the attachment order attained finality during the lifetime of the original J.D. and was never set aside. No legal

impediment is shown to continuing the sale process in accordance with Order XXI. The suit is of 1990 vintage, the execution is pending since 2008. The record also reflects dismissal of writ proceedings with costs. The present objection re-canvasses barred issues and protracts the execution. It deserves rejection with compensatory costs. Hence, I proceed to pass following order.

ORDER

1. Objection (Exh.115) under Section 47 C.P.C. is rejected with costs.
2. The Judgment Debtors shall pay costs of ₹1,000/- to the Decree Holder on or before the next day. In default, the J.Ds.' defence/objections in these execution proceedings shall stand struck off, and no further objections shall be entertained except as permitted by law.
3. Attachment to continue, Assistant Superintendent/Nazir to proceed with sale of the attached residential house strictly in accordance with Order XXI C.P.C. and applicable rules, issuing and publishing the requisite sale proclamation, and to submit a compliance report on the next date.

(Dictated and pronounced in open Court.)

Sd/-

(Khwaja C. Kalal)

Jt.Civil Judge Jr.Division, Mangrulpir,
Tal. Mangrulpir, Dist. Washim.

Date: 06/10/2025.

CERTIFICATE

“ I affirm that the contents of this P.D.F. file order are same word for word as per original order.”

Name	:-	Shri. S. S. Rathod (Jr. Clerk)
Court Name	:-	Shri. Khwaja C. Kalal, Jt. C.J.J.D. & J.M.F.C., Mangrulpir.
Date of Order	:-	06/10/2025
Order signed by presiding officer on	:-	06/10/2025
Order uploaded on	:-	08/10/2025