

Order below Exh.1

- 1) Read the case papers, The said execution petition was filed by the applicant against the opponent i.e judgment debtor for recovery of money with interest and hence to execute the decree the said execution petition was filed before the court.

- 2) In the said execution petition notice was issued to the applicant as well as Judgment debtor for the recovery of the said amount. Looking at the warrant of attachment produced on record vide Exh 07 which clearly shows that the applicant was informed about the execution of the warrant but the applicant had failed to remain present for the execution of warrant since last 18 Month. Moreover looking at the judgment of Hon'ble Apex court in the judgment of RAHUL S SHAH VERSUS JINENDRA KUMAR GANDHI, CIVIL APPEAL NOS. 1659-1660 of 2021 reported in AIR 2021 SC 2161.

In the said judgement the Hon'ble Supreme court had given direction to the trial courts regarding proceedings of trials as well as regarding proceedings

in execution petition.

42. *All Courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned directions:*

14. 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.

In the present matter the applicant had fail to remain present for the execution as well as the applicant had not provided the list of document of the judgement debtor nor given any justified reason for not remaining present for executing attachment of warrant. Hence today again matter was called out but the advocate for applicant had failed show the reason for not remaining present for execution of warrant for attachment. While the court had gone through the said provision

Order - 21, R.-105 :-

(1) The Court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.

(2) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.

(3) Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application ex parte and pass such order as it thinks fit.

- 3) The hon'ble High Court of Gujarat has held in case of PATEL SHANKARBHAI VIRABHAI V/S. PATEL NARAYANBHAI AMBALAL (CIVIL APPLICATION No. 426 of 2010 dated 10/11/2011) that 'A litigant cannot say that since he entrusted the matter to a lawyer he would thereafter go in slumber. A litigant also owes a duty to keep a constant watch on the proceedings.'

- 4) It is well settled that “the Law helps who awake and not the sleepy person”. So looking to the conduct of the applicant it is transpired that the applicant does not want to proceed in present Application as well as present court is relying upon the judgement of the

hon'ble apex court in which the direction has been passed that the execution proceedings are to be decided within six months and in the present matter the applicant had failed to proceed with the matter within stipulated time and hence in the interest of justice this court passes the following order.

Final order

The present application is dismissed Under Order 21 Rule 105 of the Code of Civil Procedure.

No order as to costs.

Date: 22/03/2024
Gadhada

[ARUN. J. VASU]
Addl Civil Judge
Gadhada
Code No. GJ 01397