

Misc. Execution – 01/2024

J.O. Code : WB01302

Order No. 09 dt. 22.01.26

Today is fixed for passing order with respect to the hearing of the application dated 08.8.2025 filed by the Judgement debtor/O.P. u/s 47 of the CPC which was concluded on the last date.

Both sides file hazira.

The record is now taken up for passing order.

Ld Advocate for the O.P. while moving the petition filed by the O.P. in this case submitted that the petitioner-husband Rajarshi Chatterjee had filed a suit for restitution of conjugal rights against the O.P.-wife Swati Chakraborty which was transferred to this court and numbered as Mat Suit No. 249/2021, after which the O.P. appeared in the said suit and filed her written statement in which she had averred that the petitioner was suffering from mental disorder due to which she cannot stay with him in her matrimonial home as he becomes violent at night and tries to strangulate and kill her and that she was willing to come back to her matrimonial home and live conjugal life with the petitioner as and when the petitioner gets completely cured. Ld Advocate also submitted that before the reconciliation failed in the said suit, the court had passed order dated 05.02.2020 for taking necessary steps jointly for the treatment of the petitioner and that thereafter the matter was adjourned from 08.5.2023 to 27.9.2023 on the prayer of the petitioner after which the O.P. was show caused when she was absent before court after which the suit was fixed for ex parte hearing on the next date and thereafter the suit was decreed ex parte on 20.01.2024. Ld. Advocate for the O.P. submitted that the O.P. has filed the present application u/s 47 of the CPC for review of the said ex parte order passed against her in the said

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suit. He further agitated that the said order was wrongly passed as it does not mention that the petitioner is suffering from mental disorder due to which he tries to strangle and kill his spouse i.e. the O.P. at night and that the said impugned order also does not contain any whisper of the order dated 05.02.2020 in which the parties were directed to take steps for the treatment of the petitioner. Ld Advocate for the O.P. finally concluded by praying that this court allow this review petition and stay this execution case and to rehear the Mat Suit in presence of both the parties.

Ld Advocate for the petitioner raised objection and submitted that there is no scope of allowing a review petition in this execution case.

Heard both the sides. Perused the petition and record. Considered.

It is apparent that this court has passed an ex parte decree of restitution of conjugal rights on 20.01.2024 against the O.P. on the prayer of the petitioner. It is also apparent that the O.P. did not file any application for setting aside the ex parte decree under Order 9 Rule 13 of the CPC and neither filed any appeal against the said order under sec. 96(2) of the CPC. The O.P. wife also did not prefer to file a review petition before the said court under Order 47 Rule 1 of the CPC and neither challenged the said order by filing a suit for setting the ex parte decree on the ground of fraud. Instead of availing the above four avenues the O.P. has preferred to file this review petition u/s 47 of the CPC at the execution stage before this executing court.

According to sec. 47 of the CPC, the Court executing a decree has exclusive jurisdiction to determine all questions arising between parties to the suit relating to the execution, discharge, or satisfaction of the decree.

Such questions must be decided by the executing Court itself and cannot be the subject of a separate suit. However, it is apparent from the submissions of the Ld Advocate of the O.P. in the course of the review petition hearing that the O.P. has not questioned the executability or the non-executability of the ex parte decree passed against her in the Mat Suit by way of the instant petition and has instead chosen to file this review petition challenging the legality of the said order thus dwelling upon its merits. The said avenue is however outside the scope of sec. 47 of the CPC and can only be done by way of availing the above remedies which was available to the O.P. after passing of the impugned ex parte decree against her.

The executing Court cannot go beyond the decree is the settled principle of law which flows from Section 38, C.P.C. In other words, it means that the executing Court has to execute the decree as it stands. It can, however, in exceptional cases refuse to execute the decree, for illustration it can refuse to execute a decree, if it is passed against a dead person. In that event the decree itself will be a nullity. It can also refuse to execute a decree if the Court passing a decree had no inherent jurisdiction to pass a decree. It can only decide the matters which relate to the execution, discharge or satisfaction of the decree under Section 47 of the Civil Procedure Code. Executing Court may look into the proceedings to find out the correct meaning of the decree and

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consequently may provide some clarity to the decree and may construe the decree to effectively implement the decree (Bhavan Vaja V. Solanki Hanjuji Khodaji Mansang AIR 1972 SC 1371). But the executing Court cannot entertain an objection that decree is incorrect in law or in fact. (Vasudev Dhanjibhai Modi Vs. Raja bhai Abdul Rehman, A.I.R. 1970 SC 1475)

Thus, the above petition filed by the O.P./Judgement debtor is found to be misconceived and is accordingly considered and dismissed and thus disposed of.

To 16.03.2026 for taking steps by the petitioner.

Dict. & corr. By me.

Sd/-
Addl. District Judge, 2nd Court,
Serampore, Hooghly.

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