

Misc Execution : 34 of 09 (2 of 14)

23.4.15

Decree holder files ready slip. A petition is filed by the decree holders for attaching the offending vehicle or issue W.A against the judgement debtor.

None appears for the Judgement Debtor.

A petition is taken up for hearing.

The learned advocate for the Decree Holders submits that this execution case has been filed for obtaining the award amount of Rs.3,12,470.33/- against the Judgement Debtor but of no result. So the learned advocate has prayed for attaching the offending vehicle for selling out the same in execution of the decree.

It is evident from the case record that the present execution case has been filed to recover the decretal dues passed in MACC Case No. 44/2007 and no order of stay is there. This execution case has been filed on 18.12.09 and since then sufficient opportunities were given to the Judgement Debtor to bring the order of the Hon'ble Court but the Judgement Debtor paid no heed to it.

By swearing affidavit this day the Decree Holders have filed an application with a prayer to attach the vehicle No. WB-38M/2100 of the Judgement Debtor.

Rule 31 of Order 21 of the Code of Civil Procedure provides, where the decree is for any specific movable, or for any share in a specific movable, it may be executed by the seizure, if practicable, all the movable or share, and by the delivery was of to the party to whom it has been adjudged, or to such person as he points to receive delivery of his behalf, by the detention in the civil prison of the Judgement Debtor or by the attachment of his property or of both.

Sub Rule 2 of Rule 31 of Order 21 CPC posits that where any attachment has remained in force for 3 months if the Judgement Debtor has not obeyed the decree and the Decree Holder has applied to have the attached property sold, such property may be sold and out of the proceeds, Court may award to the Decree Holder, in cases where any amount has been fixed by the decree to be paid as an alternative amount to deliver all movable property such proper, and in other cases, such compensation as it thinks fit, and shall pay balance (if any) to the Judgement Debtor on his application.

Rule 43 of Order 21 provides where the property to be attached is movable property, other than the agricultural produce in the possession of the Judgement Debtor, the attachment shall be made by actual seizure, and the Attaching Officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody there of.

A new Rule has been substituted for amendment by Hon'ble Calcutta High Court, wherein it was incorporated that the attachment shall be made by actual seizure at the identification of the Decree Holder or his agent.

The vehicle mentioned above is movable property other than the agricultural produce and as appears Decree Holder in possession of the Judgement Debtor. So there is no impediment to attach the vehicle mentioned above in execution of the decretal dues.

Therefore, the petition filed by the Decree Holders dated 23.4.14 is allowed.

Let the vehicle No. WB-38M/2100 is hereby attached.

The Nazir, Civil Courts, Purulia is directed to seize the vehicle being registration no. WB-38M/2100 from the possession of the Judgement Debtor, namely, Mr Jogesh Mahato, S/O Late Jhapan Mahato, residence of village Manguria, PO Manguria, PS Hura, District Purulia and keep the same in his custody or in the custody of his subordinates until further order.

The Decree Holders are directed to take steps.

The Nazir, Civil Courts, Purulia is directed to inform the date of execution of the decree by actual seizure of the above mentioned vehicle to the Decree Holders for identification of the same.

To 10.6.15 for steps.

Let a copy of this order be sent to the Nazir, Civil Court, Purulia for his information and necessary action.

Dictated & Corrected by me

Judge, M.A.C Tribunal
1st Court,Purulia.

Judge, M.A.C.Tribunal
1st Court,Purulia.