

CNR No: WBSP01-000230-2024

Present: Subhra Som Ghosal

J.O Code: WB00984

Misc Execution Case No: 01 of 2024

Order No. 02, dated: 06-03-2024.

The decree holder has been duly represented by filing hazira.

The Ld. Advocate for the decree holder is also found to be present on call.

An affidavit has been filed by the Decree Holder manifesting the fact that no appeal and/or revision is pending against the order which is being sought to be executed. Let it be made part of this case record.

The Ld. Advocate for the decree holder prayed for hearing of the application under Order XXI rule 41 of the Code of Civil Procedure.

On perusal of the petition it has transpired that by filing such petition the decree holder has prayed for direction upon the judgment debtor to disclose all his properties and also to pay the outstanding alimony amount as per order dated 17-05-2023 passed in Misc Case No. 480 of 2019.

Heard Ld. Advocate for the Decree Holder.

The present execution has been filed seeking enforcement and execution of the order dated 17-05-2023 passed in Misc Case No. 480 of 2019, against the Judgment Debtor.

There is no quandary over the proposition that an order of alimony can be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court. The decree holder/wife has invoked such option vested in her and has prayed for execution of the alimony pendente lite order.

In the instant case, the relevant provisions for grant of execution of a money decree would apply. Order XXI, Rule 30 of the Civil Procedure Code 1908, provides that:

“Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.”

As mentioned above in this execution proceed the decree holder/wife has sought for execution of the arrears of alimony pendente lite as a money decree and has prayed for attachment and sale of the properties of the judgment debtor/husband. Therefore, for this Court to execute the decree, it must first proceed to attach. As a progressing action writ of attachment has to be issued. For issuance of such writ it is imperative for this court to specify the properties which are to be attachment for satisfaction of the decree.

In this case it has transpired that the execution petition does not specify any schedule of properties. If the salary of the judgment debtor is to be attached, then also this Court to go through the rigors and protective shield of Section 60 of the Code of Civil Procedure.

In this context it is worthy to add that the Hon'ble High Court in *M/s Bhandari Engineers and Builders Private Limited v. Maharia Raj Joint Venture* passed direction for filing of affidavit by the judgment debtor. But this decision of the Hon'ble High Court has been overruled. Hence in the opinion of this Court, the Decree Holder cannot ask for disclosure in terms of the format prescribed in the aforementioned case [see *Delhi Chemical and Pharmaceutical Works Pvt. Ltd. v. Himgiri Realtors Pvt. Ltd., (Delhi)(DB)* : Law Finder Doc Id # 1851208: 2021 SCC OnLine Del 3603].

CNR No: WBSP01-000230-2024

Present: Subhra Som Ghosal

J.O Code: WB00984

Misc Execution Case No: 01 of 2024

However considering the prayer of the decree holder/wife, this court is of the opinion that the Judgment debtor be issued notice of this execution proceeding so that the order dated 17-05-2023 passed in Misc Case No. 480 of 2019, can be effectively executed and the Judgment Debtor is directed to disclose his list of assets as per the form prescribed under Form 16A, Appendix E of the Code of Civil Procedure, 1908.

Hence issue notice upon the Judgment debtor.

The prayer of the decree holder is disposed of accordingly.

To 17-05-2024 for S/R of notice. Decree Holder to put in requisite at once. A copy of this order should accompany the notice so that the directions of this court is clear before the decree holder and there is no delay in implementing the same.

Typed to the dictation directly;

corrected on the system.

Sd/-Subhra Som Ghosal
Additional District and Sessions Judge,
01st Court, Alipore
South 24 parganas.

Sd/-Subhra Som Ghosal
Additional District and Sessions Judge,
01st Court, Alipore
South 24 parganas.