

**Present: Sri Srikumar Goswami (JO Code- WB00714)**  
**Judge, Commercial Court at Alipore.**  
**Money Execution 06 of 2019**  
**CNR. No. WBSP18-000157-2019**

Order No. 38  
04.07.2022

In the matter of:  
Sri Bhagawati Prasad  
Jhunjhunwala and ors..

Vs.

In the matter of:  
UCO Bank and anr.

**ORDERED**

Today is fixed for taking further steps by the D/hrs and hearing the recalling application being I.A.no. 01/2022.

D/hrs file hazira.

Mr. Mainak Bose, Ld. Sr. Counsel for the Dhhrs. submits that they have already filed an affidavit before this Court on 18.05.2022 in compliance to order dated 29.04.2022 stating that no appeal or application or revision is either filed or is pending against the impugned decree before any superior forum and he also further prays for expeditious attachment of the bank account as per order dated 14.02.2022.

Jdr no. 1 files an application praying for adjournment till disposal of Misc Case no. 215 of 2019 before the Ld. Civil Judge (Sr. Div.), 1<sup>st</sup> Court at Alipore for setting aside the impugned decree and also the appeal being no. C.O. no. 606 of 2022 pending before the Hon'ble High Court at Calcutta.

However, no order of stay against the impugned decree has been enclosed by the Jdr. no. 1.

Now, it is well settled principle of law that until and unless there is any order of stay from the superior forum, this Court shall proceed for expeditious disposal of an execution application.

Further, the Hon'ble Supreme Court of India in **Rahul S. Shah vs. Jinendra Kumar Gandhi & ors.** as reported in (2021) 6

SCC 418, has been pleased to direct the procedure to be followed by all Courts while dealing with suits and execution proceedings which is enumerated as follows:

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

**1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third party interest and further exercise the power under Order XI Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.**

**2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.**

**3. After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.**

**4. Under Order XL Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.**

**5. The Court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.**

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COMMERCIAL COURT AT ALIFC

6. *In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.*

7. *In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.*

8. *The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.*

9. *The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.*

10. *The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A.*

11. *Under section 60 of CPC the term in name of the judgment-debtor or by another person in trust for him or on his behalf should be read liberally to incorporate any other*

*person from whom he may have the ability to derive share, profit or property.*

*12. 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.*

*13. The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.*

*14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the Court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts..."*

*Accordingly, such prayer for adjournment on behalf of the Jdr. no. 1 is hereby considered and rejected.*

*It appears from the record that this Court vide order dated 14.02.2022 has already passed an order of attachment directing that:*

*"...Since the Jdrs. failed to show any reasons that this this stage, there should be no order of attachment for any reason whatsoever, let the Bank Account of the UCO Bank be attached and the Branch Manager of the said branch of the UCO Bank is directed to pay the decretal sum of Rs.4,22,24,617.64p/- to the Dhers., if there is balance in such account and henceforth, no amount shall be withdrawn from such account by the Jdrs..."*

*It is also evident from the said order dated 14.02.2022 that the concerned Branch Manager was directed to file a report regarding the above attachment of account by the next date so fixed.*

*However, it appears from the record that no such report of attachment has been filed by the concerned Branch Manager of UCO Bank till date.*

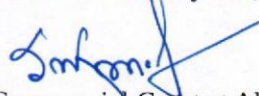
*Accordingly, fix **20.07.2022 at 11:30 am** for submitting report of attachment in terms of order dated 14.02.2022 by the concerned Branch Manager of UCO Bank positively i.d. necessary order shall be passed.*

***To date** for hearing the recalling application being I.A.no. 01/2022.*

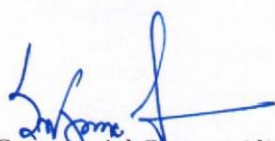
*Dhrs. are hereby directed to serve a downloaded copy of this order upon the concerned Branch Manager of UCO Bank positively within 24 hours and to submit a proof of service by the next date fixed.*

*Both parties are to act on the basis of the downloaded copy of the ordersheet from the Web-site / Ecourts-app.*

Dictated and corrected by me,

  
Judge, Commercial Court at Alipore,  
For South 24 Parganas, Purba Midnapore,  
Paschim Midnapore & Jhargram

JUDGE  
COMMERCIAL COURT AT ALIPORE

  
Judge, Commercial Court at Alipore,  
For South 24 Parganas, Purba Midnapore,  
Paschim Midnapore & Jhargram

JUDGE  
COMMERCIAL COURT AT ALIPORE

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JUDGE  
COMMERCIAL COURT AT ALBANY

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JUDGE  
COMMERCIAL COURT AT ALBANY