IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

FRIDAY ,THE NINTH DAY OF MAY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION NO: 324 OF 2025

Petition under Section 115 of CPC, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to begs to present the above Revision petition in this Hon'ble Court aggrieved by the Order dated 12-12-2024 in E.A.No. 19 of 2024 in E.P.No. 48 of 2018 in O.S.No. 10 of 2018 on the file of the Court of the Civil Judge (Senior Division) at Avanigadda, Krishna District.

Between:

Boina China Pothu Raju, S/o. China Tirupathaiah, aged about 55 years, R/o. Hamsaladeevi Village, Koduru Mandal, Krishna District.

...Petitioner/Respondent/J.Dr.

AND

Meda Naga Sivaji, S/o. Vanavala Rao, aged about 48 years, R/o. Hamsaldeevi Village, Koduru Mandal Krishna District.

...Respondent/Petitioner/D.Hr.

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be

pleased to grant stay of all further proceedings in E.P.No.48 of 2018 in O.S.No.10 of 2018 on the file of the court of the Civil Judge (Senior Division) At Avanigadda, Krishna District.

Counsel for the Petitioner: Sri. Ghantasala Udaya Bhaskar

Counsel for the Respondents: None Appeared

The Court made the following Order :

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION NO: 324/2025

ORDER:

Heard Sri Ghantasala Udaya Bhaskar, learned counsel for the petitioner.

2. The respondent/plaintiff filed O.S.No.10 of 2008 for recovery of amount against the petitioner/defendant based on the promissory note.

3. In the suit the order of attachment of property was passed in I.A.No.203 of 2008. The suit was finally decreed on 11.02.2010 in the following terms:

> "i) that the defendant do pay to the plaintiff a sum of Rs.1,95,400/- together with interest at the rate of 6% p.a. from the date of suit till the date of realization on the principal amount of Rs.1,50,000/- and
>
> ii) that the defendant do also pay to the plaintiff a sum of Rs.8,228/- towards costs of the suit and do bear his institutional costs of Rs.2-00 (as no bill of costs filed the institutional costs is taxed to the defendant)."

4. The defendant did not comply with the decree. So, the plaintiff/Decree Holder (in short D.Hr) filed E.P.No.48 of 2018 for execution of a decree under Order 21 Rule 64 to 66 CPC by auction of E.P. schedule property. The decree holder filed EA.No.19 of 2024 for making proposed amendments in EP for simultaneous execution of decree by adding the prayer that the defendant/Judgment Debtor (in short 'J.Dr') was liable for arrest and to be sent to Civil detention.

5. The EA.No.19 of 2024, with the proposed amendments reads as under:

> i) To insert in column No.11 of the E.P after against the property of the JDR and against JDR
>
> ii) To insert in column No.12 after Order 21 Rule 82, Order 21 Rule 37, 38 of the CPC.

iii) To insert in column No.13 in 6th line after Order 21 Rule 22, Order 21, Rule 37, 38 of the CPC before the word for recovery of the decree amount.

6. The J.Dr filed his counter *inter-alia* denying the contents of the EA and submitted that the petition was filed for time barred relief, and ought not to be numbered as per law.

7. The Execution Court framed the following point for consideration:

"As to whether the petition (EA.No.19 of 2024) can be allowed as prayed for."

8. The learned Execution Court observed 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 J.Dr or by the attachment and sale of his property or by both. The D.hr has a right generally to execute the decree simultaneously against the person and property of the J.Dr. In case of money decrees there is no such impediment to refuse simultaneous execution. There is also no bar for amendment in the EP, filed on the decree seeking for recovery of the amount. EA.No.19 of 2024 was thus allowed by an order dated 12.12.2024.

9. Challenging the order, dated 12.12.2024 the defendant/J.Dr has filed the present CRP under Section 115 of Code of Civil Procedure (CPC).

10. Learned counsel for the petitioner submitted that the Execution Court legally erred in allowing EA.No.19 of 2024 filed under Order 21 Rule 17 and 21 for amendment in E.P.No.48 of 2018 for the prayer which was barred by limitation. He placed reliance in the case of **Sri Raja DK. Venkata Lingama**

Nayanim Bahadur Varu v. Rajah Inuganti Rajagopala Venkata Narasimha Rayanim Bahadur[1].

11. No other point was raised.

12. I have considered the aforesaid submission and perused the material on record.

13. The only point for consideration and determination is as follows:

> "Whether the application for amendment EA.No.19 of 2024 has been rightly allowed or the order impugned suffers from any illegality, so as to call for interference?".

14. There is no dispute of facts.

15. Section 51 of CPC reads as under:

> "**51. Powers of Court to enforce execution:**— Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—
>
> (a) by delivery of any property specifically decreed;
>
> (b) by attachment and sale or by the sale without attachment of any property;
>
> (c) by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;
>
> (d) by appointing a receiver; or
>
> (e) in such other manner as the nature of the relief granted may require:
>
> [Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied—
>
> (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—
>
> (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or
>
> (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

[1] AIR 1947 Madras 216

(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation. —In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree."

16. Order 21 Rules 10, 11, 17 and 21 CPC read as under:

"**10. Application for execution** – where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

11. Oral application – (1) Where a decree is for the payment of money the Court may, on the oral application of decree –holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court.

(2) **Written application**. — Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely:—

(a) the number of the suit;

(b) the names of the parties;

(c) the date of the decree;

(d) whether any, appeal has been preferred from the decree;

(e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;

(f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;

(g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;

(h) the amount of the costs (if any) awarded;

(i) the name of the person against whom execution of the decree is sought; and

(j) the mode in which the assistance of the Court is required whether—

(i) by the delivery of any property specifically decreed;

[(ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;]

(iii) by the arrest and detention in prison of any person;

(iv) by the appointment of a receiver;

(v) otherwise, as the nature of the relief granted may require.

(3) The Court to which an application is made under sub-rule (2) may, require the applicant to produce a certified copy of the decree.

[11A. Application for arrest to state grounds.— Where an application is made for the arrest and detention in prison of the judgment-debtor, it shall state, or be accompanied by an affidavit stating, the grounds on which arrest is applied for.]"

"17. Procedure on receiving application for execution of decree:

(1) On receiving an application for execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with; and, if they have not been complied with, [the court shall allow] the defect to be remedied then and there or within a time to be fixed by it.

[(1-A) If the defect is not so remedied, the Court shall reject the application:

Provided that where, in the opinion of the Court, there is some inaccuracy as to the amount referred to in Clauses (g) and (h) of sub-rule (2) of rule 11, the Court shall, instead of rejecting the application, decide provisionally (without prejudice to the right of the parties to have the amount finally decided in the course of the proceedings) the amount and make an order for the execution of the decree for the amount so provisionally decided].

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(3) Every amendment made under this rule shall be signed or initialled by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree."

"21. Simultaneous execution:- The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor."

17. Order 21 Rule 10 CPC provides for application for execution and according to this rule, Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or if the decree has been sent to another Court then to such Court or to the proper officer thereof.

18. Order 21 Rule 11(1) provides for oral application under certain circumstances where a decree is for the payment of money and Rule 11(2)

provides for written application containing the particulars from clauses (a) to (j), as also for verification thereof in the manner stated in Rule 11. As per clause (j) in the application, inter-alia the mode in which the assistance of the Court is required i.e., as follows, is to be mentioned:

> (i) by the delivery of any property specifically decreed;
> [(ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;]
> (iii) by the arrest and detention in prison of any person;
> (iv) by the appointment of a receiver;
> (v) otherwise, as the nature of the relief granted may require.

19. The aforesaid modes are prescribed by Section 51 CPC itself.

20. Rule 17 of Order 21 CPC provides for procedure on receiving application for execution of decree. It provides *inter-alia* that the Court shall ascertain the compliance of the requirements of rules 11 to 14 and if not so complied, shall allow the defect to be remedied within fixed time. An application for execution, can therefore be allowed to be amended and on such amendment the application shall be deemed to have been an application in accordance with law and presented on the date when it was first presented, as per sub rule (2) of the Rule 17 of Order 21 CPC.

21. The submission of the learned counsel for the petitioner is that the application for amendment was filed for time barred relief. He submitted that the decree is dated 11.02.2010 and the application for amendment was filed after 12 years, limitation period, for execution of decree.

22. This Court is unable to accept such submission. E.P.No.48 of 2018 was filed within the period of limitation and there is no dispute on such factual aspect. The application for amendment might have been filed after 12 years of

the date of decree but it was in a pending petition for execution filed within 12 years. Further the present case is to be considered in the light of Section 51 CPC r/w. Order XXI Rule 11 which under clause (j) provides for the mode in which the assistance of the Court is required i.e., whether (i) by the delivery of any property specifically decreed; (ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property; (iii) by the arrest and detention in prison of any person; (iv) by the appointment of a receiver; (v) otherwise, as the nature of the relief granted may require. If no mode has been specified in the execution petition or one mode has been specified, though other mode(s) should also have been specified, as simultaneous execution is legally possible that would be a defect in the execution petition under Rule 11 which could be rectified under Rule 17 of Order 21 CPC and once allowed, and the application for execution amendment it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented. So, the amendment to cure the defect of the nature under Rule 11, when permitted and incorporated shall be taken, as on the date the Execution Petition was presented and in the present case, the execution petition having been presented within limitation, it cannot be said that amendment prayer would be barred by limitation.

23. In ***Jugalkishore Saraf v. M/s. Raw Cotton Co. Ltd.***[2], the application for execution was defective in that although it purported to be an application for execution under Order XXI, Rule 11, it did not comply with the

[2] AIR 1955 SC 376

requirements of that rule in that it did not specify any of the several modes in which the assistance of the Court was required. The Hon'ble Apex Court held that where the transferees had in their application for execution filed before the Civil Court not mentioned any of the particulars under Order XXI Rule 11(2)(j) there was no compliance with the provisions of Order XXI Rule 11(2)(j). This defect, however, was not such as to preclude the transferees (from decree holder), from obtaining the necessary relief. The defect was purely technical and might be allowed to be cured by amendment of the application under Rule 17.

24. Para Nos.41 of **Jugalkishore Saraf** (supra) (by Hon'ble Justice S.R.Das,J) reads as under:

> "41. Learned Counsel for the appellant contends that the application for execution was defective in that although it purported to be an application for execution under Order XXI, rule 11, it did not comply with the requirements of that rule in that **it did not specify any of the several modes in which the assistance of the Court was required. The application was undoubtedly defective as the decision** in the case of Radha Nath Das v. Produmna Kumar Sarkar {ILR (1939) 2 Cal 325} will show but this objection was not taken before the executing Court which could then have returned the application, nor was any objection taken by the appellant at any later stage of the proceedings. Further, it appears that the respondent company actually presented another tabular statement for execution specifying the mode in which the assistance of the Court was required. In these circumstances, it is not open to the appellant to contend that the application is not maintainable."

25. Para Nos. 60, 61 & 62 in **Jugalkishore Saraf** (supra) (by Hon'ble Justice Bhagwati, J) also read as under:

> "60. An objection was however taken on behalf of the Appellant during the course of the arguments before us though no such objection was taken in the Courts below, that the application for execution made by the Respondents was defective inasmuch as it was not an application in proper form under Order XXI, rule 11 CPC. Order XXI, rule 11(2) (j) prescribes that particulars in regard to the mode in which the assistance of the Court was required should be set out there in. **The respondents had in their application for execution filed before the City Civil Court not mentioned any of these particulars** but had only stated that the

Court should declare them the assignees of the decree as the decretal debt along with other debts were transferred by Habib & Sons to them by the deed of assignment dated the 7th February 1949 which was confirmed by the Custodian of Evacuee Property, Bombay and should order them to be substituted for Habib & Sons. This was no compliance with the provisions of Order XXI, rule 11(2) (j) and therefore there was no proper application for execution before the Court and the same was liable to be dis issed. Reliance was placed in support of this contention on a decision of the High Court of Calcutta in Radha Nath Das v. Produmna Kumar Sarkar {ILR (1939) 2 Cal 325}, where it was held dissenting from a decision of the High Court of Bombay in Baijnath Ramchander v. Binjraj Joowarmal Batia and Co. {AIR 1937 Bom 365} that under Order XXI, rule 16 CPC, the assignee of a decree cannot make two applications, one for recording the assignment and another for executing the decree. The assignee of a decree could only make one application for execution under Order XXI, rule 11 CPC specifying therein the mode in which the assistance of the Court was required and it was only after such application had been made to the Court which passed the decree that the Court would issue notice under Order XXI Rule 16 to the transferor and the judgment debtor and the decree would not be executed until the Court had heard their objections if any to its execution. Sen, J. in that case observed at page 327:-

> "It seems to me to be obvious from the wording of the rule that there can be no notice to the transferor or judgment- debtor and no hearing of any objection unless and until there is an application for execution. The notice and the entire proceedings under Order XXI, rule 16, originate from an application for execution. If there is no such application the proceedings are without any foundation. Order XXI, rule 16, of the Code nowhere provides for an application to record an assignment or for an application for leave to execute a decree by an assignee or for an application for substitution".

This in my opinion correctly sets out the position in law and in so far as the two decisions of the High Court of Bombay in Baijnath Ramchander v. Binjraj Joowarmal Batia and Co. {AIR 1937 Bom 365} and Krishna Govid v. Moolchand Keshavchand {AIR 1941 Bom 302} decide anything to the contrary they are not correct. The position was clarified by a later decision of the High Court of Bombay in Bhagwant Balajirao v. Rajaram Sajnaji {AIR 1947 Bom 157} where Rajadhyaksha and Macklin, JJ. held, following Radha Nath Das v. Produmna Kumar Sarkar that an application made by an assignee of a decree must under Order XXI, rule 16 be for the execution of the decree and not merely for the recognition of the assignment and for leave to execute the decree. It was urged before the learned Judges that the practice in the High Court of Bombay was to entertain applications of this kind, but they observed that the practice if such a practice prevailed was opposed to the provisions of the Order XXI, rule 16 CPC. The contention therefore urged on behalf of the Appellant that the application for execution in the present case was defective appears to have some foundation.

61. This defect however was not such as to preclude the Respondents from obtaining the necessary relief. The application which was filed by them in the City Civil Court was headed "application for execution under Order XXI, rule 11 CPC" and the only defect was in the specification of the mode in which the assistance of the Court was required. The particulars which were required to be filled in column J. were not in accordance with the requirements of Order XXI, rule 11(2) (j) and should have specified one of the modes therein prescribed and certainly a

declaration that the respondents were the assignees of the decree and the order for their substitution as the plaintiffs was certainly not one of the prescribed modes which were required to be specified in that column. The practice which prevailed in the High Court of Bombay as recognised in Baijnath Ramchander v. Binjraj Joowarmal Batia and Co. {AIR 1937 Bom 365} and also in Bhagwant Balajirao v. Rajaram Sajnaji {AIR 1947 Bom 157} appears to have been the only justification for making the application in the manner which the respondents did. **That defect however according to the very same decision in Bhagwant Balajirao v. Rajaram Sajnaji {AIR 1947 Bom 157} was purely technical and might be allowed to be cured by amendment of the application. As a matter of fact Order XXI, rule 17 lays down the procedure on receiving applications for execution of a decree and enjoins upon the Court the duty to ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with and if they have not been complied with the Court has to reject the application or allow the defect to be remedied then and there or within a time to be fixed by it. When the application for execution in the present case was received by the City Civil Court, the Court should have scrutinised the application as required by Order XXI, rule 17(1) and if it was found that the requirements of rules 11 to 14** as may be applicable were not complied with as is contended for by the Appellant, the Court should have rejected the application or allowed the defect to be remedied then and there or within a time to be fixed by the Court. Nothing of the kind was ever done by the City Civil Court nor was any objection in that behalf taken on behalf of the Appellant at any time until the matter came before this Court.

62. On the 27th March, 1952 however a further application for execution was filed by the Respondents in the City Civil Court specifying in column 'J' the mode in which the assistance of the Court was required and it was by ordering attachment and sale of the moveable property of the Appellant therein specified. This further application for execution was a sufficient compliance with the provisions of Order XXI, rule 11 (2) (j) and was sufficient under the circumstances to cure the defect, if any, in the original application for execution made by the Respondents to the City Civil Court on the 25th April, 1951. This objection of the Appellant therefore is devoid of any substance and does not avail him.

26. In **Sri Raja DK. Venkata Lingama Nayanim Bahadur Varu** (supra) upon which learned counsel for the petitioner placed reliance, the facts were that for execution of a decree for sale for a large sum of money claimed as arrears of maintenance EP was filed for the sale of 21 villages specified in the EP schedule. All those EP scheduled properties were sold. Still sum amount under the decree remained unsatisfied. Fresh application was filed in previous EP which had not been formally terminated though all the reliefs claimed in the EP had been granted. By fresh application the EP was sought to be

continued for recovery of the balance amount by sale of seven new villages specified in that application. It was, in such facts, held that, the decree holder could not be allowed to amend a previous execution petition by including fresh properties more than 12 years after the date of the decree. Such an application was considered, afresh application for execution, within the meaning of Section 48(1), (now repealed) and accordingly barred by law under that Section.

27. In **Sri Raja DK. Venkata Lingama Nayanim Bahadur Varu** (supra), the Madras High Court held as under:

> 13. Though the Code of Civil Procedure speaks of an "application for execution" it does not contemplate an application for execution being made in general terms and kept pending till the decree amount is fully realised. Section 51 and Order 21, Rule 11(2)(j) show that an application for execution is an application to take one or more of the steps specified therein in execution of a decree. And Rules 12, 14 and 17 further make it clear that those steps should be required to be taken in respect of some specific property or properties. Thus an application for, execution is an application for attachment and sale of certain property or for the arrest and detention in prison of the judgment-debtor or for taking some other steps in execution of a decree. The Code contemplates successive applications being made to the Court to execute the decree by taking one or more of such steps and the Court is bound to assist the decree-holder in the mode required by him subject to the exercise of its discretion as to simultaneous execution against the person and property of the judgment-debtor under Rule 21, provided of course that the application is not barred by any provision of law. It seems to me that, under such a scheme, every application requiring the Court to proceed against a particular property is a substantive application for execution, and an application for attachment and sale or for sale without attachment of property B where a previous similar application in respect of property A has succeeded or failed or is still pending is a fresh application for execution and cannot be treated as one for amending and continuing the prior application, although the prayer in the later application may be worded in that manner. Where no question of limitation arises it is, of course, immaterial how the subsequent application is regarded, but when it is made beyond the period of limitation, its real character assumes importance and must be determined, paying more regard to the substance of the matter than to the form or the words used. **Applying these principles to the facts of the present case, we find it difficult to hold that E.A. No. 379 of 1939 was not a fresh application for execution. The above reasoning applies a fortiori here, for it cannot even be said that the previous execution proceeding, E.P. No. 20 of 1930, was really pending when that application was filed. As has been stated, although it had not been formally terminated, all the villages which the respondent then required to be sold had been sold, and no further relief**

could be granted on the basis of that petition which must therefore be regarded as no longer pending for the purpose of including by way of amendment new properties sought to be sold for realising the balance of the decree amount. C.f., 60 CLJ 123.

14. Reliance was placed for the respondent on a recent decision of the Calcutta High Court in Shekendar Ali v. Abdul Gafur {29 AIR 1942 Cal 306}, where that Court held that an application for permission to proceed against fresh properties when it was discovered that those mentioned in the earlier execution petition were not attachable was not a fresh application for execution but only a matter of amendment of the previous petition and that the Court had a reasonable discretion in allowing it provided the amendment did not alter the character of the execution. The learned Judges followed Gnanendra Kumar v. Shayama Sunder Jen., {5 AIR 1918 Cal 73} which however dealt with the execution of a rent decree governed by the special provisions of limitation contained in Schedule III annexed to the Bengal Tenancy Act. They distinguished Hayatunnissa v. Achia Khatum, {11 AIR 1924 Cal 131} where the Court refused to accept an application filed beyond 12 years from the date of the decree for adding fresh properties to the list given in an application filed within twelve years, as possibly proceeding on the decree-holder's want of care and diligence. No reference was made to Sultan Hasan v. Nanki Bibi {AIR 1928 Cal 241} where an application for "continuing" a prior execution petition by attaching certain new properties was refused as barred by Section 48. It may well be that, as Bandhu Singh v. Kayastha Trading Bank {AIR 1931 ALL 134}, on which also the learned Judges relied, the Court had ample powers of allowing amendment of execution petitions apart from remedying formal defects under Order 21, Rule 17, but, with all respect, we are unable to agree that a decree-holder can be allowed to amend a previous execution petition by including fresh properties more: than twelve years after the date of the decree. For the reasons we have indicated, such an application would be a fresh application for execution within the meaning of Section 48, Sub-section (1) and accordingly barred under the provisions of that section. A similar view has been expressed in Bandhu Singh v. Kayastha Trading Bank, Ramratan v. Data Kaur {AIR 1928 Lah. 808} and Gajanand Sha v. Dayanand Thakur {30 AIR 1943 Pat 127}.

28. The present is not a case of fresh application for execution bringing for execution, fresh properties, not within the period of limitation. The present is a case of renewal of defect as per Rule 11, under Rule 17 of Order 21 CPC.

29. Further, the EP having been filed in time and the same remaining pending and not having come to an end, the question of limitation for filing amendment application for simultaneous mode of execution would not arise, even on the strength of **Sri Raja DK. Venkata Lingama Nayanim Bahadur Varu** (supra). If the EP had been decided and still the decree remained

unsatisfied and any fresh application for execution was filed beyond the period of limitation then the limitation might have been an issue. But, certainly not, when the execution is still pending, and the first application is not exhausted.

30. So, far as the simultaneous execution of the decree against the person and the property of the J.Dr is concerned it is legally permissible. In this respect, the discretion has been conferred on the Court. The court may even refuse simultaneous execution of the decree, against the person and property of the J.Dr. But, the D.Hr has a right to apply for such simultaneous execution.

31. In ***Shyam Singh v. Collector, District Hamirpur, U.P.,*** [3] the Hon'ble Apex Court held, as under in para Nos.11 to 16, on the aspect of simultaneous execution:

> 11. It has been said the difficulties of a litigant "begin when he has obtained a decree". It is a matter of common knowledge that far too many obstacles are placed in the way of a decree-holder who seeks to execute his decree against the property of the judgment-debtor. Perhaps because of that there is no statutory provision against a number of execution: proceedings continuing concurrently. **Section 51 of the Code gives an option to the creditor, of enforcing the decree either against the person or the property of the debtor; and nowhere it has been laid down that execution against the person of the debtor shall not be allowed unless and until the decree-holder has exhausted his remedy against the property. Order 21, Rule 30 of the Code provides that "every decree for 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."
>
> 12. In the case of ***Padrauna Rajkrishna Sugar Works Ltd. v. Land Reforms Commissioner, U.P.***{(1969) 1 SCC 485}, in connection with realisation of the Income Tax dues, sugar-cane cess and the price of the sugar-cane, treating them as arrears of Land Revenue, in accordance with the procedure prescribed by Section 279 of U.P. Zamindari Abolition and Land Reforms Act aforesaid itself, it was said by this Court:-
>
> > "The power exercisable by the Collector in recovering arrears of income-tax which are recoverable as arrears of land revenue are, it is clear, not restricted to the Land Revenue Code: the Collector is entitled to exercise all

[3] 1993 Supp(1) SCC 693

the powers of a Civil Court for the purpose of recovery of an amount due under a decree under the Code of Civil Procedure and the Code of Civil Procedure imposes no obligation to recover the dues by sale of movables or by arrest and detention of the defaulter before immovable property may be attached...

By virtue of Order 21, Rule 30(e) of the Code of Civil Procedure simultaneous execution both against the property and person of the judgment-debtor is allowed."

But still the discretion in the Court to order simultaneous execution must be exercised in a judicial manner. Order 21, Rule 21 of the Code itself provides that "the Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor."

13. While upholding the power of the Court to execute a decree for payment of money by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property or by both, in the case of Padrauna Rajkrishna Sugar Works ltd., (supra), itself it was said by this Court:-

"It was urged in the alternative that after selling the immovable property which realized more than Rs.23,50,000 the Collector should not have sold the movable property, for the claim for which the properties of the Company were put up for sale was only Rs.8,38,176-13-0. At first blush there is force in this argument. Why the Collector thought it necessary to sell the movables after the immovable property was knocked down to the Cawnpore Sugar Works Ltd., for Rs.23,50,000 was never explained After the irremovable property belonging to the Company was knocked down to the purchasers for art amount of Rs.23,50,000 it was apparently not necessary to hold the auction for sale of moveables valued at Rs.7,64,817 and to accept a bid of only Rs.2,75,000."

It was pointed out by Sulaiman, C.J., in a Full Bench judgment, in the case of Anadilal v. Ram Sarup .

"...all the various modes mentioned in Section 51 are not open to an executing Court in every case; it is to be guided by the procedure laid down in the schedule, and must resort to the method appropriate to each case."

14. In the case of Mono Mohan v. Upendra Mohan Pal {AIR1935 Cal 127} , it was said:

It is quite true that in Section 51 of the Code the remedies open to a judgment-creditor are detailed in the five Clauses (a) to (e) to that section and **it is also true that where the holder of a decree for money comes before the Court and wants process against the person of a judgment-debtor for his arrest, and if there are no special circumstances present, it is not open to the Court to say that the decree-holder must proceed against the properties of the judgment-debtor before applying for warrant of arrest against him...But we are clearly of opinion that there may be**

circumstances present in a case which would not only justify a refusal to allow the decree-holder to have process for the arrest and detention of the judgment-debtor, but we are prepared to go further and say that there may : be circumstances which would demand such a refusal.

15. Same view was reiterated in the case of A.K. Subramania Cheniar v.A Ponnuswami Chettiar , saying:

The Court has a discretion under Order 21, Rule 21 CPC, to refuse simultaneous execution and to allow the decree-holder to avail himself of only one mode of execution at a time.

16. In the case of Uma Kama Banerjee v. Renwick and Co. Ltd. {AIR 1953 Calcutta 717}, also it was said:

"Power of the decree-holder is, however, subject to the exercise by the Court of a judicial discretion vested in it under Order 21, Rule 21 of the Code."

32. So, allowing the application for amendment for execution against the property and person, does not mean that the Court has lost its discretion to decide for simultaneous execution against the person and property of J.Dr or to refuse such simultaneous execution pursuant to the Rule 21 and in view of law laid down in ***Shyam Singh*** *(supra).* The learned execution court still has such judicial discretion which is to be exercised by it on judicial principles in accordance with law.

33. Thus considered, I do not find any illegality in the impugned order.

34. The Civil Revision Petition is dismissed.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

Sd/- P VINOD KUMAR
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One Fair Copy to the Hon'ble Sri Justice RAVI NATH TILHARI
(For His Lordships Kind Perusal)

To,

1. The Civil Judge (Senior Division) at Avanigadda, Krishna District.

2. One CC to Sri. Ghantasala Udaya Bhaskar, Advocate [OPUC]

3. Nine (09) L.R. Copies.

4. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

5. The Secretary, Andhra Pradesh High Court Advocates' Association Library, High Court Buildings, Amaravathi.

6. **Three CD Copies.**

YM

vna

HIGH COURT

DATED:09/05/2025

ORDER

CRP.No.324 of 2025

DISMISSING THE CIVIL REVISION PETITION WITHOUT COSTS