

GAHC040007622024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : CRP/24/2024

Gadam Ete
Son of Shri Binga Ete, resident of Darka village, PO and PS Aalo, West Siang
District, Arunachal Pradesh

VERSUS

Gemar Lollen
Son of Late Jumge Lollen, proprietor of M/s M L Enterprises, resident of Kombo
Papak Village, PO and PS Aalo, West Siang District, Arunachal Pradesh

Advocate for the Petitioner : Dicky Panging, Rosy c Lowangcha, Tokge Darin, B Ado, Doge
Lona, Marge D, Daina Tamuk

Advocate for the Respondent : Kemo Lollen, Nyai Loyi, Maryum Sora, Geli Taye, D Ado

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 23-10-2024

Heard Mr. D. Panging, learned counsel for the petitioner and
Mr. K. Lollen, learned counsel for the respondent is present.

2. The present application is filed assailing an order dated
07.06.2024, passed by the learned Civil Judge (Senior Division), Capital

Complex, Yupia in Money Execution Case No. 21/2016, whereby civil warrant of arrest against the petitioner was issued with a direction to the decree holder to submit subsistence allowance of Rs.5000/- (Rupees five thousand only) in favour of Jail Superintendent. The litigational history shows that the respondent as plaintiff filed a money suit being Money Suit No. 35/2014, which was decreed by the learned trial court and appeal preferred by the present petitioner being RFA No. 03/2017 is still pending for adjudication before this Court.

3. As there is no stay order passed by this Court in RFA No. 03/2017, Money Execution being Money Execution Case No. 21/2016, was proceeding. It is seen from the record that for the purpose of execution of the decree, the learned executing court directed the judgment debtor to declare the properties for the purpose of execution, on an application filed by the decree holder under Order XXI Rule 41.

4. While the aforesaid application was pending, judgment debtor has also made declaration of his property which is recorded by the learned executing court in its order dated 25.06.2018. Thereafter, on 18.04.2019, the learned executing court directed the decree holder to file appropriate application for attachment of property which is situated within the jurisdiction of this Court and to do needful for those properties, which are beyond the territorial jurisdiction of the executing court. While the matter was proceeding at that stage, suddenly on 18.12.2023, Show-Cause was issued to the judgment debtor to appear before the court on the next date and to Show-Cause as to why he

should not be committed to civil prison as per Order 21 Rule 37 CPC. Subsequently, the impugned 07.06.2024 was passed.

5. In the given facts of the present case, more particularly while the judgment debtor is participating in the proceeding before the executing court, declared the properties that can be attached for execution, there is no necessity for passing the impugned orders, inasmuch as condition precedents as required to put a person in civil prison for execution of decree, was also not available and/or discernable from record.

6. In view of the aforesaid, this Court is of the view that the learned executing court has not only exceeded its jurisdiction but also failed to exercise its jurisdiction while passing the impugned order dated 07.06.2024. And therefore, aforesaid impugned order, so far the same relates to issuance of civil warrant of arrest against the judgment debtor stands quashed. The learned executing court accordingly, shall continue to proceed with the execution proceeding as per law.

7. In the aforesaid terms, the present petition stands allowed.

JUDGE

Comparing Assistant