



2025:JHC-1 K0:29495

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

A.F.R.

CIVIL REVISION No. - 57 of 2025

District Deputy Election Officer/ A.D.M., Finance
And Revenue, Lakhimpur Kheri And Anr.

.....Revisionist(s)

Versus

Punjab Tent House Thru. Prop. And Anr.

.....Opposite
Party(s)

Counsel for Revisionist(s)	:	Rohit Tripathi
Counsel for Opposite Party(s)	:	

Court No. - 8

HON'BLE MANISH KUMAR, J.

1. Heard Sri Rohit Tripathi, learned counsel for the revisionists, learned Standing Counsel for the respondent no. 2 and Sri Mohd. Arif Khan, learned Senior Advocate, assisted by Sri Mohd. Aslam Khan, learned counsel who has filed his vakalatnama on behalf of the respondent no. 1, which is to be filed through E-mode today itself.

2. With the consent of the parties, the matter is being decided at the admission stage itself.

3. The present revision has been preferred under Section 115 of the Code of Civil Procedure (hereinafter referred to as the C.P.C.) against the order dated 24.11.2025 passed by the Civil Judge (Senior Division), Lakhimpur Kheri on the application of the revisionist under Section 47 of the C.P.C. filed in the execution proceedings.

4. Brief facts of the case are that a suit for recovery of amount for the articles supplied during the Panchayat Elections filed by the respondent no. 1 in which the written statement has been filed by the revisionists and thereafter, issues were framed and a final decree has been passed on 19.02.2016. Against the decree dated 19.02.2016, the present revisionists preferred a First Appeal No. 60 of 2016 before the High Court which was dismissed by judgment and order dated 07.04.2025. Against which the present revisionists preferred an SLP before the Hon'ble Supreme Court which was also dismissed by judgment and order dated 01.08.2025.

5. After the dismissal of the SLP before the Hon'ble Supreme Court, the revisionists preferred a Review Petition No. 156 of 2025 before this Court and by taking a ground that the decree passed by the trial court is without

jurisdiction for the reason that the State Election Commission was not arrayed as defendant. The said review application was also dismissed on 23.09.2025.

6. The execution proceedings is pending since the year 2017. In the said execution proceedings, an application under Section 47 of the C.P.C. has been filed by the revisionists on 10.10.2025, after the dismissal of the First Appeal, the dismissal of the SLP and the dismissal of the review application taking a ground that the decree cannot be executed for the reason that the State Election Commission has not been arrayed as defendant in the suit before the learned trial court. The said application of the revisionists has been rejected by order dated 24.11.2025 and feeling aggrieved by the same, the present revision under Section 115 of the C.P.C. has been filed.

7. Learned counsel for the revisionists has submitted that the suit was filed without making the State Election Commission as defendant who is the person who makes payment for the expenditure incurred during the elections and due to which the decree cannot be executed against the revisionists i.e. the District Deputy Election Officer/Additional District Magistrate (Finance and Revenue), Lakhimpur Kheri and District Magistrate/District Election Officer, Lakhimpur Kheri.

8. It is further submitted that for the impleadment of the State Election Commission, an application for impleadment was filed by the revisionists which was rejected on 16.05.2014 against which a revision was preferred by the revisionists which was dismissed for want of prosecution on 07.03.2024 in which the recall application has been filed which is still pending.

9. On the other hand, Sri Mohd. Arif Khan, learned Senior Advocate has submitted that there is no illegality in the order dated 24.11.2025 passed by the Civil Judge (Senior Division), Lakhimpur Kheri while rejecting the application preferred by the revisionists under Section 47 of the C.P.C.

10. It is further submitted that the executing court cannot go beyond the decree nor it questions its legality or correctness and in support of his submission, he has relied upon the judgment of Hon'ble Supreme Court in the case of **Sundar Dass vs. Ram Parkas** reported in **[AIR 1977 SUPREME COURT 1201]**.

11. It is further submitted that the execution proceedings is to be decided within a period of six months from the date of filing and in the present case, the execution case has been filed in the year 2017 and in place of six months, more than eight years have passed. In support of his submission, he has relied upon the judgment of Hon'ble Supreme Court in the case of **Periyammal (dead) By Lrs and Others vs. V. Rajamani and Another Etc.** reported in **[AIR 2025 SC (Civil) 1244]**.

12. It is further submitted that the issues which have been raised by the revisionists in the present civil revision has already attained finality after the judgment in the review petition filed by the revisionists as the revisionists had

taken this point in the review petition as well.

13. After hearing the learned counsel for the parties and going through the record of the case, the position which emerges out in the present case is that the order dated 24.11.2025 has been passed by giving reasons in detail. In the impugned order, the reason has also been assigned for non inclusion of State Election Commission as defendant or a necessary party and those reasons are that the tender was invited by the respondent no. 2 and after the finalization, the agreement was executed between the respondent no. 1 and revisionist no. 2 and there was no agreement with the State Election Commission. It has also been recorded that at the time of filing of the written statement, the said plea was not taken by the revisionists, hence no issue was framed on the said point and the issues were framed accordingly. The executing court has also given the details of the proceedings initiated by the revisionists against the final decree i.e. filing of First Appeal after its dismissal, filing an SLP, after the dismissal of SLP, filing a review application before the High Court and after the dismissal of the review, the revisionists had moved the present application under Section 47 of the C.P.C. before the Execution court.

14. The objection of revisionists is that the State Election Commission should have been made a party and the application moved for the purpose by the revisionists has already been rejected. In no way it can be argued that it relates to the jurisdiction of the trial court much less inherent jurisdiction of the Court to try the suit. This submission made by the revisionists is devoid of any merit.

15. The Hon'ble Supreme Court in the case of **Sundar Dass (supra)** has already held and it is followed till date wherein it has been held that the Executing court cannot go behind the decree nor can it question its legality or correctness and the only exception is if the decree sought to be executed is a nullity for lack of inherent jurisdiction, which is not in the present case for the reason it is not the case of the revisionists that the decree is a nullity for lack of inherent jurisdiction of the court who has passed the same. The relevant paragraph no. 3 of the judgment is quoted hereinbelow:-

"3. Now, the law is well settled that an executing court cannot go behind the decree nor can it question its legality or correctness. But there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence of the court to try the case and a decree which is a nullity is void and can be declared to be void by any court in which it is presented. Its nullity can be set up whenever and wherever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings. The executing court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree. By doing so, the executing court would not incur the reproach that it is going behind the decree, because the decree being null and void, there would really be no decree at all. Vide Kiran Singh v. Chaman Paswan, (1955) 1 SCR 117 = (AIR 1954 SC 340) and Hiralal Patni v. Kali Nath, (1962) 2 SCR 747 = (AIR 1962 SC 199) . It is, therefore, obvious that in the present case, it was competent to the executing court to examine whether the decree for eviction was a nullity on the ground that the civil court had no inherent jurisdiction to entertain the suit in which the decree for eviction was passed. If the decree for eviction was a nullity, the executing court could declare it

to be such and decline to execute it against the respondent."

16. The decree has already attained finality up to the Hon'ble Supreme Court and now the Executing court has no other option except to pass an order for the execution of the decree and the application under Section 47 of the C.P.C. has rightly been rejected by the Civil Judge (Senior Division), Lakhimpur Kheri.

17. In view of the facts, circumstances and discussion made hereinabove, the present revision is devoid of merit and is accordingly dismissed.

18. It is expected that the execution court shall make endeavour to decide the execution proceedings as per the direction of Hon'ble Supreme Court in the case of **Periyammal (dead) By Lrs and Others (supra)**, wherein it has been held that the execution proceedings must be decided within a period of six months.

(Manish Kumar,J.)

December 16, 2025

Nitesh