

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **C.R.P. 197/2013 & CM APPL.18137/2013**

Decided on: 1st December, 2015

SMT. KAMLESH GUPTA & ANR. Petitioners

Through: Mr. Pankaj Seth, Advocate with
Mr. Shoumik Mazumdar, Advocate

Versus

SHRI BUDHU (SINCE DECEASED THR HIS LRS.) & ANR.

..... Respondents

Through: Mr. Ramesh Kumar, Advocate with
Ms. Anjali Chopra, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

CM APPL.18139/2013 (delay)

There is a delay of 153 days in filing the revision petition. Delay of 153 days is condoned as sufficient cause is shown.

Application stands disposed of.

C.R.P. 197/2013 & CM APPL.18137/2013 (stay)

1. This is a revision petition filed by the petitioners against the order dated 01.03.2013 passed by the learned Additional District Judge-09, Central, Tis Hazari, Delhi.

2. I have heard the learned counsel for the petitioners and have also gone through the record.
3. Before dealing with the legality of the impugned order it may be pertinent to reproduce the said order which is very short one:-

*“M Ex. No.26/11
01.03.2013*

*Present: Sh. M.N.Jha, Counsel for the DH.
Sh. Ramesh Kumar, counsel for JD No.3.*

Today again, it is observed that in the file, there is no copy of decree sheet. Order 21 Rule 11 (3) of CPC makes it compulsory that the applicant is required to produce certified copy of the decree. Since, no decree sheet is available, therefore, this execution application is not maintainable at all. The same is rejected. File be consigned to record room.

*Sd/-
(Jitendra Kumar Mishra)
ADJ-09 (Central), Tis Hazari
Delhi/01.03.2013”*

4. A perusal of the aforesaid order would show that the execution application of the petitioners was rejected on the ground of non production of the decree sheet.
5. The learned counsel for the petitioners has contended that the decree sheet is not necessary for effecting execution of the order.

6. I do not agree with the contention of the learned counsel for the petitioners that the decree sheet is not necessary for execution of the order. It may be pertinent here to refer to the provisions of Order 21 Rule 10 Code of Civil Procedure, 1908 (CPC) onwards which deal with the execution of the decrees.
7. Rule 10 of Order 21 CPC lays down that where the holder of a decree desires to execute it, he shall apply to the Court which has passed the decree for the execution of the same. It is not necessary to refer to the remaining portion of the Rule.
8. Rule 11 sub-rule (1) says that in case of money decree, even an oral application will be entertained by the executing Court which has passed the decree, provided that such a request is made at the time when the decree is passed and immediately the Court will arrest the judgment debtor before preparation of the warrants, if he is available within the precincts of the Court.
9. Sub-rule (2) of Rule 11 of Order 21 CPC lays down except as provided in sub-rule (1) every application seeking execution of a

decree has to be in writing and it has to give various details which are mentioned in the said sub-rule.

10. Sub-rule (3) of Rule 11 of Order 21 CPC specifically lays down the Court to which the application is made under sub-rule (2) **may** (emphasis added) require the applicant to produce the certified copy of the decree. Although sub-rule (3) of Rule 11 of Order 21 CPC uses the word 'may' but it has to be read as 'shall'. The reason for this is that without the production of the decree sheet, it is not possible to decipher by the Court as to what is the number of the suit, the name of the parties, whether any appeal was preferred or not and the other details which are mentioned in sub-rule (2). Therefore, in the absence of non-production of the decree sheet there is every possibility of the contents of the decree not being known and the decree being executed against a wrong person. It is with this idea that in order to obviate any difficulty with the execution of the decree that the production of the decree sheet is a *sine qua non* for the execution of the decree. Therefore, I feel as the decree sheet has not been produced, there was no other option

available to the learned Presiding Officer but to reject the application. Hence, there is no illegality, impropriety or jurisdiction error in the impugned order.

11. There is another flaw with regard to the maintainability of the revision petition.
12. If one reads Section 115 CPC after the amendment in 1999, the ambit of revision has been reduced considerably. It may be pertinent here to reproduce the exact language of Section 115 CPC which reads as under:-

“115. Revision.- (1) The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears—

- (a) to have exercised a jurisdiction not vested in it by law, or*
- (b) to have failed to exercise a jurisdiction so vested, or*
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:—*

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order

deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(2)

(3)”

13. A perusal of the aforesaid Section 115 proviso especially the later part would show that revision is entertainable only if the applicant who has preferred the revision would have been granted the relief by the trial Court it would have resulted in termination of the entire proceedings.
14. In the instant case, by no stretch of imagination it could be said that in case the Court had not asked the petitioners to produce the decree sheet, it would certainly not have resulted in termination of proceedings, therefore, strictly speaking the revision petition is not entertainable and what was permissible was only at best a petition under Article 227 of the Constitution of India. Even on that touchstone it does not satisfy the requirement of Article 227 of the

Constitution of India as there is no jurisdiction error, impropriety or illegality in the impugned order.

15. Therefore, the present revision petition is dismissed.

16. Pending application also stands disposed of.

V.K. SHALI, J.

DECEMBER 01, 2015

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