

**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

**Civil Revision Petition No.5869 of 2015**

**ORDER:**

This Civil Revision Petition under Article 227 of the Constitution of India by the third party petitioner is filed having been aggrieved of the inaction on the part of the learned Principal District Judge, Warangal in adjudicating the claim made by the petitioner/third party in EASR 5943 of 2015 in E.P.no.268 of 2008 filed under Order XXI rule 97 read with Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity).

2. I have heard the submissions of the learned counsel for the parties. I have perused the material record.

3. The facts necessary to be stated as a prelude to this order, in brief, are as follows:

The plaintiff/1<sup>st</sup> respondent brought a suit for specific performance. The defendant had remained *ex parte* on 19.01.2005. An *ex parte* decree was passed on 03.07.2008. The execution petition was filed pursuant to the *ex parte* decree. The court had executed a registered sale deed in favour of the plaintiff/Decree Holder in respect of the decree schedule property. The Decree Holder filed in July 2012, E.A.no.190 of 2010 under Order XXI Rules 95 and 97 for delivery of physical possession of the decree schedule property. The said application was allowed. The revision filed by third parties in C.R.P.no.3288 of 2012 against the orders in E.A.no.190 of 2010 was dismissed on 04.07.2013. The present third party filed EASR 5943 of 2015 in E.P.no.268 of 2008. Along with the said application, an application for grant of stay was also filed. Both the applications were assigned the same EASR no.5943 of 2015. One of the two applications is filed under Order XXI Rule 97 read with Section 151 of the Code.

4. In this background, the case of the third party/revision petitioner is this:

Even without numbering the stay application and the claim petition filed

under Order XXI Rule 97 of the Code, the executing court is directing delivery of the property with the assistance of police aid and that the said course adopted by the executing Court is illegal and unjust. The said course is likely to occasion in failure of justice incapable of correction at a later stage. The executing court ought to have seen that the petition under Order XXI Rule 97 has to be adjudicated as of suit, inasmuch as fresh suit is not maintainable under the scheme of the Code. Hence, the executing court ought to have registered the claim petition and ought to have decided the claim of the petitioner in strict accordance with law. When the claim of the petitioner is pending on its file, the executing Court had committed an error in directing delivery of the property with the assistance of the police aid. The executing Court has failed to exercise the jurisdiction vested in it in proper perspective and in accordance with the law. The said approach of the executing court is purely erroneous and unsustainable.

5. I have already stated the preliminary facts as a prelude to this order. At the hearing, it is submitted by the learned counsel for the petitioner as follows: 'The application in EASR 5943 of 2015 filed under Order XXI Rule 97 read with Section 151 of the Code was initially posted to 04.11.2015 for hearing on the maintainability, before numbering. After the said unnumbered EASR underwent certain adjournments, on 04.12.2015, as the petitioner/third party was called absent, the petition was directed to be returned to the petitioner/third party. Though the said petition was ordered to be returned, the same was not sent to the section of the Court below for being returned to the petitioner/3<sup>rd</sup> party and that therefore, the application was neither numbered nor returned. Had the application been returned to the petitioner/third party as directed by the court, he would have re-presented the application. But, since the application was not returned as directed by the court, the petitioner/third party is aggrieved.

6. On the other hand, the learned counsel for the Decree Holder/plaintiff while giving a detailed sequence of events from the date of the agreement of sale till the present stage of the matter, had contended that if the application was directed by the court to be returned and was not returned by the office of

the court, the petitioner/third party ought to have approached the office of the court below or the Presiding Officer of the court by following the procedure established by law and that the petitioner/3<sup>rd</sup> party ought to have taken return of the application and ought to have re-presented it if he was advised to do so; But, the petitioner/third party having not done so had failed to diligently prosecute his petition.

7. Though much water has flown since the date of the *ex parte* decree and though the matter is having a long chequered history, what is to be noted is that after this revision has come up for hearing, the revision petitioner/third party has taken return of the EASR, which is returned by the court below, and had re-presented it, and the matter is under consideration before the executing Court. Therefore, in the light of the facts and the settled legal position, which is undisputed, the matter need not further detain this Court any longer as the Court below is now expected to deal with the claim petition filed under Order XXI Rule 97 of the code by the revision petitioner/third party in accordance with the procedure established by law.

8. Before parting with the case, it is necessary to first refer to the provisions of Order XXI Rule 97, 98 and 99 which read thus:

**97. Resistance or obstruction to possession of immovable property.-**

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under Sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

**98. Orders after adjudication.-** (1) Upon the determination of the questions referred to in Rule 101, the Court shall, in accordance with such determination and subject to the provisions of Sub-rule (2),-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

It is now time for us to consider Order XXI, Rule 99 which reads as under:

**99. Dispossession by decree-holder or purchaser.-** (1)

Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in executing of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

**8.1** The legal position on the aspect urged on behalf of the petitioner/<sup>3rd</sup> party is no longer *res integra*. In **Silverline Forum Pvt. Ltd. V. Rajiv Trust and another**<sup>[1]</sup>, the Supreme Court had held that resistance offered by third parties can be subject matter of a petition under Rule 97 of Order XXI of the Code. A similar view was also expressed in **Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal**<sup>[2]</sup>. In this cited case, it was held as under:

A conjoint reading of Order XXI, Rules 97, 98, 99 and 101 projects the following picture:

(1) If a decree-holder, is resisted or obstructed in execution of the decree for possession with the result that the decree for possession could not be executed in the normal manner by obtaining warrant for possession under Order XXI, Rule 35 then the decree-holder has to move an application under Order XXI, Rule 97 for removal of such obstruction and after hearing the decree-holder and the obstructionist the Court can

pass appropriate orders after adjudicating upon the controversy between the parties as enjoined by Order XXI, Rule 97 Sub-rule (2) read with Order XXI, Rule 98. It is obvious that after such adjudication if it is found that the resistance or obstruction was occasioned without just cause by the judgment-debtor or by some other person at his instigation or on his behalf then such obstruction or resistance would be removed as per Order XXI, Rule 98 Sub-rule (2) and the decree-holder would be permitted to be put in possession. Even in such an eventuality the order passed would be treated as a decree under Order XXI, Rule 101 and no separate suit would lie against such order meaning thereby the only remedy would be to prefer an appeal before the appropriate appellate court against such deemed decree.

(2) If for any reason a stranger to the decree is already dispossessed of the suit property relating to which he claims any right, title or interest before his getting any opportunity to resist or offer obstruction on spot on account of his absence from the place or for any other valid reason then his remedy would lie in filing an application under Order XXI, Rule 99, CPC claiming that his dispossession was illegal and that possession deserves to be restored to him. If such an application is allowed after adjudication than as enjoined by Order XXI, Rule 98 Sub-rule (1), CPC the Executing Court can direct the stranger applicant under Order XXI, Rule 99 to be put in possession of the property or if his application is found to be substance less it has to be dismissed. Such an order passed by the Executing Court disposing of the application one way or the other under Order XXI, Rule 98 Sub-rule (1) would be deemed to be a decree as laid down by Order XXI, Rule 103 and would be appealable before appropriate appellate forum. But no separate suit would lie against such orders as clearly enjoined by Order XXI, Rule 101.

In short the aforesaid statutory provisions of Order XXI lay down a complete code for resolving all disputes pertaining to execution of decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the Executing Court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist is only under Order XXI, Rule 97 Sub-rule (1) and he cannot by-pass such obstruction and insist on re-issuance of warrant for possession under Order XXI, Rule 35 with the help of police force, as that course would amount to by-passing and circumventing the procedure laid down under Order XXI, Rule 97 in connection with removal of obstruction of purported strangers to the decree. Once such an obstruction is on the

record of the Executing Court it is difficult to appreciate how the Executing Court can tell such obstructionist that he must first lose possession and then only his remedy is to move an application under Order XXI, Rule 99, CPC and pray for restoration of possession. The High Court by the impugned order and judgment has taken the view that the only remedy available to a stranger to the decree who claims any independent right, title or interest in the decretal property is to go by Order XXI, Rule 99. This view of the High Court on the aforesaid Statutory scheme is clearly unsustainable. It is easy to visualise that a stranger to the decree who claims an independent right, title and interest in the decretal property can offer his resistance before getting actually dispossessed. He can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the decretal property even after losing possession as per Order XXI, Rule 99. Order XXI, Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. While Order XXI, Rule 99 on the other hand deals with the subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest de hors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order XXI and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing the possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him. With respect the High Court has totally ignored the scheme of Order XXI, Rule 97 in this connection by taking the view that only remedy of such stranger to the decree lies under Order XXI, Rule 99 and he has no locus standi to get adjudication of his claim prior to the actual delivery of possession to the decree-holder in the execution proceedings. The view taken by the High Court in this connection also results in patent breach of principles of natural justice as the obstructionist who alleges to have any independent right, title and interest in the decretal property and who is admittedly not a party to the decree even though making a grievance right in time before the warrant for execution is actually executed, would be told off the gates and his grievance would not be considered or heard on merits and he would be thrown off lock, stock and barrel by use of police force by the decree-holder. That would obviously result in irreparable injury to such obstructionist whose grievance

would go overboard without being considered on merits and such obstructionist would be condemned totally unheard. Such an order of the Executing Court, therefore, would fail also on the ground of non-compliance with basic principles of natural justice. On the contrary the statutory scheme envisaged by Order XXI, Rule 97, CPC as discussed earlier clearly guards against such a pitfall and provides a statutory remedy both to the decree-holder as well as to the obstructionist to have their respective say in the matter and to get proper adjudication before the Executing Court and it is that adjudication which subject to the hierarchy of appeals would remain binding between the parties to such proceedings and separate suit would be barred with a view to seeing that multiplicity of proceedings and parallel proceedings are avoided and the gamut laid down by Order XXI, Rules 97 to 103 would remain a complete code and the sole remedy for the concerned parties to have their grievances once and for all finally resolved in execution proceedings themselves.

**8.2** Thus, the Supreme Court held that the claim petitions can be filed before the executing Court even before the claim petitioners who are in possession of the decree schedule property lose possession to the Decree Holder. Further, in the decision in **Ashan Devi and Another v. Phulwasi Devi and others** <sup>[3]</sup>, while appreciating the whole gamut of the provisions contained under Rules 97 to 103 of the code and the objectives behind the same, the Supreme Court had held as follows:

Rule 97 deals with resistance or obstruction to possession by the holder of a decree for possession or the purchaser of any such property sold in execution of a decree. It empowers such a person to file an application to the Court complaining of such resistance or obstruction and requires the Court under Sub-rule (2) to adjudicate upon the application in accordance with the provisions provided therein. Rule 99 deals with dispossession by decree-holder or purchaser. It stipulates that where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession. The Court is obliged to adjudicate such an application. Thus this rule, as is manifest, includes any person other than the judgment-debtor. Rule 101 deals with the questions to be determined. It provides that all

questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application Under Rule [97](#) or Rule [99](#) or their representatives, and relevant to the adjudication of the application shall be determined by the Court dealing with an application and not by a separate suit and for the said purpose, the executing court has been conferred the jurisdiction to decide the same. Rule [100](#) deals with orders to be passed upon application complaining of dispossession. It is apt to reproduce the said rule:

**Rule [100](#). Order to be passed upon application complaining of dispossession.**-Upon the determination of the questions referred in Rule [101](#), the Court shall, in accordance with such determination,

(a) make an order allowing the application and directing that the applicant be put into possession of the property or dismissing the application; or

(b) pass such order as, in the circumstances of the case, it may deem fit.

14. Rule [98](#) deals with orders after adjudication. Sub-rule (1) provides that upon the determination of questions referred to in Rule [101](#), the Court in accordance with determination and subject to provisions of Sub-rule (2) therein make an order allowing the application and directing that the applicant be put in possession of the property or dismissing the application or pass such other order, as in the circumstances of the case it may deem fit. As far as Sub-rule (2) is concerned, the same is not necessary to be taken note of for the purposes of present case. Rule [103](#) which is significant reads as follows:

**Rule [103](#). Orders to be treated as decrees.**-Where any application has been adjudicated upon Under Rule [98](#) or Rule [100](#), the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.

Further, in **Noorduddin v. Dr.K.L.Anand**<sup>[4]</sup>, the facts show that the executing court had rejected the application of the Appellant therein on the ground that the High Court had already adjudicated the *lis*. Analysing the language employed in Rules [97](#), [98](#) and [100](#) to [104](#), the Court held:

Thus, the scheme of the Code clearly adumbrates that when an application has been made Under Order 21, Rule [97](#), the court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree-holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it

was a decree subject to right of appeal and not a matter to be agitated by a separate suit. In other words, no other proceedings were allowed to be taken. It has to be remembered that preceding Code of Civil Procedure Amendment Act, 1976, right of suit Under Order 21, Rule [103](#) of 1908 Code was available which has been now taken away. By necessary implication, the legislature relegated the parties to an adjudication of right, title or interest in the immovable property under execution and finality has been accorded to it. Thus, the scheme of the Code appears to be to put an end to the protraction of the execution and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in execution.

Elucidating further, the Supreme Court opined that adjudication before execution is an efficacious remedy to prevent fraud, oppression, abuse of the process of the court or miscarriage of justice. The object of law is to meet out justice and, therefore, adjudication Under Order XXI, Rules [98](#), [100](#) and [101](#) and its successive rules is sine qua non to a finality of the adjudication of the right, title or interest in the immovable property under execution.

**8.3** The authorities aforesaid clearly stipulate that the executing Court has authority to adjudicate all the questions pertaining to title or interest in the property arising between the parties and it also includes the claim of the stranger who apprehends dispossession or has already been dispossessed from the immovable property. Therefore, the Code of Civil Procedure enjoins the executing court with a duty and empowers it to adjudicate the *lis* for the purpose of avoiding multiplicity of proceedings.

**9.** In **Ashan Devi and Another** (3 *supra*), the question that fell for consideration before the Supreme Court was whether a purchaser of a vacant land under registered Sale Deed and claiming to be in possession of the land can maintain an application under Order XXI Rule 97 of the Code complaining of his alleged dispossession in execution of the decree of specific performance of contract of sale obtained *ex parte* by the decree holder against the original owner of the suit property? The brief facts of the cited case are as follows: 'The Decree Holder had obtained an agreement of sale dated 12.07.1984 from the judgment debtor in respect of the suit lands.

According to the Judgment debtor, she was not aware that the Objectors had obtained title to the suit property by four separate sale deeds in the year 1985 and got them registered in Calcutta where the vendors resided. The purchasers were not made parties to the suit. After the *ex parte* decree was granted, the Decree Holder had deposited balance of sale consideration in the Court and the decree was put in execution by him. A registered sale deed was executed by the court in favour of the decree holder as the judgment debtors absented despite notice and failed to execute it. According to the Decree Holder, on 5.9.1996, through the process issued by the executing court, possession of the decreed property was obtained by the Decree Holder through Court Nazir without any obstruction or resistance from any one. While so, on 21.9.1996, the Objectors filed an application under Order XXI Rule 99 of the Code before the executing court complaining about their illegal dispossession and seeking restoration of possession to them. The said application was opposed by the Decree Holder. In the above stated factual background, the Supreme Court having referred to the ratio in the decision in **Brahmdeo Chaudhary** (2 supra), had held as follows:

**‘In view of the discussion aforesaid, in our opinion, the executing court was well within law in recording evidence and adjudicating the claim of the third party. The executing court rightly rejected the preliminary objection to the maintainability of application of the Objectors under Order XXI Rule 99 of the Code and decided the other issues on merits of their claims arising between the Decree Holder and the Objectors.’**

The precedential guidance in the decisions referred to supra clearly shows that the claim petitioners need not file separate suits and that their petitions before the executing court are perfectly maintainable.

**10.** Viewed thus, this Court finds that the revision petition can be disposed of with appropriate directions.

**11.** Accordingly, the revision petition is disposed of directing the Court below to hear the learned counsel for the parties (the third party/claim petitioner and the Decree Holder) and pass appropriate orders on merits either directing its office to register EASR 5943 of 2015 filed under Order XXI Rule 97 read with Section 151 of the Code or rejecting the same in case it

comes to the conclusion that the said application is not maintainable. However, the Court below, while passing the said orders shall keep in view the provisions of law and also the precedential guidance in various precedents, referred to supra. Nonetheless, in case the said EASR is already registered/numbered, it is needless to state that the Court below shall dispose of the said EA on its merit, however, in strict accordance with the procedure established by law.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

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**M. SEETHARAMA MURTI, J**

01<sup>st</sup> June, 2016  
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[\[1\]](#) AIR 1998 SCW 1544

[\[2\]](#) AIR 1997 SC 856

[\[3\]](#) AIR 2004 SC 511

[\[4\]](#) (1995) 1 SCC 242