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C.O. 1870 of 2021

**Kalyani Ghosh
Vs
Sanat Kumar Ghosh**

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
... For the petitioner.

The affidavit of service furnished by the petitioner
be taken on record.

It is, however, accompanied by a track report
obtained from the official website of postal authority.

According to Mr. Debjit Mukherjee, learned
advocate appearing for the petitioner, the opposite
party declined to receive the service of the application,
which would be evident from the postal endorsement,
put on the returned envelope.

Nobody appears today for the opposite party
either physically or in virtual mode, observing the
formalities.

Declining to receive service and/or unclaimed
service amounts to good service. It is thus, despite the
opportunity being granted to the opposite
party/husband, the same goes unavailed of.

The subject matter of challenge in this revisional
application is against the order dated 18th September,
2021 passed by learned Additional District Judge, 4th

Court, Howrah in Money Execution Case No. 15 of 2019, declining to proceed ahead with the execution proceeding under Order 21 Rule 30 of the Code of Civil Procedure read with Section 151 of the Code of Civil Procedure, for the insufficiency of particulars being provided in the petition.

Upon advertent to the provisions available under Order 21 Rule 30 of the Code of Civil Procedure, Mr. Mukherjee submits that the decree for payment of money may be executed by the Executing Court by detention in civil prison of the judgment debtor, or by the attachment and sale of his property, or by both.

Mr. Mukherjee further submits that there has been a previous direction passed by this Court in C.O. 950 of 2021 directing the Court below to ensure expeditious disposal of Money Execution Case referred above, within a stipulated period of time, mentioned therein.

It is contended by Mr. Mukherjee that despite such direction, and an application under Order 21 Rule 30 of the Code of Civil Procedure having been filed for the execution of Money decree, the same could not be executed, resulting in serious prejudice to the valuable rights of the petitioner/wife.

In a suit filed by the husband/opposite party against the wife/petitioner praying for restitution of

conjugal life, there has an order granting alimony pendente lite to wife at the rate of Rs. 5,000/- per month. The opposite party/husband is said to have not complied the order granting alimony pendente lite to wife.

It is contended by the petitioner that without ensuring compliance of the order granting alimony pendente lite, the opposite party/husband proceeded to withdraw the matrimonial suit.

Having found no other alternative, the petitioner/wife invited the instant execution case.

Having considered the submission of Mr. Mukherjee, it appears that the direction to ensure expeditious disposal of pending money execution case was made, after the suit for restitution of conjugal life was withdrawn.

The Court below declined to proceed with the execution case under Order 21 Rule 30 of the Code of Civil Procedure, for the insufficiency of the particulars being furnished.

The Court below was thus confused about the mode and manner of execution of the money decree sought to be obtained for insufficient particulars.

Order 21 Rule 30 of the Code of Civil Procedure deals with decree for payment of money. The provisions available therein may be mentioned as hereunder:

“30. Decree for payment of money.- 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 judgment-debtor, or by the attachment and sale of his property, or by both.”

In an unambiguous terms, there is provision under Order 21 Rule 30 of the Code of Civil Procedure that money decree may be executed by detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

Therefore, the law is very clear regarding the mode and manner of the execution of decree for payment of money. More so, the petition filed by petitioner inviting execution of the money decree, doing adherence to the provisions under Order 21 Rule 30 of the Code of Civil Procedure, appears to supplement the particulars, required to be obtained, to make the provisions applicable under Order 21 Rule 30 of the Code of Civil Procedure.

Upon perusal of the impugned order, it appears that the petition filed by the decree-holder/petitioner under Order 21 Rule 30 of the Code of Civil Procedure read with Section 151 of the Code of Civil Procedure, has not been properly decided in context with the materials disclosed in petition filed by the petitioner/decreed-holder.

Accordingly, impugned order is set aside.

The revisional application is thus disposed of,

directing the court below to hear out the petitioner afresh in context with the materials disclosed in the petition, filed by the petitioner/decreed-holder under Order 21 Rule 30 of the Code of Civil Procedure, read with Section 151 of the Code of Civil Procedure, bearing in mind the provisions available under Order 21 Rule 30 of the Code of Civil Procedure, as mentioned hereinabove.

Such exercise may be done by the court below within three (03) weeks from the date of this order.

The revisional application is thus disposed of.

The petitioner is directed to make communication of this order to the learned court below, as well as to the opposite party in his registered address by speed post with A/D.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)