

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/73/2025
WITH EC/285/2018
IA NO: GA/1/2025

ANKAJ SHAH
VS
S K SURANA (HUF)

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

And

The Hon'ble JUSTICE UDAY KUMAR

Date :19thMarch, 2025.

APPEARANCE:

Mr. PrantikGorai, Adv.

Mr. Atanu Bhattacharyya, Adv.

Mr. Souma Bhattacharyya, Adv.

...for the judgment debtor.

Mr. Varun Kothari, Adv.

Mr. Jai KumarSurana, Adv.

Mr. Abhimunnya Roy, Adv.

...for the respondent.

The Court:- On consent of both the parties, the appeal is taken up for hearing along with the connected applications in order to expedite the same.

By the impugned order dated March 06, 2025, the learned Single Judge directed warrant of arrest to be issued to ensure the personal presence of the judgment debtor/ appellant. The primary premise of such direction was that by an earlier order dated October 03, 2024 passed by a Co-ordinate Bench, November 22, 2024 was fixed for examination of the judgment debtor.

The learned Single Judge records in the impugned order that upon query by the Court, learned Counsel appearing for the judgment debtor submitted that the judgment debtor was not personally present on the date of the impugned order i.e. on March 06, 2025.

Primarily on such premise and also on the ground of long pendency of the execution case for six and a half years, the warrant of arrest was issued by the learned Single Judge.

Learned Counsel appearing for the appellant contends that since March 6, 2025 was not a date on which the judgment debtor was directed to appear personally for facing examination, the warrant of arrest ought not have been issued by the learned Single Judge.

Learned Counsel appearing for the decree holder submits that the impugned order was passed not only on the premise that the judgment debtor was due to be personally present on November 22, 2024 but also on the ground of consistent protractive tactics being adopted by the judgment debtor. It is contended that on earlier occasions as well, warrant of arrest had to be issued due to absence of the judgment debtor for facing examination.

It is further contended that the impugned order is also premised on the fact that the execution case is pending since July 11, 2018 and the money decree passed in favour of the decree holder has not yet reached fruition.

Upon considering the submissions of the parties, we express our awareness as to the long pendency of the execution case which, by itself, ought to be deprecated.

However, whatever might have been the past conduct of the judgment debtor, the same could not be a consideration for issuance of the warrant of arrest for the simple reason that after the direction being passed on the judgment debtor to be personally present on November 22, 2024, vide order dated October 03, 2024, the matter did not appear in the list on November 22, 2024, thereby mitigating the obligation of the judgment debtor to appear in person on the said date. It is submitted before us by learned Counsel for both the parties that the matter was next enlisted on November 27, 2025, although no written order was passed on the said date by the Executing Court.

Hence, we did not find anything on record to show that there was a specific direction on the judgment debtor to be present for facing examination on March 06, 2025, the date on which the impugned order was passed.

As such, we did not find any justification for the learned Single Judge to take the extreme measure of issuing a warrant of arrest without first giving an opportunity to the judgment debtor to appear on a subsequent date to face examination.

We are intimated that the next date fixed before the Executing Court is March 27, 2025.

We make it abundantly clear that in the event the judgment debtor is not personally present in Court for being examined on March 27, 2025, when the matter is next scheduled to be listed before the Executing Court, it will be open to the learned Single Judge presiding over the

Executing Court to issue a warrant of arrest and take all further steps as deemed fit to the Court.

However, on the basis of the materials on record and reasons above, we are unable to impress ourselves as to the justification of the impugned order of warrant of arrest.

Accordingly, APOT/73/2025 is allowed on contest, thereby setting aside the impugned judgment and order dated March 6, 2025 in so far as the same directed a warrant of arrest to be issued in the name of the judgment debtor. All consequential steps taken in pursuant to such direction stand automatically recalled. The Deputy Sheriff, accordingly, shall stay his hands in this regard.

GA/1/ 2025 is also disposed of accordingly. There will be no order as to costs. All concerned shall act on the written communication of the order by the learned Advocates for the parties, coupled with a server copy of this order, for the purpose compliance, without insisting upon prior production of a certified copy.

(SABYASACHI BHATTACHARYYA, J.)

(UDAY KUMAR, J)