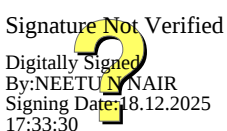
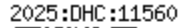




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6. Learned counsel for petitioners after taking me through the aforesaid, contends that the impugned order is not sustainable in the eyes of law since if the warrants of possession are executed, the petitioners would be rendered remediless. Learned counsel for petitioners alleges that the judgment and decree under execution were obtained by playing fraud.

7. However, in response to a specific query, learned counsel for petitioners does not dispute that as per their claim, interest in the subject property was acquired by them from the transferee *pendente lite* and they are successors in interest of the Judgment Debtor. It is also admitted that the declaratory suit filed by the present petitioners was so filed subsequent to the initiation of the execution proceedings, in which the impugned order has been passed.

8. Learned counsel for respondent/Decree Holder, while strongly opposing the present petition, contends that any declaratory suit filed subsequent to the commencement of the execution proceedings cannot be a ground to stay the execution proceedings, because that would lead to an absurdity where every Judgment Debtor would personally or through someone file such declaratory suits to thwart execution. In this regard, learned counsel for respondent/Decree Holder places reliance on the judgment of Allahabad High Court in the case titled **Deepak & Anr vs District Judge, Hardoi & Ors**, 2023 SCC OnLine All 1481.

9. In the case of **Deepak & Anr** (supra), the learned Single Judge traversed through the view taken in similar situations by different High Courts including Madras High Court and Karnataka High Court as well as



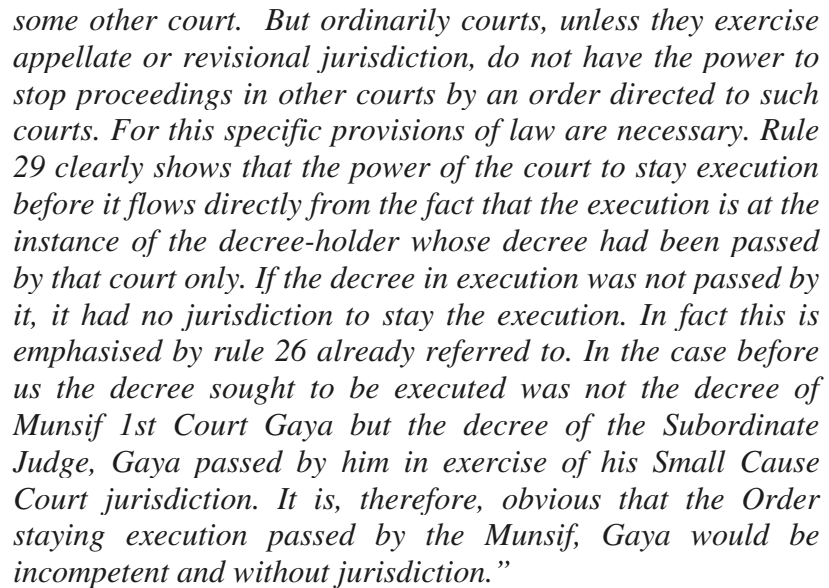
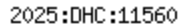
by the Hon'ble Supreme Court, all of whom are of consistent view that where the declaratory or other suit, benefit whereof is claimed by a Judgment Debtor, is filed subsequent to the initiation of execution proceedings, the latter cannot be stayed. The learned Single Judge in the said case observed thus:

“12. A perusal of Order XXI Rule 29 of the Code makes it evident that the same would be applicable in case a Suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court on the part of a person against whom the decree is passed or any person whose interest is affected by the decree or any order made in execution thereof (as per Allahabad amendment).

*13. The aforesaid aspects of ‘such Court’ has been defined by Hon'ble the Supreme Court in the case of **Shaukat Hussain @ Ali Akram v. Smt. Bhuneshwari Devi (Dead) by LRs.**, (1972) 2 SCC 731 in the following manner:*

*“It is obvious from a mere perusal of the rule that there should be simultaneously two proceedings in one court. One is the proceeding in execution at the instance of the decree-holder against the judgment-debtor and the other a suit at the, instance of the judgment-debtor against the decree-holder. That is a condition under which the court in which the suit is pending may stay the execution before it. If that was the only condition, Mr. Chagla would be right in his contention, because admittedly there was a proceeding in execution by the decree-holder against the judgment-debtor in the court of Munsif 1st Gaya and there was also a suit at the instance of the judgment-debtor against the decreeholder in that court. But there is a snag in that rule. **It is not enough that there is a suit pending by the judgment-debtor, it is further necessary that the suit must be against the holder of a decree of such court. The words “such court” are important. “Such court” means in the context of that rule the court in which the suit is pending. In other words, the suit must be one not only pending in that court but also one against the holder of a decree of that court. That appears to be the plain meaning of the rule.***

It is true that in appropriate cases a court may grant an injunction against a party not to prosecute a proceeding in



19. The aspect of the word ‘where the Suit is pending’ is also of particular importance since the same connotes that a Suit filed against holder of a decree of such Court should be pending as on the date when decree is sought to be executed which has also been considered by High Court of Madras in the case of Balamnal (*supra*) in the following manner:—

“21. Further, under Order XXI Rule 29 CPC, to stay the execution of the decree, the following conditions must be satisfied viz.:

- a) *there must be simultaneous proceedings;*
- b) *an execution by the decree holder must be pending against the judgment debtor;*
- c) *the judgment debtor must have filed a suit against the decree holder; and*
- d) *the suit must be pending.*

22. In so far as this case is concerned, the first condition viz., there must be simultaneous proceedings, is not at all satisfied by the revision petitioners herein. The suit in O.S.No.270/2004 was filed in the year 2004 and the suit was decreed on 22.06.2005. The appeal was filed in the year 2005 and the same was dismissed on 10.10.2006. The second appeal was filed in the year 2006 and the same was also dismissed on 27.01.2011. The suit in O.S.No.104/2012 was filed on 20.04.2012 whereas the execution petition in E.P.No.107/2011 was filed on 02.11.2011. In such circumstances, it cannot be



said that simultaneous proceedings are pending so as to invoke Order XXI Rule 29 CPC.

23. Even assuming that simultaneous proceedings are pending and even all the conditions of Order XXI Rule 29 CPC get satisfied, still staying the execution of the decree is not automatic, as the Execution Court has to exercise its discretion whether by staying the decree, great injustice would be caused to the decree holder or not.”

20. In the aforesaid case also it is evident that execution proceedings were filed prior to institution of Regular Suit against the decree holder and in such circumstances, High Court at Madras has held that the same would not come within the definition of ‘simultaneous proceedings’ so as to invoke provisions of Order XXI Rule 29 of the Code.

.....

24. Although the provisions of Order XXI Rule 29 of the Code empower the Executing Court to stay the execution of decree, at the same time, it is evident that such a power is not to be exercised in a cursory or mechanical manner but in exceptional circumstances only when a Suit against the decree holder is pending consideration at the time of filing of execution. Applying the aforesaid provisions to Suits filed subsequent to execution proceedings would lead to absurd results whereby no decree of any Court of competent jurisdiction can ever be satisfied. This cannot be the meaning and purpose of Order XXI Rule 29 of the Code particularly keeping in view the specific provisions of Rule 29 of the Code itself which indicates that a Suit should be pending against the holder of a decree or of a decree which has been executed. The obvious conclusion of the word ‘pending’ is that the Suit against the judgment decree holder should be pending as on the date of institution of execution. This Court is in respectful agreement with the judgments rendered by the High Courts of Madras and Karnataka.”

(emphasis supplied)

10. I am in respectful agreement with the view taken by the learned Single Judge of the Allahabad High Court in the above cited judicial pronouncement.



2025:DHC:11560



11. In view of the above discussion, I find no infirmity in the impugned order, so the same is upheld and the present petition as well as the accompanying applications are dismissed with cost of Rs.15,000/- to be paid by the petitioners to the respondent/Decree Holder.

12. At this stage, learned counsel for petitioners submits that he has no time to challenge this order, so it may be clarified that the learned court dealing with the declaratory suit shall take a view independent of the above discussion. The same is accordingly clarified.

**GIRISH
KATHPALIA**

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**GIRISH KATHPALIA
(JUDGE)**

DECEMBER 18, 2025/as