GAHC010143002026

2026:GAU-AS:16101

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/335/2026

SUNIL BAJORIA
SON OF LATE BHAGAWATI PRASAD BAJORIA, RESIDENT OF MANI BHAWAN, LOWER POLICE BAZAR, SHILLONG- 793001

VERSUS

SMT. PRABHA DEVI KOTHARI
WIFE OF SRI RAJENDRA KUMAR KOTHARI, RESIDENT OF M.S. ROAD, FANCY BAZAR, DISTRICT- KAMRUP (METRO), GUWAHATI- 781001, ASSAM

Advocate for the Petitioner : MR. S CHAMARIA, MOMI KALITA,MR N M DEKA,MR M M ZAMAN

Advocate for the Respondent : MS N RAHMAN (FOR CAVEATOR), MRS P D KHATANIAR,MR. P KHATANIAR

BEFORE
HONOURABLE MR. JUSTICE PRANJAL DAS

JUDGMENT & ORDER (CAV)

Date on which judgment was reserved	: 29.09.2026
Date of pronouncement of judgment	: 03.11.2026
Whether the pronouncement is of the Operative part of the judgment?	: NA
Whether the full judgment has been pronounced?	: Yes

Heard Mr. S. Chamaria, learned counsel for the petitioner. Also heard Mr. P. Khataniar, learned counsel for the respondent.

2. The instant petition under Article 227 of the Constitution of India is filed against the judgment and order dated 16.06.2026 passed by the learned Civil Judge (Senior Division) No. 3, Kamrup(M), Guwahati in Misc.(J) Case No. 629/2024 arising out of T.Ex. Case No. 11/2014, whereby the learned court rejected the petition filed by the petitioner under Section 47 CRP, 1908 seeking declaration that the compromise decree dated 08.01.2013 passed in T.S. No. 112/2008 had become inexecutable owing to subsequent statutory impossibility.

3. The compromise decree was stated to be founded upon a deed of settlement dated 13.12.2012.

4. The facts in brief projected by the petitioner side are that the petitioner is the legal heirs of Late Bhagawati Prasad Bajoria and is one of the Judgment Debtors in T. Ex. Case No.11/2014 pending before the Court of learned Civil Judge (Senior Division) No.3, Kamrup (M), Guwahati. After the death of Bhagawati Prasad Bajoria, the property involved in the said Execution Case is now owned by the present petitioner under the family settlement and hence as on date, it has been looked after by the present petitioner for all purposes.

5. That, Title Suit No.112/2008 was instituted between the parties and the same was ultimately disposed of on compromise by a decree dated 08.01.2013 on the basis of a Deed of Settlement dated 13.12.2012.

6. That, under the terms of the compromise, construction was required to be undertaken after obtaining valid NOC/construction permission from the competent authority and thereafter specified portions of the building were to be

handed over to the respondent.

7. That, pursuant thereto, the petitioner approached GMDA seeking renewal of the earlier NOC and permission for construction as contemplated under the compromise decree.

8. That, by communication dated 26.12.2013, GMDA refused renewal of the earlier NOC and directed submission of a fresh proposal in conformity with the prevailing Building Bye-Laws and Zoning Regulations.

9. In this context, the petitioner contends that because of such statutory developments, the original scheme envisaged under the compromise decree became incapable of implementation in its original form and the petitioner and the respondent are compelled to prepare fresh plans in conformity with the new regulations.

10. The petitioner accordingly filed an application under Section 47 CPC, 1908 seeking declaration that the decree had become inexecutable because the very foundation upon which the compromise decree rested had ceased to exist. The said petition was afterwards registered as **Misc.(J) Case No.629/2024** arising out of *T. Ex. Case No.11/2014* of *Title Suit No.112/2008* filed before the learned Civil Judge (Senior Division) No.3, Kamrup (M), Guwahati.

11. However, the learned Executing Court dismissed the said application as stated above, and aggrieved by the same, the instant revision has been preferred. The relevant documents and orders have been annexed by the petitioner along with this petition.

12. The primary grounds contended by the revision petitioner are that the impugned order suffers from a jurisdictional error, inasmuch as the learned Executing Court, while exercising jurisdiction under Section 47 of the CPC, ought

to have decided as to whether the decree was still executable. But instead of doing so, it held the opinion that the provisions of Section 47 CPC would be applicable only where the decree is a nullity or *void ab initio*, or that the decree is passed by a court lacking inherent jurisdiction.

13. It is contended that the jurisdiction under Section 47 CPC is not only confined to examining whether a decree is a nullity or without jurisdiction, but it extends to every question regarding the executability of the decree in question. In this context, it is contended by the petitioner that in terms of the agreement, when the application for renewal of NOC was refused by GMDA authorities, it amounted to fundamentally altering the very basis of the compromise decree, rendering it inexecutable, and that in such a situation, it was wrong on the part of the Executing Court to proceed with the process for executing the decree.

14. It is contended that in para 20 of the impugned judgment and order itself, the learned Executing Court has taken notice of the situation of the changed building plan and the prevailing statutory requirements, as a result of which the area available to the parties would have to be adjusted and proportionally reduced. It is submitted that in the context of such a finding, the learned Executing Court ought to have decided the executability of the decree rather than proceeding with the execution. With such projected contentions, the revision petitioner is seeking interference with the impugned order in exercise of jurisdiction under Article 227 of the Constitution of India.

15. *Mr. Chamaria*, learned counsel for the petitioner, supports the contentions of the revision petition. It is submitted that in terms of the compromise decree, the limitation period was only one year, whereafter the responsibility of enforcing the agreement shifted to the other side, and that without discharging the same, the respondents were seeking execution of the decree. It is submitted

that upon rejection of the application for renewal by the GMDA, it became essential to execute a fresh agreement.

In support of his contentions, the learned counsel for the petitioner cites the following decisions:

(i) Dhurandhar Prasad Singh vs. Jai Prakash University & Ors. reported in AIR 2001 Supreme Court 2552.

(ii) Haji Sk. Subhan vs. Madhorao, reported in AIR 1962 Supreme Court 1230.

(iii) Narain Kumar & Suri Wazir Singh vs. H.C. Mehta, reported in AIR1987Delhi275.

16. On the other hand, *Mr. Khataniar*, learned counsel for the respondent, submits that there is no infirmity in the impugned order passed by the learned Executing Court. It is submitted that in the context of the changed building and construction bye-laws of the GMDA, the situation necessitated the petitioner to file a fresh application for NOC from the GMDA, and that instead of doing so, the petitioner prematurely came before the learned Executing Court holding that the decree was inexecutable. It is also submitted that the respondent is seeking execution of that part of the agreement and compromise decree at this stage which required the petitioner to seek a fresh NOC from the GMDA. It is submitted that the learned Executing Court was right in proceeding with the matter and not holding at the outset that the decree had become inexecutable.

The learned counsel for the respondent cites the following decisions:

(i) Radhey Shyam & Anr. vs. Chhabi Nath & Ors. with Jagdish Prasad vs. Iqbal Kaur & Ors. reported in 2015 0 Supreme (SC) 158.

(ii) Pradeep Mehra vs. Harijivan J. Jethwa, reported in 2023 INSC 958.

17. I have perused the revision petition, the annexed documents, and other

relevant materials. I have also considered the rival submissions and the decisions cited at the Bar.

18. In the backdrop of earlier civil litigation between the parties, a deed of settlement dated 13.12.2012 was drawn up, and on the basis of the same, the compromise decree dated 08.01.2013 was passed.

19. The main contention of the petitioner who had filed the application before the learned Executing Court contending in-executability of the decree is that in view of the change in building bye-laws, the earlier agreement had become redundant and therefore, the compromise decree drawn up in terms of the same had also become inexecutable.

20. Another basic contention of the petitioner is that the learned Executing Court, instead of looking into that aspect of the matter, was influenced by the settled proposition that the learned Executing Court cannot go behind the decree. It is contended that the learned Executing Court failed to see that the decree had become inexecutable.

21. On the other hand, the basic contention of the respondent/decree holder is that Clause 2 of the agreement dated 13.12.2012 talked about two options, namely, *seeking renewal of the permission or in the alternative, seeking a fresh permission from the municipal or building authority*. In this context, the decree holder contends that when the renewal prayer was refused due to change in building bye-laws, it was incumbent upon the judgment debtor to invoke the alternative course of action stipulated in Clause 2 by way of seeking a fresh permission, and without doing that, they came before the learned Executing Court contending about non-executability of the decree.

22. The basic contention of the respondent side is that despite the change in

building bye-laws, the stipulations that were there in the agreement about the decree holder getting 50% of the basement area, six rooms of dimensions 14'6"×9' each on the ground floor, and two rooms of dimensions 14'6"×9' each on the second floor remains intact – as revealed by Annexure-9 of the application submitted by the judgment debtors before the learned Executing Court seeking a declaration about non-executability of the decree.

23. Clause 2 of the agreement dated 13.12.2012 has a crucial bearing on the nature of the dispute, and the said Clause 2 may be reproduced hereinbelow:

> "*2. That immediately on execution of this presents the First party shall take all necessary measures either to renew the existing NOC for construction or obtain fresh NOC for construction from the competent authority."*

24. Thus, it is revealed from the aforesaid Clause 2 of the agreement that the first party, which is the predecessor of the judgment debtors, shall take all necessary measures either to renew the existing NOC for construction or obtain fresh NOC for construction from the competent authority.

25. In terms of the agreement, after renewing the permission or obtaining fresh permission, the judgment debtors were to start the construction and complete it within one year, failing which, the decree holder was also at liberty to complete the remaining construction. Therefore, the contention and submission of the petitioner side that the period of one year being over, there is no duty anymore on the part of the petitioner would not be correct because the said period of one year is in regard to the construction which was to be undertaken upon renewing the permission or obtaining fresh permission.

26. The judgment debtor/petitioner had sought building permission vide its application dated 07.12.2013, and the Town Planner, GMDA, vide letter dated

26.12.2013 rejected the application on the ground that the duration of the NOC had expired on 17.03.2004 and stated that the applicant has to apply for fresh permission along with fresh drawing on the basis of NOC issued earlier.

27. The learned Executing Court in the impugned order has stated that in terms of the agreement, the judgment debtors were to hand over to the decree holders six shops on the ground floor each measuring 14'6"×9', two rooms on the second floor each measuring 14'6"×9',and 50% space in the basement for parking. In this context, the learned court held that upon perusing the site plan annexed as Annexure-9 by the decree holders, it was clear that the said six shops on the ground floor, two shops on the second floor of the aforesaid dimensions, and the 50% of the area were still available for allotment to the decree holder, and that therefore, the compromise decree dated 08.01.2013 was capable of execution.

28. In this context, I have perused the said Annexure-9 referred to by the learned court below, and I find that the said shops and basement area as indicated above would still be available, and therefore, the learned Executing Court was not in error in arriving at the said finding.

29. It is well settled that an Executing Court has to execute the decree as it is and that it cannot go behind the decree. However, in appropriate situations, in exercise of powers under Section 47 of the CPC, the learned Executing Court could also arrive at a finding that due to supervening circumstances, the decree had indeed become inexecutable. In such a situation, perhaps the principles of doctrine of frustration envisaged under the Indian Contract Act, 1872 would also be applicable.

30. In the case of **Haji Sk. Subhan v. Madhorao, (supra),** the Hon'ble

Supreme Court took up this question and held that the executing court can refuse to execute the decree holding that it had become inexecutable on account of change in law and its effect. The relevant para 39 may be reproduced hereinbelow:

> "*39. The contention that the Executing Court cannot question the decree and has to execute it as it stands, is correct, but this principle has no operation in the facts of the present case. The objection of the appellant is not with respect to tho invalidity of the decree or with respect to the decree being wrong. His objection is based on the effect of the provisions of the Act which has deprived the respondent of his proprietary rights, including the right to recover possession over the land in suit and under whose provisions the appellant has obtained the right to remain in possession of it. In these circumstances, we are of opinion that the Executing Court can refuse to execute the decree holding that it has become inexecutable on account of the change in law and its effect."*

31. In the case of **Dhurandhar Prasad Singh (supra),** the Hon'ble Apex Court referred to the aforementioned case of **Haji Sk. Subhan (supra)** to reiterate the position that executing court in appropriate circumstances can refuse to execute the decree holding it to be inexecutable. Thus, there is no doubt about that proposition.

However, only in exceptional circumstances when the executing court is clearly convinced from the facts and circumstances that the decree had become inexecutable, would it come to such a finding, and ordinarily, the mandate of the executing court would be to execute the decree as it is, without going into the merits of the decree or going behind the decree.

32. The decision in **Narain Kumar & Suri Wazir Singh (supra)**, relied upon by the petitioner, would turn on its own facts and will not come to the

assistance of the petitioner side.

33. The respondent has relied upon the decision in **Pradeep Mehra (supra)**. In this decision, the Hon'ble Supreme Court has delved into the scope and ambit of the powers under Section 47 of the CPC, which empowers the executing civil court to address all questions pertaining to execution of the decree. In this decision, the Hon'ble Apex Court also delved into the issue of how the execution process is at many times misused to delay the execution of the decree. The relevant paras may be reproduced hereinbelow:

4.Section 47 of the CPC reads as under:

Section 47. Questions to be determined by the Court executing decree.

*(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. *** (3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.*

Explanation 1.-- For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.-- (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within

the meaning of this section.

5.A bare perusal of the aforesaid provision shows that all questions between the parties can be decided by the executing court. But the important aspect to remember is that these questions are limited to the "execution of the decree". The executing court can never go behind the decree. Under Section 47. CPC the executing court cannot examine the validity of the order of the court which had allowed the execution of the decree in 2013, unless the court's order is itself without jurisdiction. More importantly this order (the order dated 12.02.2013), was never challenged by the tenants/judgment debtors before any forum. The multiple stages a civil suit invariably has to go through before it reaches finality, is to ensure that any error in law is cured by the higher court. The appellate court, the second appellate court and the revisional court do not have the same powers, as the powers of the executing court, which are extremely limited. This was explained by this Court in Dhurandhar Prasad Singh v. Jai Prakash University and Others (2001) 6 SCC 534, in para 24, it had stated thus:

> *"24. ……The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus, it is plain that executing court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and a nullity, apart from the ground that the decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing." This Court noted further:*
>
> *"..... The validity or otherwise of a decree may be challenged by filing a properly constituted suit or taking any other remedy available under law on the ground that the original defendant absented himself from the proceeding of the suit after appearance as he had no longer any*

interest in the subject of dispute or did not purposely take interest in the proceeding or colluded with the adversary or any other ground permissible under law.

6. The reality is that pure civil matters take a long time to be decided, and regretfully it does not end with a decision, as execution of a decree is an entirely new phase in the long life of a civil litigation. The inordinate delay, which is universally caused throughout India in the execution of a decree, has been a cause of concern with this Court for several years. In Rahul S. Shah v. Jinendra Kumar Gandhi and Others (2021) 6 SCC 418, this Court had observed that a remedy which is provided for preventing injustice (in the Civil Procedure Code) is in fact being misused to cause injustice by preventing timely implementation of orders and execution of decrees. ……..”

(emphasis added)

34. The decision in **Radhey Shyam (supra),** relied upon by the respondent side, discusses the scope of certiorari jurisdiction while adjudicating the correctness or otherwise of a decision of the civil court. The Hon'ble Apex Court have held that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226 of the Constitution, though these are amenable to supervisory jurisdiction under Article 227 of the Constitution of India.

35. In the impugned order, though the learned Executing Court has noticed the settled proposition of law that the learned Executing Court cannot go behind the decree, but it cannot be said that the learned Executing Court has decided the matter solely on that principle. The learned Executing Court went into the question of executability of the decree and held that despite the change in building bye-laws, it could not be held that the decree had become inexecutable. The learned Executing Court referred to the aforementioned

Clause 2 of the agreement, which also gave the option of seeking a fresh permission to the judgment debtor, which the judgment debtor has not sought to exercise despite the lapse of a considerable time. The learned Executing Court, as already discussed above, has also noticed about the dimensions of the rooms, etc., remaining the same, and this was also one of the grounds why the learned civil court held in favour of executability of the decree.

36. Upon perusing the materials and considering the contentions of both the sides, this Court is of the opinion that despite the rejection of the prayer for renewal, the option of seeking fresh permission in terms of Clause 2 of the agreement dated 13.12.2012 was still available to the judgment debtor, which has not been invoked. This Court has also noticed and approved the finding of the learned Executing Court about the overall dimensions of the property to be given in terms of the agreement after the proposed construction remaining the same despite the change in the building bye-laws, as discussed earlier.

37. As already mentioned, the learned Executing Court has discussed the question of executability of the decree and after giving cogent reasons has rejected the contention of the judgment debtor that the decree had become inexecutable. This Court is of the opinion that the impugned order of the learned executing court does not suffer from any jurisdictional error or patent error or irregularity so as to justify exercise of certiorari jurisdiction of this Court to interfere with the same.

38. Consequently, in the facts and circumstances and in the backdrop of the above discussion, the impugned order dated 16.06.2026 passed by the learned Civil Judge (Senior Division) No. 3, Kamrup (M), Guwahati in *Misc.(J) Case No. 629/2024*, *T.Ex. Case No. 11/2014 (arising out of TS No. 112/2008),* is hereby **upheld and confirmed.**

39. Accordingly, the present civil revision is found to be devoid of merits and is dismissed.

40. Interim order, if any, in the execution case shall stand vacated.

41. The civil revision petition stands disposed of.

JUDGE

Comparing Assistant