

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

*Reserved On: 08.04.2026
Pronounced On: 16.04.2026
Uploaded On: 17.04.2026*

*Whether the Operative part or
full judgment is pronounced: **Full***

CM(M) 107/2026

**Feroz Ahmad Dar (Age: 50 years)
S/o Late Farooq Ahmad Dar.
R/o Muslim Peer Sopore, District Baramulla.**

.....Petitioner

Through: Mr.Owais Sareer, Adv.

Versus

**M/s Himalayan Motors
Through Its Managing Partner
Bashir Ahmad Beigh
Office: Tengpora, Bypass, Srinagar.**

... Respondents.

Through:

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGEMENT

1. The petitioner through the medium of instant petition has sought following reliefs:

“i) Direct the learned Executing Court to first decide the pending Section 47 of Civil Procedure Code application on its own merits and in accordance with law, before proceeding any further with the execution petition.

ii. Direct the learned Executing Court to follow the procedure prescribed under Order 21 of the Civil Procedure Code strictly, if and when it proceeds with the execution after deciding the Section 47 application.

iii. Any other order, as may be found appropriate and necessary in the nature and circumstances of this case and in the interest of natural justice, equity

and fair play be passed in favor of the petitioner and against the respondent bank with costs.”

BRIEF FACTS

2. The petitioner has invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, calling in question the legality and propriety of order dated 23.01.2026 passed by the learned 2nd Additional District Judge, Srinagar (Executing Court), whereby levy warrants have been issued in execution of an ex parte money decree dated 02.11.2023.

3. The respondent herein had instituted a civil suit titled Himalayan Motors vs. Feroz Ahmad Dar, which culminated in an ex parte money decree dated 02.11.2023 against the present petitioner/judgment debtor. Pursuant thereto, the respondent/decree holder initiated execution proceedings before the learned Executing Court on 10.02.2024.

4. Upon appearance in the execution proceedings, the petitioner/judgment debtor filed an application under Section 47 of the Code of Civil Procedure on 29.05.2024, questioning the execution of the decree on the ground that the same is without jurisdiction and thus void ab initio. The respondent/decree holder filed objections thereto.

5. It is also borne out from the record that during the pendency of the aforesaid application, the then Presiding Officer of the Executing Court came to be transferred, as a result whereof the application could not be taken to its logical conclusion and remained undecided.

6. It is further evident that thereafter, without adjudicating upon the said application, the learned Executing Court, vide order dated 23.01.2026, proceeded to issue levy warrants against the petitioner/judgment debtor.

7. Aggrieved thereof, the petitioner has approached this Court, inter alia, on the ground that the Executing Court has acted with material irregularity and in excess of jurisdiction by proceeding with coercive steps in execution without first deciding the objection as to execution of the decree.

SUBMISSIONS ON BEHALF OF PETITIONER

8. Learned counsel for the petitioner submits that the impugned execution proceedings are vitiated by patent illegality and jurisdictional error. It is contended that an application under Section 47 of the Code of Civil Procedure strikes at the very root of the decree, and the Executing Court is under a mandatory duty to decide all questions relating to jurisdiction before proceeding further with execution. In the present case, the Learned counsel submits that by bypassing this essential requirement, the Executing Court has acted without jurisdiction and in violation of the settled principles of natural justice, thereby subjecting the petitioner to coercive measures without adjudication of application filed under section 47 of CPC.

9. Learned counsel also submits that the Executing Court has committed material irregularity in the exercise of its jurisdiction by proceeding with coercive steps despite the pendency of a substantive challenge to the validity of the decree itself. This has the effect of rendering the petitioner's statutory remedy illusory and defeats the very purpose of adjudication under Section 47 CPC. The continuation of such proceedings without deciding / adjudicating the said application calls for interference by this Hon'ble Court in exercise of its supervisory jurisdiction.

10. It is further contended that the decree dated 02.11.2023 is itself without jurisdiction, and since this issue goes to the root of the matter, the execution proceedings could not have been lawfully continued until the said question was finally determined.

LEGAL ANALYSIS

11. The writ petition is admitted for hearing, and having regard to the limited and innocuous nature of the prayer made, this Court is of the view that the matter can be disposed of at the threshold.

12. The moot question that arises for consideration is whether an Executing Court can proceed with execution proceeding by taking coercive measure in form of issuance of levy warrants, during the pendency of objection/application preferred under Section 47 of the Code of Civil Procedure, 1908, or whether it is mandatorily required to adjudicate such objection/application firstly before taking any further steps in execution.

13. Section 47 of the Code of Civil Procedure mandates that all questions arising between the parties to the suit relating to the execution, discharge or satisfaction of the decree shall be determined by the Executing Court and not by a separate suit. For facility of reference Section 47 of Code of Civil Procedure(CPC) is reproduced as under:

“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 I.—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.”

14. A plain reading of Section 47 of the Code of Civil Procedure, 1908 would show that basic purpose of the said provision is to determine any disputes/issues that arise out of the execution, discharge, or satisfaction of a decree. Therefore, when a decree is challenged under Section 47 CPC, such challenge is essentially directed against the execution of the decree itself. Having said that, the executing court is bound to adjudicate upon such objections before proceeding further in the matter. It is not permissible that an application under Section 47 CPC, pending consideration, is brushed aside and execution is carried forward. Any such course would render the remedy under Section 47 CPC illusory.

15. Applying the aforesaid principle to the facts of the present case, the course adopted by the executing court cannot be sustained. The petitioner has specifically pleaded that the decree sought to be executed is nullity on account of lack of inherent jurisdiction.

16. A bare perusal of record shows that the petitioner had filed application under Section 47 CPC on 29.05.2024, raising a substantive challenge to the execution proceedings. The respondent/decree-holder filed objections on 21.06.2024.

Thereafter, the executing court, upon taking cognizance of the rival pleadings, vide order dated 04.04.2025, directed the parties to file written arguments, and on 20.05.2025 deemed it appropriate to call for the trial court record for proper adjudication of the issues raised. The application, however, remained pending.

17. Despite the pendency of the said application, the executing court, without returning any finding thereon, proceeded to issue levy warrants vide order dated 23.01.2026. The impugned order does not reflect any consideration, much less adjudication, of the objections raised under Section 47 CPC.

18. Proceeding with coercive steps in execution in the face of a pending challenge, particularly one that goes to the root of the decree, is not in consonance with the scheme of Section 47 CPC and renders the remedy provided thereunder ineffective.

19. In the considered view of this Court, the approach adopted by the Executing Court is legally not sustainable. The application under Section 47 CPC, which strikes at the very root of the decree and its execution, was required to be decided as a preliminary issue before proceeding further in execution. The pendency of such an application, particularly when it involves a jurisdictional challenge, casts a duty upon the Executing Court to first determine the same.

20. The action of the Executing Court in issuing levy warrants during the pendency of the application filed under Section 47 of CPC, without first deciding the same, is clearly contrary to law and amounts to material irregularity in the exercise of jurisdiction.

21. In view of the aforesaid, this Court is satisfied that the impugned order dated 23.01.2026 cannot be sustained and is liable to be set aside.

22. Accordingly, the petition is disposed of with the following directions:

- i. The order dated 23.01.2026 passed by the learned Executing Court, whereby levy warrants have been issued, is hereby set aside.
- ii. The learned Executing Court i.e., Court of learned 2nd Additional District Judge, Srinagar, is directed to decide the application filed by the petitioner under Section 47 CPC at the first instance, on its own merits and strictly in accordance with law expeditiously, after affording an opportunity of hearing to both sides and continuation of execution proceeding thereafter shall be subject to the outcome of the said application.
- iii. Till such time said application is decided, no coercive steps shall be taken against the petitioner in the execution proceedings.

23. Petition **disposed of** along with connected CM(s) in the manner indicated above.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:
16-04-2026
"Shamim/PS"

- i. *Whether the order is Speaking: Yes/No*
- ii. *Whether the order is Reportable: Yes/No*