



2024:JKLHC-JMU:255

Sr. No. 04

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

Case:- CM(M) No. 64/2021
CM No. 3886/2022
CM No. 7245/2022
CM No. 1126/2022
CM No. 4526/2023
CM No. 404/2024
CM No. 9384/2021
CM No. 9385/2021
CM No. 1996/2022
CM No. 2888/2022
CM No. 2889/2022

1. Virender Kumar Chawla, Age 60 years,
S/o Late. Sh. Gobind Ram,
R/o A-19, Tribune Colony, Ambala Cantt.
2. Rajinder Kumar Chawla, Age 58 years,
S/o Late. Sh. Gobind Ram,
R/o A-20, Tribune Colony, Ambala Cantt.

....Petitioners

Through: Mr. Vansh Chawla, Advocate

Vs

Neha Chawla
W/o Late Surinder Chawla
R/o M-25, Buta Nagar, Lower Roop Nagar,
Near Radio Sharda, Near Greenland Palace,
Jammu-181121.

....Respondent

Through: In person

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
15.02.2024

(Oral)

01. In the instant petition filed under Article 227 of the Constitution of India, the petitioners herein have sought quashment



of order dated 15.11.2021 (for short **“the order impugned”**) passed by the 2nd Additional District Judge, Jammu (for short **“the Executing Court”**) in execution proceedings titled as **“Neha Chawla Vs. Late Surinder Chawla (deceased) through his brothers, namely, Virender Chawla and Rajinder Chawla.”**

02. The background facts emerging from the record reveals that proceedings under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (for short **“the Act of 1956”**) came to be instituted by the respondent herein against her husband, namely, Surinder Chawla (for short **“the deceased”**), seeking maintenance for herself as well as her minor son before the Court of 1st Additional District Judge, Jammu, which Court upon finally deciding the said proceedings in terms of order dated 11.11.2002 allowed the maintenance of Rs. 5,000/- both for the respondent as well as her minor son. The respondent herein subsequently filed the proceedings under Section 25 of the Act of 1956 for altering/enhancing the amount of maintenance on 27.03.2006, which proceedings came to be disposed of by the court of Principal District Judge, Jammu vide order dated 12.03.2009 enhancing the amount of maintenance of Rs.5,000/- to Rs.11,000/-, to be paid to the respondent herein and to her minor son by the deceased.



03. The order dated 12.03.2009 supra came to be challenged by the deceased in an appeal before this Court in CIMA No. 348/2009 which came to be dismissed by this Court on 23.04.2010.

04. During the pendency of the said appeal and prior to its disposal by this Court, the deceased died on 24.03.2010.

05. The respondent herein thereafter preferred an execution petition before the Court of 2nd Additional District Judge, Jammu on 01.06.2020 in respect of the aforesaid orders of maintenance claiming *inter-alia* therein said execution petition the arrears of maintenance for the period w.e.f. 12.03.2006 to 27.03.2010 amounting to Rs.2,88,000/- as also the arrears of maintenance from 27.03.2010 upto the date of presentation of execution petition i.e. 01.06.2020 together with interest @ 9% till the date of its payment to the respondent herein. The claim for payment of the aforesaid arrears, however, came to be based and lodged by the respondent herein against the assets of the deceased alleged to have got vested unto the petitioners herein, being the brothers of the deceased.

06. On 05.06.2021, the respondent herein preferred another application by way of rejoinder before the Executing Court supplementing the execution petition, stating further therein that the petitioners herein being the brothers of the deceased, are liable to maintain her out of the estate of deceased and also claimed an



amount of Rs.14,79,000/- as arrears of maintenance excluding the amount of Rs.2,88,000/- as was claimed in the initial execution petition making the total balance amount of arrears as Rs.17,67,000/-.

07. The petitioners herein being non-applicants in the execution petition supra before the Executing Court contested both the main execution petition as well as the rejoinder application filed by the respondent herein, by way of objections, stating therein that the execution petition is time barred and that the respondent herein stands already paid an amount of Rs. 8 lacs as arrears of maintenance in pursuance of an order passed by the Court of Additional District Judge, Matrimonial Cases upon a petition filed by the respondent herein under Section 30 of the Hindu Marriage Act, 1980 and that the said amount included the arrears of maintenance as were to be paid to the respondent herein in terms of the orders passed by the Court in the proceedings filed by the respondent herein under the Act of 1956. It also came to be stated that the proceedings, whereof the execution is being sought by the respondent herein had lapsed on account of the death of the husband of the respondent herein, who was stated to have divorced the respondent herein in terms of an *ex-parte* decree of divorce obtained by him in the proceedings filed by him. The petitioners herein, however, in the aforesaid objections did not deny the fact



that the assets of the deceased husband of the respondent herein vested unto them.

08. After hearing the parties, the Executing Court upon considering the execution proceedings in terms of the impugned order dated 15.11.2012 over-ruled the objections urged by the petitioners herein and consequently, *inter-alia*, concluded that the respondent herein is entitled to the unpaid arrears of enhanced maintenance of Rs. 2,88,000/- upto 24.03.2010 and thereafter with effect from 24.03.2010 to the date of attaining of majority of her son i.e. 30.04.2014 to an amount of Rs. 5,28,000/- @ Rs. 11,000/- per month as also the arrears of maintenance in favour of the respondent herein for 78 months upto 30.10.2021 @ Rs. 7,333/- per month, amounting to Rs. 5,71,974/, however, declined the payment of interest @ 9% as prayed by the respondent herein.

The Executing Court in the impugned order further ruled that the order of maintenance granted in terms of order dated 12.03.2009 supra in favour of the respondent herein is executable against the assets of her deceased husband being in the hands of the petitioners herein and consequently while summarizing the order directed the petitioners herein being legal heirs/ representatives of the deceased husband of the respondent herein to deposit the arrears of maintenance as worked out till 30.10.2021 amounting to Rs.13,87,974 with the Nazir of the Court.



09. The impugned order dated 15.11.2021 is being challenged by the petitioners herein *inter-alia* on the grounds that the same is bad, illegal, arbitrary and unconstitutional and that the Executing Court exceeded its jurisdiction as provided under Section 47 of the Code of Civil Procedure having gone beyond the orders, execution whereof had been sought by the respondent herein, as the Executing Court has proceeded to hold the respondent herein entitled to future maintenance payable by the petitioners herein being the legal representative of her deceased husband after the death of her husband, ignoring the fact that such a direction for payment of maintenance could not have been passed by the Executing Court in the said execution proceedings but and that the factum of divorce of the respondent herein by her deceased husband stands upheld by the Apex Court in the year 31.01.2001, after such plea have had been confirmed in an observation made by the Punjab & Haryana High Court in the proceedings which had arisen from the case of domestic violence instituted by the respondent herein against the petitioners herein and that the Executing Court even wrongly recorded findings in regard to the said plea of divorce while considering the execution proceedings instituted by the respondent herein and that the Executing Court also failed to appreciate the fact that the respondent herein have had been paid the maintenance amount of Rs. 20,000/- per month under and in terms of the proceedings instituted by her under Section 25 of the Hindu



Marriage Act, 1980 in compliance whereof the respondent have had been paid the amount of Rs. 8 lacs with effect from October, 2006 till the death of her husband in the year 2010 and that the said fact also came to be overlooked by the Executing Court without appreciating in its true and correct perspective as also the fact that the respondent herein had concealed the fact in the execution proceedings before the Executing Court of receiving the said maintenance granted to her in the proceedings under the Hindu Marriage, Act, 1980.

Heard learned counsel for the parties and perused the record.

10. Before proceeding to advert to the grounds of challenge urged in the instant petition by the petitioners, it is significant to note here that the nature and nomenclature of the proceedings instituted under the provisions of the Act of 1956 have not been defined or styled anywhere. It is also nowhere provided in the Act of 1956 that the order of maintenance granted under the said Act, be it under Section 18 or Section 25, would be an award or a decree to be executed as such.

11. Be that as it may, since both the parties have submitted to the jurisdiction of the Executing Court as also the procedure adopted by the said Court qua the orders dated 27.03.2006 read with order dated 12.03.2009, as such, this Court refrains from



expressing any opinion *qua* the maintainability of the execution proceedings or else the procedure adopted and followed by the Executing Court for execution of the said orders.

12. The challenge thrown raised by the petitioners herein, as noticed in the preceding paras, is against order dated 15.11.2021 on the grounds referred hereinabove, and the challenge thrown precisely is to the observations and findings made and recorded by the Executing Court *qua* the factum of divorce as also the entitlement of the respondent herein to the amount of maintenance from the assets of the deceased, having vested unto the petitioners herein as also the non-inclusion of the amount of maintenance, which the respondent herein have had been receiving out of the maintenance proceedings instituted by her under the provisions of the Hindu Marriage Act, 1980 wherein in the said proceedings in terms of order dated 07.12.2009 while awarding the maintenance of an amount of Rs.20,000/- in her favour, the Court which passed the said order included the amount of Rs. 5,000/- having been received by the respondent herein in terms of the maintenance proceedings instituted by her under Section 18 of the Act of 1956

13. Before proceeding further in the matter, it would be appropriate to refer to the provisions of Section 47 of the Code of Civil Procedure being relevant and germane where as the Executing Court admittedly has passed the impugned order in terms thereof:-



“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.”

From a plain reading of the Section supra, it is amply clear that at the stage of execution, the powers of the Executing Court are very limited. The scope of Section 47 is that it empowers the Executing Court to determine all questions arising between the parties to the suit or their representatives **relating to the execution, discharge or satisfaction of the decree** and not the



questions which ought to have been raised during trial, at the time of filing of written statement, framing of issues or arguments.

Law is settled that section 47 supra of the Code has been enacted for the beneficial object of checking needless litigation and eliminating unnecessary delay in the proceedings and the Apex Court in case titled as ***Merla Ramanna Vs Nalla Paraju***, reported in ***AIR 1956 SC 87*** has observed as follows:-

- (i) The questions must be one arising between the parties to the suit in which the decree is passed, or their representatives; and
- (ii) It must relate to the execution, discharge or satisfaction of the decree.

Thus, what emerges from the perusal of Section 47 supra and the principles laid down by the Apex Court supra is that the question must relate to execution, discharge or satisfaction of the decree and any question which hinders or in any manner affects execution of the decree are also covered by Section 47 supra.

A similar view has even been laid down by the Apex court in case titled as ***Kanwar Singh Saini Vs High Court, Delhi***, reported in ***(2012)4 SC 307***.

14. Reverting back to the case in hand, the Executing Court, in law, have had to deal with the execution proceedings instituted by the respondent herein for execution of the orders passed under



Section 25 of the Act of 1956 while having regard to the nature and tenor of the order/s passed under the Act of 1956 and keeping in mind the terms under which the order was passed and had to execute the same as it existed.

15. Perusal of the impugned order would, however, reveal that the Executing Court has overlooked the important facts obtaining in the matter including the fact of award of maintenance to the respondent herein under order dated 07.12.2009 and in terms of the provisions of Hindu Marriage Act, 1980. The issue of divorce as well as the question of the assets/estate to have vested unto the petitioners herein and a claim lodged thereto by the respondent herein for the purposes of payment of maintenance to her by the petitioners herein out of the said assets seemingly has not also been addressed properly by the Executing Court. The matter seemingly has not been received appropriate consideration by the Executing Court having regard to the ambit and scope of the section 47 of CPC, thus, necessitating remanding the matter back to the Executing Court for its re-consideration. However, considering the fact that the petitioners herein have admitted to be in arrears of the amount of maintenance amounting to Rs.2,88,000/-, the petitioners herein, as such, are directed to pay to the respondent herein the said amount of arrears of maintenance along with the interest @ 12% per annum herein within ten days from the date of passing of this order.



16. The petition, accordingly, for the foregoing reasons is ***disposed of*** and the matter remanded back to the Executing Court, for its reconsideration, with a direction to proceed in the matter afresh and to decide the same in accordance with law.

17. It is made clear that any observation made hereinabove qua the execution petition supra shall be deemed to have been made only for the purposes of disposal of the instant petition and in no case shall be deemed expression of any opinion as to the merits of the execution petition.

18. Registry is directed to remit the record back to the Executing Court forthwith which Court before proceeding further in the matter shall summon the parties properly.

19. The application being CM No. 404/2024 filed by Arjun Chawla is directed to be returned back to the applicant herein with liberty to the applicant to file the same before the Executing Court, which Court shall be free to decide the same on its own merits in accordance with law.

Disposed of accordingly.

(JAVED IQBAL WANI)
JUDGE

JAMMU
15.02.2024
Muneesh

Whether the order is speaking : **Yes**
Whether the order is reportable : **Yes**