AFR
Reserved on 13.10.2025
Delivered on 17.10.2025

2025:AHC:186421

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 9445 of 2025

Smt. Santosh Jain and 2 others

…..Petitioner(s)

Versus

Kewal Kishore and another

…..Respondent(s)

Counsel for Petitioner(s)	:	Ashish Agrawal, Harsh Vardhan Gupta
Counsel for Respondent(s)	:	Pankaj Agarwal

Court No. - 36

HON'BLE ROHIT RANJAN AGARWAL, J.

1. Petitioners, before this Court, are judgment-debtors whose objection filed under Section 47 of Code of Civil Procedure (*CPC*) was rejected and revision filed, thereafter, has also been dismissed.

2. Facts, leading rise to present petition, are that one Late Aatma Ram was tenant of Shop No. 13/1091 situated in Bazar Fazalganj, Saharanpur. Respondent no. 1, Kewal Kishore, the decree-holder instituted a S.C.C. Suit No. 64 of 1978 for arrears of rent and ejectment. On 01.12.1981, he executed Power of Attorney in favour of his father Gurudas Mal for contesting the suit, filing vakalatnama, filing of affidavit appointing advocate etc. The suit was decreed on 13.08.1993. Against the said judgment, a S.C.C. revision was filed which was also dismissed on 22.08.1994. The matter travelled upto Hon'ble Supreme Court and SLP filed by judgment-debtor was converted into Civil Appeal No. 4433 of 1993 which was dismissed on 30.11.2000.

3. Plaintiff-decree-holder filed Execution Case No. 27 of 2002. During pendency of execution case, judgment-debtor Aatma Ram died. His son Pradeep Kumar Jain was substituted, who also died on

29.07.2016 and present petitioners were substituted as legal heirs on 16.02.2017. An application under Section 47 read with Section 151 CPC was filed by petitioners in execution proceedings which was registered as Misc. Case No. 21 of 2018.

4. Decree-holder filed his objection stating that Power of Attorney holder Gurudas Mal has signed the execution application and has every right to obtain possession of property in dispute. The application moved under Section 47 CPC was rejected on 18.05.2018, against which S.C.C. Revision No. 7 of 2018 was filed, which was partly allowed and the case was remitted back by order dated 17.07.2018 to executing court to re-adjudicate the Misc. Case No. 21 of 2018. Post remand, executing court again rejected the misc. case on 11.12.2024, against which a Revision No. 140 of 2024 was filed which was dismissed on 15.01.2025. Both the orders dated 11.12.2024 and 15.01.2025 were challenged before the co-ordinate Bench of this Court in Matters under Article 227 No. 941 of 2025. The co-ordinate Bench disposed of the case on 31.01.2025 remanding back the matter to be decided afresh. The executing court again on 11.03.2025 rejected the application under Section 47 CPC which was challenged through Revision No. 55 of 2025 which has been dismissed by order dated 11.08.2025. Hence, the present writ petition.

5. Learned counsel for the petitioners submitted that application as mandated under Order XXI Rule 10 read with Rule 11(2) CPC should have been signed by decree-holder and Power of Attorney holder did not have any right to move the same. According to petitioners' counsel, Power of Attorney holder was not authorised by plaintiff-decree holder to contest the execution proceedings and Power of Attorney was only in respect of suit proceedings. He further contended that the word, "shall" appearing in Rule 10 of Order XXI mandates that provision is mandatory in nature and there cannot be any deviation and decree-holder has to sign the application before it is moved for execution. He further submits that Rule 11(2) contemplates that Court has to record satisfaction that execution application is in accordance with law, while in the instant case, the court below has clearly recorded that there was no Power of Attorney

in favour of Gurudas Mal, father of decree holder in regard to execution proceedings and the defect having been occurred cannot be cured. Reliance has been placed upon a decision of Hon'ble Supreme Court rendered in case of **Karnataka Housing Board vs. K.A. Nagamani, Civil Appeal No. 4631 of 2019**, decided on 06.05.2019 and decision of Karnataka High Court rendered in case of **Dastagir Hussain Nadaf vs. Maharashtra Apex Corporation Ltd., 1986 Supreme (Kar) 341**.

6. Counsel for the respondents submitted that Rule 10 has to be read in harmony with Rule 11(2) of Order XXI. According to him, Gurudas Mal was having Power of Attorney since 1981 and has been conducting proceedings on behalf of his son, the decree-holder for last 40 years. According to him, the language employed in Rule 11(2) clearly speaks that application be signed and verified by the applicant or some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

7. In the instant case, Gurudas Mal being father of decree-holder was contesting the case for last 40 years and was well acquainted with the facts of the case and comes under the words 'some other person' and the application moved is to the satisfaction of the court, thus, application moved under Section 47 CPC is only to linger on the execution of decree which is of the year 1993 having been affirmed by Hon'ble Supreme Court. He thus submitted that a highly technical objection has been raised by petitioners to delay the execution proceedings which is pending for last 23 years. Reliance has been placed upon the decision rendered by Bombay High Court in case of **Kopargaon Big Bagayatkar Vividha Karyakari Sahakari Society Ltd. vs. Deorao Sakharam Pawar and others, AIR 1976 Bom 333** and decision of Jammu and Kashmir High Court rendered in case of **Ghulam Navi Seh vs. Gaffer Wagey, AIR 1983 J&K 67**.

8. I have heard respective counsel for the parties and perused the material on record.

9. The short question which needs adjudication of this Court is as to the interpretation of Rule 10 and Rule 11(2) of Order XXI.

10. It is an admitted case to both the parties that shop in dispute was let out to one Aatma Ram by Kewal Kishore for which suit for ejectment and arrears of rent was filed in the year 1978. The decree-holder had executed a Power of Attorney in favour of his father in the year 1981. Since then Gurudas Mal, Power of Attorney holder has been contesting the suit and, thereafter, revision filed by judgment-debtor. The matter in regard to arrears of rent and ejectment had already attained finality by judgment of Hon'ble Supreme Court dated 30.11.2000.

11. Execution proceeding was initiated in the year 2002 on the application made by Power of Attorney holder Gurudas Mal who signed and verified the same. Initially, execution case was contested by original judgment-debtor Aatma Ram, but after his death, Pradeep Kumar Jain continued to appear in the execution case till 2016. It was after his death that petitioners who are legal heirs had moved an application under Section 47 read with Section 151 CPC which was registered as Misc. Case No. 21 of 2018 taking objection that the application was not signed by decree-holder himself in terms of Rule 10 of Order XXI and, thus, execution case was not maintainable.

12. Before adverting to decide the issue in hand, a cursory glance of Rule 10 and Rule 11(2) of Order XXI is necessary for the better appreciation of the case, which are extracted hereasunder:-

> *"**10. Application for execution. –** Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper office thereof.*
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> ***11. Oral application.** – (1) ****
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> *(2) **Written application.** – Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely:-*
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> *(a) the number of the suit;*

(b) the names of the parties;

(c) the date of the decree;

(d) whether any appeal has been preferred from the decree;

(e) whether any, and (if any) what, payment of other adjustment of the matter in controversy has been made between the parties subsequently to the decree;

(f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;

(g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;

(h) the amount of the costs (if any) awarded;

(i) the name of the person against whom execution of the decree is sought; and

(j) the mode in which the assistance of the Court is required, whether-

(i) by the delivery of any property specifically decreed;

(ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;]

(iii) by the arrest and detention in prison of any person;

(iv) by the appointment of a receiver;

(v) otherwise as the nature of the relief granted may require."

13. Rule 10 provides for application for execution, where a decree-holder desires to get a decree executed, he shall apply to the Court which passed the decree or to the officer appointed in this behalf. While Rule 11 is divided into two parts. Sub-rule (1) of Rule 11 provides for oral application where the decree is for payment of money, while sub-rule (2) of Rule 11 provides for a written application. According to sub-rule (2) of Rule 11, the application has to be in writing, signed and verified by the applicant or some other person proved to the satisfaction of the Court.

14. Thus, from the reading of Rule 10 and Rule 11(2), it is amply clear that they are complimentary to each other and in no way they restrict or curtail the provisions contained therein. Rule 11(2) is intended to convey that decree-holder himself need not make an application for getting the decree executed and the same may be moved by some other person

proved to the satisfaction of the Court who is well acquainted with the facts of the case and the application contains in a tabular form, the particulars enumerated therein from Clause (a) to (j) of sub-rule (2) of Rule 11.

15. The argument raised by petitioners' counsel that application for execution needs to be mandatorily signed by decree-holder is thoroughly misplaced from the reading of Rule 11(2). Both Rule 10 and 11(2) are to be read in harmony and not in isolation.

16. Reliance placed upon decision of Apex Court in case of **K.A. Nagamani (supra)** does not help the case of petitioners as it is well settled that execution proceedings are separate and independent proceedings for execution of decree and they cannot be considered to be continuation of original suit. Reliance placed upon the other judgment of **Dastagir Hussain Nadaf (supra)** is distinguishable from the present case.

17. The signing and verification of an application moved for execution of a decree cannot be equated with that of verification of pleading as mandated under Order VI Rule 15 CPC. As Rule 15 of Order VI clearly provides that every pleading shall be verified at the foot by the party or by one of the parties pleading or some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, while the application for execution of a decree can be moved by signing and verifying either by decree-holder or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case and the application shall contain in a tabular form the particulars enumerated from Clause (a) to (j) in sub-rule (2) of Rule 11.

18. The verification of a pleading and execution of a decree cannot be placed on the same pedestal as has been held by Delhi High Court in case of **International Security and Intelligence Agency Ltd. vs. Municipal Corporation of Delhi and others, AIR 2002 Delhi 347**. Relevant paras 7 and 8 are extracted hereasunder:-

> *"**7.** I am afraid an execution petition cannot be placed on the same pedestal as the pleadings of the suit viz. the plaint, the written statement, replication which have to be necessarily in the form of paragraphs. The facts of pleadings are put in such a mode that may require verification as contemplated by the aforesaid order. On the other hand, there is a prescribed proforma having more than 11 columns for execution petition in respect of which information is to be provided by the applicant.*
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> ***8.** Though the information as to the name of the parties, date of the decree in tabular form cannot be provided the status of "paragraph" of pleadings in a suit yet such columns have to be referred as "paras" in the "verification" appearing at the foot of the execution petition. In common parlace and as per dictionary meaning the word "paragraph" is defined as 'a distinct section of a piece of writing, a symbol used to mark a new paragraph and also a reference mark". This is why requirement of Order 21 Rule 11 (2) CPC are deemed to be fulfilled if the verification is to the satisfaction of the Court. It is the satisfaction of the Court which is material for the purpose of accepting or rejecting verification. In the pleadings of the aforesaid nature, party may be required to verify as to which of the paragraphs are verified to be true out of his knowledge and which of the paragraphs are verified to be true upon information and believed to be true. Thus, it is the satisfaction of the Court with regard to the sufficieny and correctness of the information provided by the petitioner that is paramount."*

19. In the instant case, Power of Attorney holder Gurudas Mal, father of decree-holder has been contesting the case since 1981. The execution application has been signed and verified by him detailing the particulars as required under Rule 11(2) from Clause (a) to (j). The objection as to the maintainability of the execution application at his behest has been rightly sustained by executing court as well as the revisional court.

20. The objection raised by judgment-debtors/petitioners objecting to the said execution proceedings are thoroughly misplaced in view of Section 11(2) of Order XXI.

21. Considering the facts and circumstances of the case, I find that no case for interference is made out.

22. Writ petition fails and is hereby dismissed.

23. Recently, the Apex Court, on 06.03.2025, in **Periyammal vs. Rajamani, 2025 SCC OnLine SC 507** considering the earlier judgment of the Apex Court rendered in case of **Rahul S. Shah v. Jindendra Kumar Gandhi reported in (2021) 6 SCC 418** had held that the

execution proceedings should be concluded expeditiously. Relevant paragraphs are extracted hereasunder:-

> *"72. Before we close this matter, we firmly believe that we should say something as regards the long and inordinate delay at the end of the Executing Courts across the country in deciding execution petitions.*
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> *73. It is worthwhile to revisit the observations in* ***Rahul S. Shah (supra)*** *wherein this Court has provided guidelines and directions for conduct of execution proceedings. The relevant portion of the said judgment is reproduced below:*
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> *42. All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:*
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> *42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties.*
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> ***
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> ***42.5. The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.***
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> ***42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.***
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> *42.9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.*

> ***42.10. The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.***
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> ***42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.***
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> ****** (Emphasis supplied)***
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> *74. The mandatory direction contained in Para 42.12 of* ***Rahul S. Shah (supra)*** *requiring the execution proceedings to be completed within six months from the date of filing, has been reiterated by this Court in its order in Bhoj Raj Garg v. Goyal Education and Welfare Society, Special Leave Petition (C) Nos. 19654 of 2022."*

24. Looking to the fact that decree is of the year 1993 and the matter has already attained finality by Hon'ble Supreme Court, the Executing Court is hereby directed to proceed with Execution Case No. 27 of 2002 and decide the same in the light of the dictum of Hon'ble Apex Court within a period of two months, from the date of production of certified copy of this order.

October 17, 2025
V.S.Singh

(Rohit Ranjan Agarwal,J.)

Digitally signed by :-
VIDYA SAGAR SINGH
High Court of Judicature at Allahabad