



HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 16898/2023

[REDACTED] 47 Years,
[REDACTED]
[REDACTED] Udaipur. Presently residing at [REDACTED] IMCO
[REDACTED] Construction and Engineering, [REDACTED]
Kuwait. Through Power of Attorney held by [REDACTED] Pushpa
S/o [REDACTED]
Fr [REDACTED]

----Petitioner

Versus

[REDACTED] ed
[REDACTED] Chandpara, Near Hanish Lake, Bhopal,
[REDACTED] Presently residing at 121, Al Huda Building,
[REDACTED] Dubai.

----Respondent

For Petitioner(s) : Mr. Jaideep Singh Saluja, Adv.
For Respondent(s) : Mr. Akshay Nagori, Adv.

HON'BLE MR. JUSTICE MUNNURI LAXMAN

Order

Order Reserved on : 20/05/2025

Order Pronounced on : 27/05/2025

1) The present writ petition has been filed challenging the order dated 16.09.2023 passed by the Judge, Family Court No. 2, Udaipur, in Civil Case No. 01/2023 (CIS No. 01/2023), whereby the applications filed by the petitioner resisting the execution of the decree dated 03.03.2019 passed by the Court of First Instance in Dubai (UAE), were rejected. The petitioner has also sought a declaration that the order and decree dated 03.03.2019 passed by the Court of First Instance, Dubai, be declared illegal and set aside, and appropriate consequential orders be passed.



रजि. प्रतिलिपि
प्रशासनिक अधिकारी-राजस्थान
राजस्थान उच्च न्यायालय
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2) This writ petition has been filed by the husband, who is the judgment debtor in the primary court. The respondent is the wife, who is the decree-holder in the execution court. For the sake of convenience, the ranks of the parties, as referred to in the execution petition, are maintained.

3) The decree-holder filed a suit before the Court of First Instance, Dubai (UAE), seeking maintenance, dissolution of marriage, and other reliefs. The Dubai court passed an order and decree dated 03.03.2019. For the execution of the said decree, the decree-holder filed an execution petition before Family Court No. 2, Udaipur. In response to the notices issued in the execution petition, the judgment debtor filed two applications opposing the execution of the decree. One application was filed under Section 47 read with Section 151 of the CPC, opposing the execution on the ground that the decree passed by the Dubai Court falls within the exceptions under Section 13 of the CPC and, therefore, cannot be executed. Another application was filed under Section 44A read with Section 151 of the CPC, opposing the execution on the ground that the reciprocal arrangement between India and the UAE was notified only on 17.01.2020, whereas the decree of the Dubai Court was dated 03.03.2019; as such, the said decree is not executable.

4) The primary court, after considering the objections raised by the judgment debtor and hearing the decree-holder, passed the impugned order dismissing both applications. Aggrieved by the said order, the judgment debtor has filed the present writ petition.

5) At the time of hearing the writ petition, a preliminary objection was raised by the learned counsel appearing for the



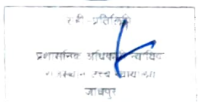
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decree-holder, contending that orders passed under Section 47 of the CPC constitute decrees, which are appealable as first appeal, and therefore, the present writ petition is not maintainable.

6) The learned counsel appearing for the judgment-debtor/writ petitioner submitted that the impugned order is a common order passed on applications filed under Section 47 read with Section 151 and Section 44A read with Section 151 of the CPC. Both applications are in the nature of objections to the execution of a decree and are to be treated as objections under Section 47 of the CPC. It was further submitted that the impugned order, or any order passed under Section 47 of the CPC, does not amount to a decree unless specifically defined under any provision of the CPC. Moreover, such orders are not appealable, as Order XLIII of the CPC enumerates the categories of orders passed under Order XXI of the CPC that are appealable, and the present order does not fall within those categories. Thus it is not decree. Further, the present order is also not an appealable order under Order XLIII of the CPC.



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7) Per contra, the learned counsel appearing for the decree-holder contended that any order passed under Section 47 of the CPC must be treated as an appealable order, similar to an appeal against a decree, and such an order should be considered a deemed decree, and appeal like a regular appeal lies under the CPC. Therefore, the present writ petition is not maintainable. In support of these contentions, the learned counsel relied upon the decision of the Bombay High Court in the case of **Shri Pradeep Ramgopal Gupta vs. Smt. Rukminibai Rammanohar Shahu & Ors.**, [Writ Petition No.4427 of 2019], decided on 04.02.2020,



and the decision of the Hon'ble Supreme Court in the case of **Sameer Singh vs. Abdul Rab**, reported in 2015(1) SCC 379.

8) I have considered the contentions of both the parties and carefully perused the impugned order as well as material available on record.

9) In the light of the contentions, the following questions fall for consideration:-

- (i) Whether the impugned order passed under Section 47 of the CPC can be considered a decree so as to be appeal like an appeal against a decree.
- (ii) If the orders passed under Section 47 of the CPC are not decrees, whether they are appealable orders under Order XLIII of the CPC.

10) To resolve the controversy involved in the present case, it is apt to refer to Section 47 of the CPC and Order XXI Rules 58, 97 to 103 of the CPC, which read hereunder:-

"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.

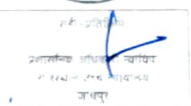
[sub-section (2) omitted]

(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.]"



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**Order XXI, Rule 58**

"58. Adjudication of claims to, or objections to attachment of, property.- (1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such claim or objection shall be entertained-

- (a) where, before the claim is preferred or objection is made, the property attached has already been sold; or
- (b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,-

- (a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or
- (b) disallow the claim or objection; or
- (c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or
- (d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claims or objection shall be conclusive."

Order XXI, Rules 97, 98, 99 to 103 of CPC

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"97. Resistance or obstruction to possession of immovable property.—(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

[(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.]

"98. Orders after adjudication.—(1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),—

- (a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or
- (b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days."

"99. Dispossession by decree-holder or purchaser.—(1) Where any person other than the judgmentdebtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."

"100. Order to be passed upon application complaining of dispossession.—Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,—



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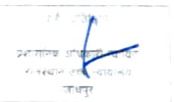
- (a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or
- (b) pass such other order as, in the circumstances of the case, it may deem fit."

"101. Question to be determined.—All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions."

"102. Rules not applicable to transferee lite pendente.—Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgement-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation.—In this rule, "transfer" includes a transfer by operation of law."

"103. Orders to be treated as decrees.—Where any application has been adjudicated upon under rule 98 or rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree."



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Order XXI of the CPC prescribes three stages at which an objection to the execution can be taken, as contemplated by Rules 58, 97, and 99. Order XXI Rule 58 of the CPC relates to the stage where an attachment of any property is made; the person affected by such attachment can raise a claim and objection to the attachment. This rule applies to both movable and immovable property. Order XXI Rule 97 deals with the dispossession of immovable property belonging to any person other than the



judgment debtor. Claims relating to Rule 97 are required to be adjudicated under Rule 98, and claims relating to Rule 99 are required to be adjudicated under Rule 103 of the CPC. Any adjudication under Rules 58, 97, or 99, or any order made therein, shall have the same force and be subject to the same conditions as if it were a decree, whether on appeal or otherwise. This means that any order passed under these provisions is assailable like an appeal filed against a decree, and such orders are deemed decrees by virtue of the specific provisions contained in sub-rule (4) of Rule 58 and Rule 103 of Order XXI of the CPC. In this regard, it is also relevant to mention Section 99 and 99A of the CPC for comparison, which are quoted as hereunder:-

"99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.-No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder [or non-joinder] of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court :

Provided that nothing in this section shall apply to non-joinder of a necessary party."

"99A. No order under section 47 to be reversed or modified unless decision of the case is prejudicially affected.-Without prejudice to the generality of the provisions of section 99, no order under section 47 shall be reversed or substantially varied, on account of any error, defect or irregularity in any proceeding relating to such order, unless such error, defect or irregularity has prejudicially affected the decision of the case."

From a comparative reading of the above two sections, it is clear that the word used in Section 99 of the CPC is "decree," whereas the word used in Section 99A, with reference to Section 47, is "order." From the reading of Section 47 of the CPC, it is



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clear that all questions arising between the parties to the suit in which the decree was passed, or their representatives, relating to the execution, discharge, or satisfaction of the decree, shall be determined by the court executing the decree and not by any separate suit. The provisions referred to under Order XXI Rules 58, 97, and 99 of the CPC also fall within the scope of the questions referred to under Section 47 of the CPC. Any order passed with reference to Section 47 read with Order XXI Rules 58, 97, and 99 of the CPC is deemed a decree by virtue of the specific provisions contained in sub-rule (4) of Rule 58 and Rule 103 of Order XXI of the CPC. Those orders are to be treated as deemed decrees, and the provisions for a regular appeal apply to such orders. This means that only a regular appeal lies before the appropriate forum against any order passed on such applications. However, there may be many other questions besides those referred to under Rules 58, 97, and 99 of the CPC, and orders on those questions cannot be considered decrees. Section 47 of the CPC thus comprehends both orders that can be treated as decrees and orders that cannot be treated as decree. The orders passed with reference to Section 47 read with Order XXI Rules 58, 97, and 99 of the CPC are deemed decrees, whereas any other orders passed under Section 47 of the CPC shall not be treated as decrees, as is clear from the reasoning given above.

11) Section 96 of the CPC is also relevant in this regard, which reads as follows:

"96. Appeal from original decree.- (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original



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jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed *ex parte*.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees."

From a reading of the above provision, it is clear that an appeal shall lie from any decree passed by a court exercising original jurisdiction to the court authorized to hear such appeal, subject to the objections raised. This means that an appeal lies only against decrees. Objections relating to questions falling under Section 47 of the CPC vis-a-vis Order XXI Rules 58, 97, and 99 shall be treated as decrees by virtue of the specific provisions contained therein. However, any other objections under Section 47 of the CPC other than those referred to in the above stages cannot be treated as decrees, since there is no specific provision treating such orders as decrees. This view is further substantiated by the language used in Section 99A of the CPC. It is needless to say that the right to appeal is a creature of statute. Where a statutory provision creates such a right, the aggrieved person is entitled to file an appeal; otherwise, they are not, as held by the Hon'ble Supreme Court in the case of **Anant Mills vs. State of Gujarat**, reported in [1975] 3 SCR 220.

12) Section 96 of the CPC specifically provides that an appeal lies against a decree passed by a court exercising original jurisdiction, subject to other provisions contained in the CPC. This means that only orders in the nature of deemed decrees can be



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treated as decrees against which an appeal lies under Section 96 of the CPC. For any other kinds of orders that are not treated as decrees, no appeal lies under Section 96 of the CPC, and the only available remedy is other than an appeal. Accordingly, this Court holds that the nature of the orders passed in the present case are not relatable to Order XXI Rules 58, 97, and 99 read with Section 47 of the CPC, and such orders should be treated other than those orders. The impugned order is not a decree against which an appeal lies under Section 96 of the CPC. Accordingly, Point No. 1 is answered.

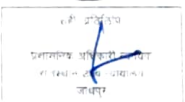
13) The second question fall for consideration is whether an order passed under Section 47 of the CPC, other than those orders referred to hereinbefore, is an appealable order under Order XLIII or a non-appealable order. In this regard, it is apt to refer to the relevant provisions of Order XLIII of the CPC, which read as follows:

ORDER XLIII

APPEALS FROM ORDERS

1. Appeal from orders.- An appeal shall lie from the following orders under the provisions of section 14, namely:-

- ... xxx xxx xxx
- (f) an order under rule 21 of Order XI;
- ... xxx xxx xxx
- (i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;
- (j) an order under Rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;
- (ja) an order rejecting an application made under sub-rule (1) of rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (1) of rule 105 of that Order is appealable;"



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From a reading of the above provision, it is clear that orders passed under Section 47 are not appealable orders. When such orders are not appealable under Order XLIII, the only remedy available is under Articles 226 or 227 of the Constitution of India. The judgments relied upon by the learned counsel for the decree-holder in the cases of **Shri Pradeep Ramgopal Gupta** and **Sameer Singh** (cited supra) relate to questions raised with reference to objections under Order XXI Rules 97 and 99 read with Section 47 of the CPC, and not to objections other than those under Order XXI Rules 58, 97, and 99 of the CPC. Therefore, such judgments are not significant for the reason that there are specific provisions stating that such orders are to be treated as decrees.

14) A somewhat similar controversy arose before the Full Bench of the High Court of Patna in the case of **Narmada Devi & Ors. vs. Ram Nandan Singh & Ors.**, reported in AIR 1987 Pat 33 and it was held that orders passed in Section 47 of the CPC are not decree.

15) For the ongoing reasons, the preliminary objections raised by the decree-holder as to the maintainability of the present writ petition is devoid of any merit and the same is hereby rejected. The application (IA No.01/2023) filed in this regard stands dismissed.

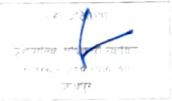
16) Let the matter be listed for hearing on merits.

17) Interim order, if any, shall continue till next date of hearing

(MUNNURI LAXMAN), J

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