



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO No. 294 of 2025
Decided on : 13.08.2025

Smt. Ganga Jogta.

...Petitioner

Versus

Shri Nand Lal (deceased) through his legal heirs.

...Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Whether approved for reporting?¹ Yes

For the petitioner : Mr. Bhag Chand Sharma,
Advocate.

For the respondents : Mr. Ravi Thakur, Advocate.

Ajay Mohan Goel, Judge (Oral)

By way of this petition, the petitioner has assailed order dated 03.05.2025, passed by learned Civil Judge (Court No.5), Shimla, in Execution Petition No. 94 of 2022, in terms whereof, the decree-holder has been directed to move an appropriate application to bring on record the legal representatives of deceased judgment-debtor.

2. Brief facts necessary for the adjudication of this petition are that the Civil Suit filed by the petitioner herein,

¹Whether reporters of the local papers may be allowed to see the judgment?

stands decreed in this favour. According to the petitioner, the original defendant was proceeded against ex-parte during the adjudication of the Civil Suit. Even in the execution proceedings, he did not appear and he was proceeded against ex-parte. Thereafter, during the pendency of the execution proceedings, judgment-debtor has died.

3. The issue which has been decided in terms of the impugned order by the learned Executing Court is as to in these circumstances, whether the decree-holder has to bring on the record the legal representatives of the deceased judgment-debtor or not. As per the learned Court, legal heirs have to be brought on record.

4. Learned counsel for the petitioner submitted that there is no provision in the Civil Procedure Code that the legal representatives of the deceased judgment-debtor are to be brought on record. He submitted that in the light of the fact that the judgment-debtor chose not to appear before the learned Executing Court and he was proceeded against ex-parte, the order passed by the learned Court below is perverse and is liable to be satisfied. He argued that as the judgment-debtor

was now dead, therefore, the decree-holder was having a legal right to get the decree executed without any hindrance from any quarters, including without impleading the legal representatives of the deceased judgment-debtor as judgment-debtors.

5. On the other hand, learned counsel appearing for the legal representatives of the deceased judgment-debtor before this Court submitted that learned Executing Court rightly held that the decree-holder was obliged to bring on record the legal representatives of the deceased judgment-debtor and simply because the judgment-debtor was proceeded against ex-parte, this did not mean that the decree-holder was not to bring on record the legal representatives of the deceased judgment-debtor.

6. I have heard learned counsel for the parties and have also carefully gone through the impugned order as well as other documents placed on record by the parties.

7. It is a matter of record that the decree passed in favour of the petitioner is an ex-parte decree and even during the execution proceedings, the deceased judgment-debtor

chose not to appear despite being served during his lifetime.

8. Section 50 of the Civil Procedure Code provides that where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representatives of the deceased. Now, but natural in the light of the said Statutory provision, such a decree can be executed against the legal representative of the deceased only if such legal representative is firstly brought on record. In this backdrop, if one peruses Order XXII, Rule 12 of the Civil Procedure Code, the same provides that nothing in Rules III, IV and VIII of Order 22 of Civil Procedure Code shall apply to the proceedings in execution of a decree or order.

9. Hon'ble Supreme Court of India in *V. Uthirapathi Vs. Ashrab Ali & Ors.*, (1998) 3 Supreme Court Cases 148, while interpreting said provisions, has been pleased to hold that if after the filing of an execution petition in time, the decree holder dies and his legal representatives do not come on record or the judgment-debtor dies and his legal representatives are not brought on record, then there is no abatement of the execution

petition. If there is no abatement, the position in the eye of law is that the execution petition remains pending on the file of the execution Court. If it remains pending and if no time limit is prescribed to bring the legal representatives on record in execution proceedings, it is open in case of death of the decree-holder for his legal representatives to come on record at any time. The execution application cannot even be dismissed for default behind the back of decree-holder's legal representatives. Hon'ble Supreme Court has further held that in case of death of judgment-debtor, the decree-holder could file an application to bring the legal representative of judgment-debtor on record at any time. Of course, in case of death of judgment-debtor, the Court can fix a reasonable time for the said purpose and if the decree holder does not file an application for the aforesaid purpose, the Court can dismiss the execution petition for default. But in any event, the execution petition cannot be dismissed as abated. Hon'ble Supreme Court has further held that alternatively, it is also open to the decree-holder's legal representatives to file a fresh execution petition in case of death of decree-holder or in the case of

death of judgment-debtor, the decree-holder can file a fresh execution petition impleading the legal representatives of the judgment-debtor. However, such a fresh execution petition filed, is in law, only in continuation of the pending execution petition, the one which was filed in time by the decree-holder initially.

10. Thereafter, in *Varadarajan Vs. Kanakavalli & Ors.*, (2020) 11 Supreme Court Cases 598, the Hon'ble Supreme Court has referred to its earlier judgment in *V. Uthirapathi Vs. Ashrab Ali & Ors (supra)* and in Para 8 thereof, has been pleased to hold as under:-

"8. We may state that Order XXII of the Code is applicable to the pending proceedings in a suit. But the conflicting claims of legal representatives can be decided in execution proceedings in view of the principles of Rule 5 of Order XXII. This Court in a judgment reported as V. Uthirapathi v. Ashrab & Ors. held that the normal principle arising in a suit — before the decree is passed — that the legal representatives are to be brought on record within a particular period is not applicable to cases of death of the decree- holder or the judgment-debtor in execution proceedings. This Court held as under:-

"11. Order 22 Rule 12 of the Code of Civil

Procedure reads as follows:

“Order 22 Rule 12: Application of order to proceedings.—Nothing in Rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.”

12. In other words, the normal principle arising in a suit — before the decree is passed — that the legal representatives are to be brought on record within a particular period and if not, the suit could abate, — is not applicable to cases of death of the decree-holder or the judgment-debtor in execution proceedings.

13. In *Venkatachalam Chetti v. Ramaswami Servai* [ILR (1932) 55 Mad 352 : AIR 1932 Mad 73 (FB)] a Full Bench of the Madras High Court has held that this rule enacts that the penalty of abatement shall not attach to 2 (1998) 3 SCC 148 execution proceedings. Mulla's Commentary on CPC [(Vol. 3) p. 2085 (15th Edn., 1997)] refers to a large number of judgments of the High Courts and says:

“Rule 12 engrafts an exemption which provides that where a party to an execution

proceedings dies during its pendency, provisions as to abatement do not apply.

The Rule is, therefore, for the benefit of the decree-holder, for his heirs need not take steps for substitution under Rule 2 but may apply immediately or at any time while the proceeding is pending, to carry on the proceeding or they may file a fresh execution application."

14. *In our opinion, the above statement of law in Mulla's Commentary on CPC, correctly represents the legal position relating to the procedure to be adopted by the parties in execution proceedings and as to the powers of the civil court."*

11. Thus, in the light of the said adjudications of the Hon'ble Supreme Court, there is no doubt that after the death of the judgment-debtor, the legal representatives of the deceased judgment-debtor are to be brought on record. Therefore, the contention of the learned counsel for the petitioner that the order passed by the learned Civil Court directing the judgment-debtor to bring the legal representatives of the deceased judgment-debtor on record, are perverse and

is not sustainable in the eyes of law. Learned Executing Court correctly directed the petitioner to bring on record the legal representatives of deceased judgment-debtor on record. Simply because, the only judgment-debtor was proceeded against ex-parte, this does not gives any right to the petitioner not to bring on record his legal representatives after his death.

12. In the light of above observations, this petition being devoid of any merit is dismissed. Interim order, if any, stands vacated. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

August 13, 2025
(Shivank Thakur)