



GRAVITAS LEGAL

## **Filing of certified copy of Decree not mandatory in an Execution Application**

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### **Introduction**

The tool of interpretation has once again come to the aid of the litigants from being smothered by the chains of the procedural law, when the highest court of law in the country held in the case of *Sir Sobha Singh & Sons Pvt. Ltd. v. Shashi Mohan Kapur (deceased) through L.R.*<sup>1</sup>, that there is no mandatory requirement for filing of certified copy of decree in an execution petition/application. While holding so, the Apex Court has extended the rules and principles that are applicable in appeals from decree to the applications for execution of decrees.

### **Facts**

The opportunity for the said decision arose when in a landlord-tenant dispute, the parties arrived at a compromise and a consent order was passed on the basis of the same, however, no decree was drawn by the Trial Court recording the consent order. Thereafter, when the Respondent-tenant did not vacate the premises and filed applications seeking extension of time for vacating the premises on one pretext or the other, the Appellant-landlord filed an execution petition on the basis of the consent order and the Executing Court issued a warrant of possession against the respondent/Judgment debtor in respect of suit house. Further, applications filed by the Respondent challenging the executability of the consent order were also dismissed by the Executing Court. Appeal was filed by the Respondent and the same was allowed by the High Court on the ground that since the Trial Court had not drawn up the formal decree after passing the consent order, the Execution Petition is not maintainable. Appeal was preferred by the Appellant challenging said order of the High Court.

### **Issue**

Whether an execution petition is not maintainable on the ground that a formal decree has not been drawn up following a consent order?

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<sup>1</sup>2019 (203) AIC 51 (S.C.)

## **Held**

The Supreme Court carried out an analysis and interpretation of the relevant provisions of the Code of Civil Procedure, 1908 in order to arrive at its finding on the issue presented before it. The entire issue revolved around a single provision, that is, Order 21 Rule 11(3) which stipulates that the Court to which an application for execution of a decree is made, may require the applicant to produce a certified copy of the decree. However, the Court has adeptly noted that the provision provides that the Applicant making an application for execution of decree is mandated to file a certified copy of the decree only when the Executing Court may require the applicant to do so. In other words there is no necessary obligation for an applicant applying for execution of a decree to file a certified copy of the decree unless the Executing Courts directs the Applicant to file the same. Having made said observation, the Apex Court laid down the essential ingredients of an application for execution of a decree and the same are reproduced thus:

“First, the written application filed under Order 21 Rules 10 and 11 (2) of the Code must be duly signed and verified by the applicant or any person, who is acquainted with the facts of the case, to the satisfaction of the Court; Second, the application must contain the details, which are specified in clauses (a) to (j) of Rule 11(2) of the Code, which include mentioning of the date of the judgment and the decree; and Third, filing of the certified copy of the decree, if the Court requires the decree holder to file it under Order 21 Rule 11(3) of the Code.”

Thus, the Supreme Court has categorically ruled that it is not necessary to file a copy of the decree along with execution application unless the Court directs the decree holder to file a certified copy of the same. In arriving at its conclusion, the Court has also referred to Rule 6A (2) of Order 20 of the Code which provides that an appeal may be preferred against a decree without filing a copy of the decree. The Court has deemed it fit to apply the said rule to execution applications of a decree as same does not amount to any conflict with the other specific provisions specifically laying down conditions for filing execution applications for decrees.

## **Conclusion**

The decision of the court comes as a relief to decree holders who, despite having favourable orders, maybe handicapped from realizing the relief in their favour merely due to delays and laches on the part of the judicial machinery or technical issues raised by notorious litigants who indulge into delaying tactics and defeat the purpose of law by taking recourse to technical issues. The Apex Court has, within the lawful boundaries and rules of interpretation, determined the true effect of a provision by rule that filing of certified copy of a decree is not a mandatory requisite in an execution application.

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