

7th January, 2020

## FILING OF APPLICATION UNDER ORDER 21 RULE 41 IN MATTERS OF EXECUTION OF DECREE

**Whether an application under Order 21 Rule 41 can be filed before an application under Order 21 Rule 11 of the Code of Civil Procedure, 1908**

1. **N. Chandra Chems, Mumbai v. Varma Mukherji Pvt. Ltd. and others**<sup>[1]</sup>

9. Reading of all these provisions would apparently disclose that in order to disclose the properties in an application for execution by way of attachment of the property and sale thereof the decree-holder must be aware of the properties which are available for attachment and which are statutorily exempted and unless this information is available to the decree-holder, he may not be able to submit the application for execution under Order 21, Rule 11(2) of Civil Procedure Code complete in all respects. The provision of law comprised under Order 21, Rule 41(2) of Civil Procedure Code, in our considered opinion, cannot be said to be ancillary in strict sense to Order 21, Rule 11(2). Undoubtedly the provisions are in aid to the execution proceedings which can be initiated under Order 21, Rule 11(2) of Civil Procedure Code. However, taking into consideration the requirement of the particulars which are to be disclosed in an application under Rule 11(2) and provisions of law comprised in Part II of Code of Civil Procedure, it cannot be said that such an application has necessarily to be filed only after filing or initiating the proceedings under Order 21, Rule 11(2) of Civil Procedure Code. Needless to say that nothing forbids the decree-holder from seeking further information even after filing of the proceedings under section 11(2) by taking resort to Order 21, Rule 41(2) of Civil Procedure Code, but by no stretch of imagination it can be said that an application under section 21, Rule 41(2) would not lie unless the proceedings are initiated under Order 21, Rule 11(2) of Civil Procedure Code. A Copy of the judgment attached hereto at **page no. 2 to 6.**

2. **United Phosphorous Ltd. v. A.K. Kanoria**<sup>[2]</sup>

12. ....Rule 41 of Order XXI enables the decree holder to get from the judgment debtor the information of the assets, which is within the special knowledge of the judgment debtor. Therefore, an application under Order XXI, Rule 41 is not an application for execution of the decree but, merely an aid to the decree holder to enable him to execute the decree by obtaining information which is within the special knowledge of the judgement debtor. If this be so, the application under Order XXI, Rule 41 would ordinary precede the filing of an execution petition, though it can also be filed in the pending execution petition itself. A Copy of the judgment attached hereto at **page no. 7 to 14.**

3. **State Bank of India v. M.K. Raveendran**<sup>[3]</sup>

4. ....Opinion expressed by the Bombay High Court that the court which passed the decree does not cease to have jurisdiction to entertain application under Order 21 Rule 41 C.P.C. at least till the decree is transmitted to another court for execution appears to be sound considering the scope and ambit of Rule 41 of Order 21 of the Code of Civil Procedure. Since the provision covered by the rule is intended only to aid the execution and not one of the modes of the execution, it is just and reasonable to hold that even on the trial side in proceedings under Order 38 of the C.P.C. resort to Rule 41 of Order 21 of the Code can be sought for to get details of the assets from the defendant to secure the decree likely to be passed in the suit subject to

the satisfaction of the other conditions for getting an order of interim attachment before judgment. A Copy of the judgment attached hereto at **page no. 15 to 16.**

**Format of affidavit to be filed by judgment debtor under Order 21 Rule 41**

4. **Bhandari Engineers & Builders Pvt. Ltd. v. Maharia Raj Joint Venture & Ors.**<sup>[4]</sup>

5. Form 16A of Appendix E of the Code of Civil Procedure prescribes the format of the affidavit of assets to be filed by the judgment debtor which is reproduced herein below:-...

6. In order to satisfy whether the judgment debtor has the means to satisfy the decree and further that the judgment debtor has disclosed all his assets, the judgment debtor has to be directed to give a declaration and verify the aforesaid affidavit under Order XXI Rule 41(2) of the Code of Civil Procedure in the following format:...

7. If the judgement debtor does not truly or sufficiently disclose his assets in the aforesaid affidavit under Order XXI Rule 41(2) of the Code of Civil Procedure, the Court can exercise the inherent power under Section 151 of the Code of Civil Procedure by directing the judgment debtor to file a further affidavit of assets, income and expenditure in the format provided in Annexure A in Kusum Sharma v. Mahinder Kumar Sharma, 2015 (217) DLT 706.

10. This Court is of the view that in cases of execution of decree for recovery of money, it would be appropriate to direct the judgment debtor, at the initial stage itself, to file the affidavit of assets as on the date of the institution of the suit as well as of the current date i.e. date of swearing the affidavit in Form 16A, Appendix E under Order XXI Rule 41(2) of the Code of Civil Procedure along with statement of all their bank accounts for the last three years within 30 days of the receipt of the notice and to remain present for being orally examined under Order XXI Rule 41(1) of the Code of Civil Procedure. The judgment debtor be directed to verify the affidavit in terms of para 6 above. It is clarified that the application under Order XXI Rules 41(1) and (2) of the Code of Civil Procedure is not required to be in writing and such an order can be passed on oral prayer of the decree holder. In the event of the default of the judgment debtor to file the affidavit within the stipulated time, the judgment debtor be detained in civil prison for a term not exceeding three months under Order XXI Rule 41(3) of the Code of Civil Procedure. If the judgment debtor's affidavit does not truly or sufficiently disclose his assets, further affidavit be directed to be filed in terms of paras 7 and 8 above. The judgment debtor be also examined orally under Order XXI Rule 41(1) of the Code of Civil Procedure to receive such information or documents as will aid in execution of the decree. A Copy of the judgment attached hereto at **page no. 17 to 22.**

<sup>[1]</sup> (2007) 5 Mah LJ 722 (Bombay High Court)

<sup>[2]</sup> (2002) 4 Mah LJ 358 (Bombay High Court)

<sup>[3]</sup> AIR 2010 Ker 20

<sup>[4]</sup> (2016) 227 DLT 302

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reservation of the subject land stands lapsed. The petition is required to be allowed. We are in agreement with the contention raised by the petitioners. Apparently, the subject land was not acquired within a period of two years of the date of publication of the declaration. We, therefore, find that the acquisition of the subject land is lapsed.

9. In the light of these circumstances, the acquisition proceeding initiated in respect of the subject land is quashed and set aside. Consequently, the award declared by the Special Land Acquisition Officer in respect of the land Gut No. 54(b) admeasuring 1 H 21 R is quashed and set aside. Rule made absolute with no order as to costs.

*Petition allowed.*

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CIVIL PROCEDURE CODE, ORDER 21, RULES 11(2) AND 41(2)

*(R. M. S. Khandeparkar and D. G. Karnik, JJ.)*

N. CHANDRA CHEMS, MUMBAI

*Appellant.*

vs.

VARMA MUKHERJI PVT. LTD. and others

*Respondents.*

**Civil Procedure Code, O. 21, RR. 11(2) and 41(2)** — *Execution of decree for payment of money — Application under Order 21, Rule 41(2) can be filed prior to the initiation of the proceedings under Order 21, Rule 11(2).*

The application for execution which is required to be filed in writing in terms of Order 21, Rule 11(2) of Civil Procedure Code should disclose the particulars of the property which the decree-holder seek to attach for recovery of the money decreed in favour of the decree-holder. Getting or obtaining the required information regarding the assets of the judgment debtor for the purpose of attachment of such property for sale and appropriation of the proceeds thereof for effective execution of the decree for payment of money would certainly be a preliminary step to take effective measure for execution of the decree for payment of money. Obviously the decree-holder would require such information at the time of filing of an application under Order 21, Rule 11(2) of Civil Procedure Code itself. Order 21, Rule 41 speaks of the procedure to be followed for attachment of the property in execution of the decree for payment of money. The provisions are in aid to the execution proceedings which can be initiated under Order 21, Rule 11(2) of Civil Procedure Code. In order to disclose the properties in an application for execution by way of attachment of the property and sale thereof the decree-holder must be aware of the properties which are available for attachment and which are statutorily exempted and unless this information is available to the decree-holder, he may not be able to submit the application for execution under Order 21, Rule 11(2) of Civil Procedure Code complete in all respects. Being so it goes without saying that an application under Order 21, Rule 41(2) certainly can be filed prior to the initiation of the proceedings under Order 21, Rule 11(2) of Civil Procedure Code. The impugned order holding application under Order 21, Rule 41(2) as pre-mature as there had been no application under Order 21, Rule 11(2) cannot be sustained and is liable

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Appeal No. 1192 of 1999 in Chamber Summons No. 1058 of 1998 in Summary Suit No. 889 of 1997 decided on 8-6-2007. (O.O.C.J., Bombay)

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to be set aside. AIR 1940 Bom. 330 and 2002(4) Mh.L.J. 358 = AIR 2003 Bom. 97, Rel. (Paras 5, 8, 11 and 15)

For appellants : *Ms. Kashmira Bharucha* instructed by *Ms. Anupama Binge*  
None for respondents.

**List of cases referred :**

1. *United Phosphorous Ltd. vs. A. K. Kanoria*, 2002(4) Mh.L.J. 358  
= AIR 2003 Bombay 97 (Paras 3, 9)
2. *Cooverji Varjang vs. Cooverbai Nagsey Champsey*,  
1940 Bom. L.R. 564 = AIR 1940 Bombay 330 (Paras 9, 10)

**ORAL JUDGMENT**

**R. M. S. KHANDEPARKAR J. :**— Heard the learned counsel for the appellants. None present for the respondents though served. Perused the records.

2. The present appeal arises from order dated 5th August, 1989 passed in Chamber Summons No. 1058 of 1998 in Summary Suit No. 889 of 1997. By the impugned order the learned Single Judge has rejected the Chamber Summons whereby the appellants had sought a direction to the respondents in terms of Order 21, Rule 41(2) of Civil Procedure Code. The application of the appellants in that regard has been dismissed holding that the same was premature as there had been no application under Order 21, Rule 11(2) of Civil Procedure Code, 1908.

3. The learned advocate for the appellants placing reliance in the decision of this Court in *United Phosphorous Ltd. vs. A. K. Kanoria*, reported in 2002(4) Mh.L.J. 358 = AIR 2003 Bombay 97 submitted that the provisions of law comprised in the Civil Procedure Code nowhere require that for the purpose of seeking information regarding the properties of the judgment debtor, there has to be an application under Order 21, Rule 41(2) of Civil Procedure Code on record. On the contrary, such information would be necessary to the decree-holder to file an application under Rule 11(2) and for seeking attachment of the property of the judgment debtor to recover the amount due and payable under the decree.

4. Order 21, Rule 41(2) of Civil Procedure Code provides that where a decree for the payment of money has remained unsatisfied for a period of 30 days, the Court may on an application by the decree-holder and without prejudice to its power under sub-rule (1), require the judgment debtor or where the judgment debtor is a Corporation any officer thereof to make an affidavit stating the particulars of the assets of the judgment debtor. The said provision of law comprised under Rule 41 speaks of the procedure to be followed for attachment of the property in execution of the decree for payment of money.

5. Rule 11(2) of Order 21 of the Code of Civil Procedure relates to the written application for execution. It enumerates various particulars which are required to be furnished by the decree-holder in an application for execution of a decree. Clause (j) of the said rule reads thus :

- “(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) otherwise, as the nature of the relief granted may require.”

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Evidently, the application for execution which is required to be filed in writing in terms of Order 21, Rule 11(2) of Civil Procedure Code should disclose the particulars of the property which the decree-holder seeks to attach for recovery of the money decreed in favour of the decree-holder.

6. Rule 30 of Order 21 provides that every decree for the payment of money, including a decree for the payment of money as an alternative to some other relief, may be executed by the detention in the civil prison of the judgment debtor, or by the attachment and sale of his property, or by both.

7. The provisions of law comprised under sections 55 to 59 deals with the power of the Court in relation to arrest and detention of judgment debtor in the process of execution of a decree whereas sections 60 to 64 deal with the power of the Court as well as the liability of the judgment debtor and corresponding rights of the decree-holder for attachment of the property of the judgment debtor in execution of a decree. Those sections make elaborate provisions regarding the proceedings which can be initiated against a judgment debtor in execution of a decree for payment of money. It is also settled law that in an execution proceeding of a money decree, the judgment debtor cannot be arrested and detained in a civil prison unless he is given an opportunity of either complying with the decree or showing cause against the arrest and detention in jail. Similarly the properties which are exempted from attachment, as also certain restraints which are to be observed before ordering the attachment and sale of a property in an execution of the decree, are elaborately stated under sections 60 to 64 of the Civil Procedure Code.

8. Reading of all these provisions would apparently disclose that in order to disclose the properties in an application for execution by way of attachment of the property and sale thereof the decree-holder must be aware of the properties which are available for attachment and which are statutorily exempted and unless this information is available to the decree-holder, he may not be able to submit the application for execution under Order 21, Rule 11(2) of Civil Procedure Code complete in all respects. The provision of law comprised under Order 21, Rule 41(2) of Civil Procedure Code, in our considered opinion, cannot be said to be ancillary in strict sense to Order 21, Rule 11(2). Undoubtedly the provisions are in aid to the execution proceedings which can be initiated under Order 21, Rule 11(2) of Civil Procedure Code. However, taking into consideration the requirement of the particulars which are to be disclosed in an application under Rule 11(2) and provisions of law comprised in Part II of Code of Civil Procedure, it cannot be said that such an application has necessarily to be filed only after filing or initiating the proceedings under Order 21, Rule 11(2) of Civil Procedure Code. Needless to say that nothing forbids the decree-holder from seeking further information even after filing of the proceedings under section 11(2) by taking resort to Order 21, Rule 41(2) of Civil Procedure Code, but by no stretch of imagination it can be said that an application under section 21, Rule 41(2) would not lie unless the proceedings are initiated under Order 21, Rule 11(2) of Civil Procedure Code.

9. We are fortified in this view by the decision of the Division Bench as well as by the learned Single Judge (Shri D. G. Karnik, J.) In fact the said decision is directly on the point in issue. In *United Phosphorous* case the point

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for consideration which arose was whether an application under Order 21, Rule 41 can be filed without filing an application under Order 21, Rule 41(2) of Civil Procedure Code. After considering the various provisions of the Code of Civil Procedure and relying on the decision of the Division Bench in *Cooverji Varjang vs. Cooverbai Nagsey Champsey*, reported in 1940 Bom. L.R. 564 = AIR 1940 Bombay 330 it was held that the contention that no chamber summons for seeking information regarding the property of the judgment debtor can be entertained and accepted without an application for execution under Order 21, Rule 11 of Civil Procedure Code is totally unacceptable.

**10.** In *Cooverji Varjang* case the Division Bench was undoubtedly dealing with a matter arising under Rule 50 of Order 21 of the Code of Civil Procedure. Sub-rule (2) of Rule 50 provides that where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined. While considering the scope of the said provision, the Division Bench held that —

“It is difficult to see what useful purpose is served in making an application to execute the decree before the leave has been granted. Mr. Munshi contends that an application in execution and one of the methods of execution which must be satisfied under Rule 11. But the application means one preliminary rule taking any effective step in execution against persons who are not covered by that Rule. Conceding that it is an application in execution, nevertheless, it is a special form of application which is covered by a rule. It seems to us that it is not apt to say that an application for leave under Rule 50 is a mode of execution referred to in Rule 11.”

**11.** The Division Bench therefore has in clear terms held that an application for necessary leave under Order 21, Rule 50(2) of Civil Procedure Code would be a preliminary and effective step for initiating meaningful and purposeful execution proceedings. Applying the same rule to Order 21, Rule 41(2) of Civil Procedure Code, getting or obtaining the required information regarding the assets of the judgment debtor for the purpose of attachment of such property for sale and appropriation of the proceeds thereof for effective execution of the decree for payment of money would certainly be a preliminary step to take effective measure for execution of the decree for payment of money. Obviously the decree-holder would require such information at the time of filing of an application under Order 21, Rule 11(2) of Civil Procedure Code itself. Being so it goes without saying that an application under Order 21, Rule 41(2) certainly can be filed prior to the initiation of the proceedings under Order 21, Rule 11(2) of Civil Procedure Code.

**12.** There is yet another reason which would justify entertaining an application under Order 21, Rule 41(2) of Civil Procedure Code prior to the

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initiation of the proceedings under Rule 11(2) of Order 21. In a case where the judgment debtor holds properties in a place different from the one where the decree has been issued, a decree-holder may have absolutely no knowledge about such properties. This information can be definitely collected from the judgment debtor himself who owns the property and the most authenticated method to collect such information would be by taking resort to provisions of Order 21, Rule 41(2) of Civil Procedure Code. To deny such opportunity to the decree-holder would virtually amount to allow lawful decree passed by the Court being rendered futile and meaningless.

13. Besides, section 60 of the Code of Civil Procedure enumerates the properties which are exempt from attachment and sale in execution of a decree for payment of money. Details of assets from the judgment debtor himself would certainly assist the Court in ascertaining the properties of the judgment debtor which should be excluded from the attachment and sale in the execution proceedings. The information from the judgment debtor regarding his assets prior to proceeding with the application under Order 21, Rule 11(2) of Code of Civil Procedure would be of advantage to the Court itself.

14. Needless to say that all the observations hereinabove are in relation to the maintainability of the application under Order 21, Rule 41(2) prior to the filing of the application under Order 21, Rule 11(2) and we have not expressed any opinion on the merits of the case in hand. The same shall be dealt with by the learned Single Judge on restoration of the application under Order 21, Rule 41(2) on remand thereof.

15. For the reasons stated above therefore we are of the considered opinion that the impugned order cannot be sustained and is liable to be set aside. Accordingly the appeal succeeds. The impugned order is hereby set aside. Chamber Summons No. 1058 of 1998 is restored to board. Considering that the matter relates to the year 1998 the learned Single Judge may consider to expedite the disposal of the Chamber Summons. There would be no order as to costs.

*Appeal allowed.*

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ELIGIBILITY CONDITION OF BEING WOMEN FOR EMPLOYEES BEING  
RECRUITED IN COLLEGE MEANT FOR ONLY WOMEN NOT  
VIOLATIVE OF ARTICLES 14 AND 16 OF CONSTITUTION OF INDIA

*(J. P. Devadhar and B. P. Dharmadhikari, JJ.)*

WOMEN'S EDUCATION SOCIETY,  
NAGPUR and another

*Petitioners.*

vs.

NAGPUR UNIVERSITY and others

*Respondents.*

**Constitution of India, Arts. 14 and 16 and Maharashtra Universities Act (35 of 1994), S. 7(1) Proviso — Petitioner No. 2 College run by petitioner No. 1 Public Trust to impart education to female students — Appointment of candidates for teaching as also non-teaching purposes in the College — Eligibility condition of being women imposed by the petitioners for employees being recruited is not violative of Article 14 or 16.**

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W. P. No. 2504 of 2003 decided on 1-8-2007. (Nagpur)

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14. In the circumstances I am of the view that the Tribunal was not justified in rejecting the claim for compensation on the ground that an order for the payment of compensation, which has been deposited by the employer under the Workmen's Compensation Act, 1923, had been passed in favour of the appellants by the Labour Court at Amravati. The learned Counsel appearing for the appellants has fairly stated before the Court that it was only in the year 2001 after this First Appeal had been pending for almost three years, that the appellants out of sheer economic necessity, made an application for the withdrawal of the compensation awarded under the Workmen's Compensation Act, 1923 and received the same. In the event that the Railway Claims Tribunal awards any compensation to the appellants to an extent greater than the compensation of Rs. 69,008/-, which has been withdrawn by the appellants, the appellants, it is clarified, would be entitled to receive only that part of the compensation awarded by the Railway Claims Tribunal, which is in excess of the amount of Rs. 69,008/-.

15. The orders of the Railway Claims Tribunal dated 21st July, 1997 and 31st July, 1997 are accordingly quashed and set aside. The application filed by the appellants hereinbefore the Railway Claims Tribunal being Appeal No. 17/OA-I/II/III/RCT/NGP/1996, shall stand restored to the file of the Railway Claims Tribunal, Nagpur. The Tribunal shall pass fresh orders on the application for compensation in the light of this Judgment. Having regard to the facts and circumstances of the case, the Tribunal is directed to pass final orders, after hearing the parties, *within a period of two months* from the date on which a certified copy of this Judgment is produced before the Tribunal. The parties shall appear before the Tribunal for seeking directions, through their counsel, on *8th July, 2002*. The First Appeal is accordingly allowed in the aforesaid terms. Record and Proceedings of the court below be sent back forthwith. The Respondent shall pay costs to the appellants quantified at Rs. 3,000/-.

*Appeal allowed.*

CIVIL PROCEDURE CODE, ORDER 21, RULE 41(2) AND  
ORDER 21, RULE 11(2)

(D. G. Karnik, J.)

UNITED PHOSPHOROUS LTD.

*Plaintiff.*

vs.

A. K. KANORIA

*Defendant.*

**(a) Civil Procedure Code, O. 21, RR. 41(2) and 11 and Limitation Act (36 of 1963), Art. 136** — *The drawing up of a decree not a condition precedent for filing of an "execution petition" or an application under Order 21, Rule 41, Civil Procedure Code.*

Drawing up of a decree is not and cannot be a condition precedent for filing of an "execution petition" or an application under Order 21, Rule 41 of the Code of Civil Procedure. (1998) 8 SCC 315, Rel. (Paras 8 and 9)

Chamber Summons No. 937 of 2001 in Summary Suit No. 4600 of 1997 decided on 13-6-2002. (O.O.C.J. Bombay)

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**(b) Civil Procedure Code, O. 21, RR. 41 and 11(2)** — *An application under Order 21, Rule 41, Civil Procedure Code is not an application for execution of the decree but merely an aid to the decree holder to enable him to execute the decree by obtaining information which is within the special knowledge of the judgment debtor — An application under Order 21, Rule 41 would ordinarily precede the filing of an execution petition though it can also be filed in the pending execution petition itself.*

Rule 41 of Order 21 of Civil Procedure Code enables the decree holder to get from the judgment debtor the information of the assets, which is within the special knowledge of the judgment debtor. Therefore, an application under Order 21, Rule 41 is not an application for execution of the decree but, merely an aid to the decree holder to enable him to execute the decree by obtaining information which is within the special knowledge of the judgment debtor. The application under Order 21, Rule 41 would ordinarily precede the filing of an execution petition, though it can also be filed in the pending execution petition itself. An application under Order 21, Rule 41 can be filed without or before filing an execution application/Darkhast under Order 21, Rule 11(2) of the Code of Civil Procedure. AIR 1986 Cal. 328 and 42 Bom.L.R. 564, Rel., The judgment of Rebello, J. (Chamber Summon No. 864/98) insofar it holds that no chamber summons for execution can be entertained or accepted without an application for execution in proper form under Order 21, Rule 11 is per incuriam. (Paras 10 and 13)

For plaintiff : *S. Suvarna* instructed by *D. S. K. Legal*

For defendant : *Prashant Chande*

Amicus Curiae : *P. V. Shah*

**ORAL JUDGMENT** : — Heard Shri S. Suvarna instructed by DSK Legal for the plaintiff, Shri Mr. Prakash Chande instructed by H. V. Chande for the defendant and Shri P. V. Shah, Advocate appearing amicus curiae.

2. When this matter came up for hearing before Hon'ble S. A. Bobde, J. on 2-5-2002, he was pleased to request P. V. Shah, Advocate to assist the Court as Amicus Curiae, Shri Shah ably assisted this Court. I record my deep appreciation of the able assistance rendered by Shri P. V. Shah, Advocate.

3. Facts :

In summary suit no. 4600 of 1996 filed by the plaintiff a money decree was passed against the defendant. The plaintiff has filed the present Chamber Summons for an order of this Court requiring the defendant to file an affidavit as provided under Sub-rule (2) of Rule 41 of Order XXI of the Code of Civil Procedure, disclosing the assets held by him. The Chamber Summons was filed without filing an application under Order XXI, Rule 11, (commonly known as an "Execution Petition" or a "Darkhast") of the Code of Civil Procedure.

4. Shri Chande, the Learned Advocate appearing for the defendant opposes the Chamber Summons and contends that Chamber Summons is not maintainable and deserves to be dismissed because according to him, an application under Order XXI, Rule 41 cannot be filed (i) unless a formal decree was drawn up and remains unsatisfied for a period of 30 days thereafter and (ii) without first filing



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an Execution Petition/Darkhast under Order XXI, Rule 11(2) of the Code of Civil Procedure.

5. Regarding 1st contention:

Whether application under Order 21, Rule 41 can be filed before a formal decree is drawn in accordance with section 33 read with order XX, Rule 6 of the Code of Civil Procedure?

6. Shri Chande invited my attention to clause nos. 2, 3, 9, 10 and 14 of section 2 of the Code of Civil Procedure and contended that the word “Judgment” and “Decree” are separately defined to make a distinction between them. “Judgment” contains the reasons for the decision of the Court and in the last paragraph gives concisely the adjudication of the disputes and declares the rights of the parties. “Decree” follows the judgment and contains the matters provided in Order XX, Rule 6, and also contains the amount of costs incurred in the suit and in what proportion such costs are to be paid by whom. The decree is drawn up administratively by the office of the Court and on judge being satisfied that the decree is in accordance with the judgment, the judge signs the decree. What is then put in execution is not the judgment of the Court but the decree drawn by the office and signed by the Judge. According to Shri Chande, execution proceedings cannot be commenced until the decree is drawn up.

7. Shri Chande then drew my attention to Order XXI, Rule 41 of the Code of Civil Procedure which reads as under :

**41. Examination of judgment-debtor as to his property.** — (1) Where a decree is for the payment of money the decree-holder may apply to the Court for an order that —

- (a) the judgment-debtor, or
- (b) any officer thereof, or
- (c) any other person.

be orally examined as to whether any or what debts are owing to the judgment debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person and for the production of any books or documents.

(2) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.

(3) In case of disobedience of any order made under sub-rule (2), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the Court directs his release.

Relying on the use of the word “decree” in Order XXI, Rule 41, Shri Chande contended that unless the decree was drawn, it cannot remain unsatisfied

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for a period of 30 days and therefore, no application under sub-rule (2) of Order 41 can be made unless the formal decree was drawn.

8. I am unable to agree with the submission of Shri Chande. Sub-rule 6-A of Order 20 (which was introduced by an Amendment Act No. 104 of 1976 with effect from 1-2-1977) reads as under :

“6A. *Last Paragraph of judgment to indicate in precise terms the reliefs granted.* — (1) The last paragraph of the judgment shall state in precise terms the relief which has been granted by such judgment.

(2) Every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible, and, in any case, within fifteen days from the date on which the judgment is pronounced; but where the decree is not drawn up within the time aforesaid, the Court shall if requested so to do by a party desirous of appealing against the decree, certify that the decree has not been drawn up and indicate in the certificate the reasons for the delay, and thereupon —

(a) an appeal may be preferred against the decree without filing a copy of the decree and in such a case the last paragraph of the judgment shall, for the purposes of rule 1 of Order XLI, be treated as the decree; and

(b) so long as the decree is not drawn up, the last paragraph of the judgment shall be deemed to be the decree for the purpose of execution and the party interested shall be entitled to apply for a copy of that paragraph only without being required to apply for a copy of the whole of the judgment shall cease to have the effect of a decree for the purpose of execution or for any other purpose :

Provided that, where an application is made for obtaining a copy of only the last paragraph of the judgement, such copy shall indicate the name and address of all the parties to the suit.”

Clause (b) of sub rule (2) of Rule 6-A specifically lays down that so long as the decree is not drawn up, the last paragraph of the decree should be deemed to be a decree for the purpose of execution. By a legal fiction, last part of the judgment containing adjudication of the rights of the parties, is regarded as the decree. Thus, drawing up of a decree is not and cannot be a condition precedent for filing of an “execution petition” or an application under Order XXI, Rule 41 of the Code of Civil Procedure.

9. There is another reason for holding that a decree holder should be entitled to file the execution proceedings and/or application under Order XXI, Rule 41 without waiting for the drawing up of a formal decree. Article 136 of the Limitation Act prescribes the time limit for execution of the decree to be 12 years from the date when the decree or order becomes enforceable. In *Essential Commodities Corporation vs. Swadeshi Agro Farming and Storage Pvt. Ltd.* reported in (1998) 8 SCC 315, the Hon’ble Supreme Court of India was considering whether the period of limitation under Article 136 of the Limitation Act, 1963 for execution of the decree will start from the date of the decree which is to bear the date of the judgment as per Order XX, Rule 7 of the Code of Civil Procedure or from the date when the decree is actually drawn up and signed by the Judge. In para-20 of the Judgment, the Supreme Court in unequivocal terms

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laid down that the period of limitation starts from the date of the decree (i.e. the date of the judgment under Order XX, Rule 7 of the Code of Civil Procedure) and not from the date when the decree is actually drawn up and signed by the Judge. If the contention of Shri Chande is accepted then it would mean that though decree holder cannot execute the decree as it is not drawn up though the period of limitation for executing a decree has begun to run. Imagine a case where on account of mistake of the Court, or pending backlog a decree is not drawn up for a period of 12 years. In such a case, if contention of Shri Chande is accepted, the decree would become inexecutable even before it is signed. Such an interpretation, therefore, cannot be accepted. I therefore, hold that drawing up and signing of a decree by the Judge is not a condition precedent for filing of an execution petition or making of an application under Order XXI, Rule 41 of the Code of Civil Procedure.

10. *Regarding 2nd contention:*

Whether an application under Order XXI, Rule 41 can be filed without or before filing an execution application/ Darkhast under Order XXI, Rule 11(2) of the Code of Civil Procedure?

11. Shri Chande, the Learned Advocate for the defendant contended that an application under Order XXI, Rule 41 is an application in an execution petition; according to him. Execution commences on filing of written application (commonly called as Execution Application or Darkhast) under sub-rule (2) of Rule 11 of Order XXI of the Code of Civil Procedure. Unless the execution petition is filed and numbered, contends Shri Chande, any application under order XXI cannot be filed. Shri Chande submits that after the judgment is delivered, the Court becomes *functus officio* and only after filing of an execution petition under Order XXI, Rule 11(2), the Court again assumes Jurisdiction. The petition under Order XXI, Rule 41, is to be made to the executing Court and not to the Court which passed the decree, because the Court passing the judgment decree becomes *functus officio*, the moment judgment and decree is passed.

12. In my opinion, application under Order XXI, Rule 41 is not an application in an execution. It is an application in aid of execution or a step towards the execution. Under Clause (j) of Rule 11(2) of Order XXI of the Code of Civil Procedure, the execution petition must specify the mode in which assistance of the Court is required for the execution of a decree. Clause (j) reads as follows :

- (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 retention in prison of any person;
  - (iv) by the appointment of a receiver;
  - (v) otherwise, as the nature of the relief granted may require.

Examination of a judgment debtor under sub-rule (1) of Rule 41 of Order XXI or direction to the judgment debtor to file an affidavit to be issued under sub-rule (2) of Rule 41 or Order XXI is not one of the mode of execution of a decree provided in clause (j) of Rule 11(2) of Order XXI, Rule 30. Disclosure of the assets is a preliminary step towards the execution of a decree. Rule Nos. 3 to

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9 of Order XXI of the Code of Civil Procedure contemplate transfer of a decree by the Court which passed the decree to another Court for execution. The decree holder, who is not aware of the assets of the judgment debtor, is often unable to decide in which Court he should file the execution petition or in which Court he should get the decree transferred unless he knows the particulars of the assets of the judgment debtor. Rule 41 of Order XXI enables the decree holder to get from the judgment debtor the information of the assets, which is within the special knowledge of the judgment debtor. Therefore, an application under Order XXI, Rule 41 is not an application for execution of the decree but, merely an aid to the decree holder to enable him to execute the decree by obtaining information which is within the special knowledge of the judgment debtor. If this be so, the application under Order XXI, Rule 41 would ordinary precede the filing of an execution petition, though it can also be filed in the pending execution petition itself. I am fortified in this view by the judgment of the Calcutta High Court in *Shew Kumar Company vs. Grindlays Bank Limited* reported in *AIR 1986 Cal. 328* wherein the Division Bench observed in para-9 of its judgment :

“We accept the contention of the Respondent that an application for examination of a judgment debtor (under Order XXI, Rule 41) is strictly not an application for execution”.

In the said case, the Division Bench further held even after the decree is transmitted for execution to another Court, the Court passing the decree retains jurisdiction in respect of the decree and can examine the judgment debtor, under Order XXI, Rule 41. It is not necessary in this case to consider whether the Court which passes the decree retains jurisdiction over the decree even after its transmission for execution to another Court, but I am of the opinion that the Court which passed the decree does not cease to have a jurisdiction to entertain an application under Order XXI, Rule 41 atleast till the decree is transmitted to another Court for execution.

12A. Shri Chande, the Learned Advocate for the defendant however, handed in to me a typed copy of the judgment and order of this Court (Coram: F. I. Rebello, J.) passed in *Krishna Steel vs. Aren Engineers in Chamber Summons No. 864 of 1998* wherein his Lordship observed :

“I have seen disturbing signs while taking up this assignment. Applications for execution are being moved in the suit even without proceedings for execution have filed. Office entertains and places the matter on board. Proceedings in execution can only be after the decree holder applies to execute the decree in terms of the rules framed by this Court in the Original Side as also the reliefs produced at Order XXI which are applicable. At any rate, even if the decree has to be executed, the Chamber Summons have to be in the proceedings for execution and not in the summary suit.”

Relying on these observations, Shri Chande contended that a Chamber Summons under Order XXI, Rule 41 cannot be filed unless an Execution Petition/Darkhast is first filed. In response, the Learned Counsel for the petitioner handed in a copy of another order passed by this Court (Coram : R. N. Lodha, J) in *Balsara*

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*Hygiene Products Limited vs. Savitri India Limited in Chamber Summons No. 1514 of 1999 in Summary Suit no. 5481 of 1998.* In the said matter, His Lordship Justice Lodha had made the Chamber Summons absolute and directed the defendant Judgment-debtor to file the affidavit stating the particulars of the properties under Order XXI, Rule 41 of the Code of Civil Procedure, even when no Execution Petition was filed. I am informed at the bar that the said Chamber Summons was taken out, even before decree was drawn up and sealed. Subsequently, Rebello, J. again confirmed his view by an order dated 5-8-1999 passed in *Chandra Chem vs. Verma Mukherjee Pvt. Ltd. in Chamber Summons No. 1058 of 1998 in Summary suit no. 889/97* and dismissed, the Chamber Summons which was taken out under Order XXI, Rule 41 of the Code of Civil Procedure without first filing an execution petition under Order XXI, Rule 11(2) of the Code of Civil Procedure. It was held that the jurisdiction of the Court which passed the decree is limited to correct the clerical and arithmetical mistakes and the Court may in some rare cases also invoke section 151. It appears that these two judgments of this Court decided by Rebello, J. were not brought to the notice of His Lordship Lodha, J in *Balsara Hygiene Products Limited vs. Savitri India Limited*. There thus, appears to be a conflict in view taken by two learned single judges of this Court. Rebello, J. has held that an application/chamber Summons under Order XXI, Rule 41 cannot be filed without filing an execution petition/Darkhast under Order XXI, Rule 11(2) of the Code of Civil Procedure. Lodha, J has however, allowed the application/chamber Summons under Order XXI, Rule 41 to be filed under the title of the decided suit and before the execution petition in Order XXI, Rule 11(2) was filed, and even before the decree was drawn up.

13. Shri Chande, the Learned Counsel for the petitioner submitted that the conflict needs to be resolved by making a reference to the Division Bench. The Learned Advocate Mr. Shah appearing Amicus curiae however, submitted that the judgment of Rebello, J is *per incuriam* inasmuch as the earlier decision of Division Bench of this Court in *Cooverji Varjang vs. Cooverbai Nagsey Champsey* reported in *42 Bom L.R. 564*, was not brought to his notice. In that case, the plaintiff had sought leave to execute the order of costs made against firm, against the partner of the firm, by seeking leave under Order XXI, Rule 50(2) of the Code of Civil Procedure. The judgment of Wadia, J holding that an application for leave under Sub-rule(2) of Rule 50 of Order XXI, is an ancillary application for execution and that unless the leave was granted, decree was not executable against the alleged partner, was affirmed by the Division Bench. Lord Chief Justice Baumond, in his judgment held:

“Therefore, before executing a decree against a firm, against some alleged partner who has not been served, it is necessary to get the leave of the Court under that sub-rule. It is difficult to see what useful purpose is served in making an application to execute the decree before the leave has been granted. Mr. Munshi contends that an application in execution and one of the methods of execution which must be satisfied under Rule 11. But the application means one preliminary rule taking any effective step in execution against persons who are not covered by that

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Rule. Conceding that it is an application in execution, nevertheless, it is a special form of application which is covered by a rule. It seems to us that it is not apt to say that an application for leave under Rule 50 is a mode of execution referred to in Rule 11.

Thereafter, it was further observed,

We are inclined to think that it is, but, we are entirely in agreement with a view taken by the trial Judge that it is not necessary to apply in execution first and then apply for leave afterwards”.

Thus, Division Bench of this Court has held that it is not necessary to file an Execution Petition/Darkhast under Order XXI, Rule 11 before making of an application under Order XXI, Rule 50(2) of the Code of Civil Procedure. In my opinion, what is held about there being no necessity of filing of an Execution Petition/Darkhast under Order XXI, Rule 11(2) before filing of an application under Order XXI, Rule 50 equally applies to the application under Order XXI, Rule 41. The judgment in *Krishna Steel's* case is contrary to the ratio of the judgment of the Division Bench in *Cooverji Vajrang's* case because it was specifically held by the Division Bench of this Court that Petition under Order XXI, Rule 50 can be made before filing of execution petition under Order XXI, Rule 11 of the Code of Civil Procedure. Therefore, the judgment of *Rebello, J* in so far it holds that no chamber summons for execution can be entertained or accepted without an application for execution in proper form (under Order XXI, Rule 11) is per incuriam. Hence, the second objection taken by the Respondent is also overruled.

14-15. In the circumstances, the Chamber Summons is made absolute in terms of prayer clause (a) and the defendant is directed to file an affidavit disclosing his assets and properties as provided under Order XXI, Rule 41 of the Code of Civil Procedure. The affidavit to be filed within a period of five weeks. The chamber summons be listed for consideration of prayer clause (b) in the event the affidavit is not filed within a period of five weeks.

*Order accordingly.*

CASTE SCRUTINY AND INITIATION OF PROCEEDINGS WITHIN  
REASONABLE TIME : QUASHING OF TERMINATION ORDER

(*C. K. Thakker, C.J. and Smt. Ranjana Desai, J.*)

ANIL VASANTRAO SHIRPURKAR

*Petitioner.*

vs.

STATE OF MAHARASHTRA and others

*Respondents.*

**Caste Scrutiny** — *Initiation of proceedings against employee and his termination on the ground that he did not belong to Scheduled Tribe — The employee was appointed in 1994 and after completion of two years probation he was regularised in 1996 — It was only after about seven years of service and after about five years of regularisation that the proceedings were initiated against employee — As the power of initiation of proceedings was not exercised within 'reasonable period', the action taken and the order terminating services deserved to be quashed.*

W. P. No. 3701 of 2002 decided on 12-7-2002. (Bombay)

**2009 SCC OnLine Ker 5078 : AIR 2010 Ker 20 : (2010) 87 AIC 365 : 2010 AIHC  
(NOC 411) 124 : (2009) 4 KLT 683**

BEFORE S.S. SATHEESACHANDRAN, J.

State Bank of India

*Versus*

M.K. Raveendran

W.P. (C) No. 27298 of 2009  
Decided on October 30, 2009

**JUDGMENT**

The Writ Petition is filed seeking mainly the following reliefs: 1. To call for the records leading to Exts. P4 and P5 and set aside the same.

2. To declare that the respondent is liable to disclose his assets in the execution petition filed against him in a petition filed under Order 21 Rule 41(2) and face the examination. Petitioner is the decree holder. The decree executed in the suit is for money, and the respondent is the judgment debtor. In the execution proceedings initiated by the decree holder for realisation of the decree debt personal execution against the judgment debtor by his arrest and detention was applied for. The decree holder also moved for an order directing the judgment debtor to make an affidavit stating the particulars of his assets, and also of his oral examination to collect details of his property or means for satisfying the decree. The learned Munsiff declined the request of the decree holder to issue order against the judgment debtor under Order 21 Rule 41 of Code of Civil Procedure holding that such enquiry can be proceeded only where the execution petition is filed for attachment and sale. Propriety and correctness of those orders is challenged in the writ petition invoking the supervisory jurisdiction vested with this court under Article 227 of the Constitution of India.

3. Notice was ordered to the respondent. Though served, respondent/judgment debtor has not entered appearance. The impugned orders challenged in the writ petition passed by the learned Munsiff holding that proceedings for oral examination of the judgment debtor and also for directing the judgment debtor to file an affidavit regarding his assets-can be proceeded only where the execution petition is filed for attachment and sale are not correct.

4. Rule 41 of Order 21 C.P.C. is captioned as 'attachment of property'. That does not postulate it is applicable only when the execution relate to attachment of property. The object of the section is to enable the decree holder to get the necessary information with respect to the properties of the judgment debtor so that he can realise his debt without difficulty and trouble. It is an effective provision to obtain discovery in aid of the execution of the decree which is obtained. The Bombay High Court in *United Phosphorus Ltd. v. A.K. Kanoria* (AIR 2003 Bombay 97) has considered the scope and ambit of Rule 41 of Order 21 of the C.P.C. It has been held that examination of a judgment debtor under sub-rule (1) of Rule 41 of Order 21 or direction to the judgment debtor under sub-rule (2) to file affidavit, is not one of the modes of execution of a decree provided in clause (j) of Rule 11(2) of Order 21 of the C.P.C. What is contemplated by Rule 41 of Order 21 C.P.C. is disclosure of the assets of the judgment debtor as a preliminary step towards

the execution of the decree. In the above decision, the Bombay High Court has also expressed the view that an application under Rule 41 of Order 21 C.P.C. by the decree holder can be filed even before presentation of the execution petition. A decree holder who is not aware of the assets of the judgment debtor is often not able to decide in which court he should file the execution petition, to which court he should get the decree transferred. He can resort to Rule 41 of Order 21 to get the details from the judgment debtor the information of his assets, which is within his special knowledge and that can be sought for even before proceeding with the execution by filing an execution petition is the view taken by the above High Court. Opinion expressed by the Bombay High Court that the court which passed the decree does not cease to have jurisdiction to entertain application under Order 21 Rule 41 C.P.C. at least till the decree is transmitted to another court for execution appears to be sound considering the scope and ambit of Rule 41 of Order 21 of the Code of Civil Procedure. Since the provision covered by the rule is intended only to aid the execution and not one of the modes of the execution, it is just and reasonable to hold that even on the trial side in proceedings under Order 38 of the C.P.C. resort to Rule 41 of Order 21 of the Code can be sought for to get details of the assets from the defendant to secure the decree likely to be passed in the suit subject to the satisfaction of the other conditions for getting an order of interim attachment before judgment. To restrict the scope of Rule 41 of Order 21 of the Code only in a case of attachment of property, but, not to cases wherein enquiry on a plea of no means is raised by the judgment debtor to resist the execution, solely for the reason that the above rule is dealt with the provisions relating to attachment of property under the Code will not be conducive to justice. Only safeguard before passing of an order under sub-rule (1) and (2) under Order 41 of Rule 21 of the Code over and above the satisfaction of the court in passing of such orders, whether it be on the trial side or execution, is that it must be done only after notice to the judgment debtor. Disclosure of the as sets of the judgment debtor is a preliminary step towards the execution of the decree and in very many cases the information of assets is within the special knowledge of the judgment debtor. An executing court is bound to facilitate the execution of the decree passed by a court and as Rule 41 of Order 21 of the C.P.C. is only an aid in execution, its scope and applicability cannot be confined to cases where attachment of property is sought as mode of execution, but, in cases of personal execution of the judgment debtor by arrest and detention as well. Setting aside the impugned orders challenged in the writ petition, the court below is directed to pass appropriate orders taking note of the observations made above, and in accordance with law.

Writ petition is disposed as above.

*Order accordingly.*

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**EX.P. 275/2012**

**Bhandari Engineers & Builders Pvt. Ltd. v. Maharia Raj Joint Venture**

**2016 SCC OnLine Del 182 : (2016) 227 DLT 302 : (2016) 155 DRJ 212 : (2016) 229 DLT 744**

(BEFORE J.R. MIDHA, J.)

EX.P. 275/2012

M/s. Bhandari Engineers & Builders Pvt. Ltd. .... Decree Holder

Mr. S.S. Jauhar, Adv.

v.

M/s. Maharia Raj Joint Venture & Ors. .... Judgement Debtors

Mr. Sanjay Agnihotri, Adv. for JD 4.

Mr. Ajit Sharma and Mr. Mayank Aggarwal, Advs. for Objector Brij Bhushan.

And

EX.P. 276/2012

M/s. Bhandari Engineers & Builders Pvt. Ltd. .... Decree Holder

Mr. S.S. Jauhar, Adv.

v.

M/s. You One Maharia (JV) Delhi & Ors. .... Judgement Debtors

Mr. Sanjay Agnihotri, Adv. for JD 4.

Mr. Ajit Sharma and Mr. Mayank Aggarwal, Advs. for Objector Brij Bhushan.

EX.P. 275/2012 and EX.P. 276/2012

Decided on January 11, 2016

**JUDGMENT (ORAL)**

**J.R. MIDHA, J.:**— Delays and difficulties in execution of decrees erode public confidence and trust in justice delivery system. To prevent such delays, the executing Courts can exercise inherent powers to direct the judgment debtor to be present in Court (and even ensure his presence by coercive process) to receive such information or documents as will aid in the execution of the decree. The executing Court may examine the judgment debtor orally or direct him to file an affidavit detailing how he wishes or proposes to satisfy the decree.

**2.** In cases for execution of decree for recovery of money, an important step is to ascertain the assets/means of the judgement debtor to satisfy the decree. Order XXI Rule 41(2) of the Code of Civil Procedure empowers the executing Court to direct the judgement debtor to disclose his assets on affidavit in Form 16A, Appendix E to ascertain his assets/means to satisfy the decree. Order XXI Rule 41(2) of the Code of Civil Procedure is reproduced herein below:-

**"Order XXI Rule 41**

*(2) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor."*

**3.** Order XXI Rule 41(1) of the Code of Civil Procedure empowers the executing Court to orally examine the judgment debtor. Order XXI Rule 41(1) of the Code of Civil Procedure is reproduced hereunder:-

**"Order XXI**

**Rule 41. Examination of judgment-debtor as to his property.-**

(1) Where a decree is for the payment of money the decree-holder may apply to the Court for an Order that—

(a) the judgment-debtor, or

(b) where the judgment-debtor is a corporation, any officer thereof, or

(c) any other person, be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents."

4. In the event of the judgment debtor's default to file the affidavit of assets, Order XXI Rule 41(3) of the Code of Civil Procedure empowers the Court to detain the judgment debtor in civil prison for a term up to three months. Order XXI Rule 41(3) of the Code of Civil Procedure is reproduced below:-

**"Order XXI Rule 41**

(3) In case of disobedience of any order made under sub-rule (2), the court making the order, or any court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three month unless before the expiry of such terms the court directs his release."

5. Form 16A of Appendix E of the Code of Civil Procedure prescribes the format of the affidavit of assets to be filed by the judgment debtor which is reproduced hereinbelow:-

"[No. 16A

*Affidavit of Assets to be made by a Judgment-debtor*

[O. XXI, r.41(2)]

*In the Court of*

*A.B..... Decree-holder.*

*Versus*

*C.D..... Judgment-debtor.*

*I..... of .....state on Oath/solemn affirmation as follows:-*

1. My full name is .....(Block Capitals)

2. I live at

3. I am\*..... married/single/widower (widow)/divorced

4. The following persons are dependant upon me:-

5. My employment, trade or profession is that of .....carried on by me at

*I am a director of the following companies:-*

6. My present annual/monthly/weekly income, after paying income-tax, is as follows:-

(a) From my employment, trade or profession Rs.....

(b) From other sources Rs.....

7. \*(a) I own the house in which I live; its value is Rs.....

I pay as outgoings by way of rates, mortgage, interest, etc., the annual sum of Rs.....

(b) I pay as rent the annual sum of Rs.....

8. I possess the following:-

(a) Banking accounts;

- (b) Stocks and shares;
- (c) Life and endowment policies;
- (d) House property;
- (e) Other property;
- (f) Other securities;

Give particulars

9. The following debts are due to me:- (give particulars)
- (a) Form ..... of ..... Rs.
  - (b) From .....of ..... Rs..... (etc.)

Sworn before me, etc.]”

6. In order to satisfy whether the judgment debtor has the means to satisfy the decree and further that the judgment debtor has disclosed all his assets, the judgment debtor has to be directed to give a declaration and verify the aforesaid affidavit under Order XXI Rule 41(2) of the Code of Civil Procedure in the following format:

*“Declaration:*

1. I declare that I have/do not have means to satisfy the decree.
2. I declare that I have made full and accurate voluntary disclosure of my income, expenditure, assets and liabilities from all sources. I further declare that I have no assets, income, expenditure and liabilities other than set out in this affidavit.
3. I undertake to inform this Court immediately upon any material change in my employment, assets, income, expenses or any other information included in this affidavit.
4. I understand that any false statement in this affidavit may constitute an offence under Section 199 read with Sections 191 and 193 of the Indian Penal Code punishable with imprisonment upto seven years and fine, and Section 209 of Indian Penal Code punishable with imprisonment upto two years and fine. I have read and understood Sections 191, 193 199 and 209 of the Indian Penal Code.

DEPONENT

Verification:

Verified at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ that the contents of the above affidavit relating to my assets, income and expenditure are true to my knowledge, no part of it is false and nothing material has been concealed therefrom. I further verify that the copies of the documents filed along with the affidavit are the copies of the originals.

DEPONENT”

7. If the judgement debtor does not truly or sufficiently disclose his assets in the aforesaid affidavit under Order XXI Rule 41(2) of the Code of Civil Procedure, the Court can exercise the inherent power under Section 151 of the Code of Civil Procedure by directing the judgment debtor to file a further affidavit of assets, income and expenditure in the format provided in **Annexure A** in *Kusum Sharma v. Mahinder Kumar Sharma*, 2015 (217) DLT 706. The relevant portion of the said judgment is reproduced hereunder:

**“15. Affidavit of income and assets provided in Form 16A of APPENDIX-E under Order 21 Rule 41(2) of the Code of Civil Procedure**

15.1 Order 21 Rule 41(3) of the Code of Civil Procedure empowers the Court, in execution of a money decree, to examine the judgment debtor to ascertain the properties owned by him. Order 21 Rule 41(2) further empowers the Court to direct the judgment debtor to file an affidavit stating the particulars of the assets of the

*judgment debtor. Upon disobedience of such an order, Order 21 Rule 41(3) of the Code of Civil Procedure empowers the Court to send the judgment debtor to civil prison for a term not exceeding three months.*

*15.2 The form of the affidavit required to be filed by the judgment debtor under Order 21 Rule 41(2) of the Code of Civil Procedure is provided in Form 16-A in Appendix E.*

*15.3 Initially the Matrimonial Courts were directing the parties to file the affidavit in the format given in Form 16-A of Appendix E under Order 21 Rule 41 of the Code of Civil Procedure but the litigants were not truly disclosing their income in the said affidavit.*

*15.4 This Court is of the view that the format of affidavit of assets, income and expenditure provided in Form 16-A of Appendix E of the Code of Civil Procedure is not comprehensive to discover the complete income, assets and expenditure of the parties in matrimonial litigation and therefore, there is a need to formulate a comprehensive affidavit of assets, income and expenditure."*

**8.** Where the judgment debtor is a company, the Court can direct all the directors of the judgment debtor to file their personal affidavit containing the particulars set out in para 14 below.

**9.** The statement of the judgement debtor as to his inability to satisfy the decree may invite the attention of the decree holder to Section 6(2) of the Provincial Insolvency Act, 1920 (as amended in 1978) which provides for an insolvency notice and the decree holder may invoke the same.

### **Conclusion**

**10.** This Court is of the view that in cases of execution of decree for recovery of money, it would be appropriate to direct the judgment debtor, at the initial stage itself, to file the affidavit of assets as on the date of the institution of the suit as well as of the current date i.e. date of swearing the affidavit in Form 16A, Appendix E under Order XXI Rule 41(2) of the Code of Civil Procedure along with statement of all their bank accounts for the last three years within 30 days of the receipt of the notice and to remain present for being orally examined under Order XXI Rule 41(1) of the Code of Civil Procedure. The judgment debtor be directed to verify the affidavit in terms of para 6 above. It is clarified that the application under Order XXI Rules 41(1) and (2) of the Code of Civil Procedure is not required to be in writing and such an order can be passed on oral prayer of the decree holder. In the event of the default of the judgment debtor to file the affidavit within the stipulated time, the judgment debtor be detained in civil prison for a term not exceeding three months under Order XXI Rule 41(3) of the Code of Civil Procedure. If the judgment debtor's affidavit does not truly or sufficiently disclose his assets, further affidavit be directed to be filed in terms of paras 7 and 8 above. The judgment debtor be also examined orally under Order XXI Rule 41(1) of the Code of Civil Procedure to receive such information or documents as will aid in execution of the decree.

### **Present case**

**11.** In the present case, vide order dated 03<sup>rd</sup> September, 2015, judgement debtors were directed to file the affidavits of their assets in Form 16A, Appendix E, under Order XXI Rule 41(2) of the Code of Civil Procedure along with statement of all their bank accounts for the last three years within 30 days. Relevant portion of the order dated 03<sup>rd</sup> September, 2015 is reproduced hereunder:-

*".....The Judgement debtors are directed to file the affidavit of their assets in Form 16A, Appendix E, under Order XXI Rule 41(2) of the Code of Civil Procedure along with statement of all their bank accounts for the last three years within 30 days. The judgement debtors shall remain present in Court on the next date of hearing."*

**12.** On 16<sup>th</sup> November, 2015, the judgement debtors sought further one week time to file the affidavit in terms of the order dated 03<sup>rd</sup> September, 2015 whereupon further one week time was granted to them failing which the managing partners/directors of the judgement debtors were directed to be detained for a period of three months upon deposit of the subsistence allowance by the decree holder. Relevant portion of the order dated 16<sup>th</sup> November, 2015 is reproduced hereunder:-

*"Learned counsel for the decree holder submits that the judgment debtors have not filed the affidavit of their assets in terms of order dated 03<sup>rd</sup> September, 2015, and, therefore, they should be detained in civil prison under Order XXI Rule 41(2) of the Code of Civil Procedure.*

*Learned counsel for the judgment debtors seeks one week's time to file the affidavit in terms of order dated 03<sup>rd</sup> September, 2015. In the interest of justice, one week's time is granted to the judgment debtors to file the affidavit in terms of order dated 03<sup>rd</sup> September, 2015, failing which the managing partners/directors of the judgement debtors No. 1, 3 and 4 shall be detained in civil prison for a period of three months upon deposit of the subsisting allowance by the decree holder. The response to the affidavit be filed within four weeks thereafter...."*

**13.** Learned counsel for judgement debtors submit that judgment debtors have filed the affidavits but the same are not in the prescribed format. The judgement debtors have not filed statement of all their bank accounts in terms of the order dated 03<sup>rd</sup> September, 2015. The learned counsel for the judgement debtors submit that the requisite affidavits in terms of the order dated 03<sup>rd</sup> September, 2015 along with the application for condonation of delay shall be filed within one week. The same shall be considered as and when filed. The fresh affidavits to be filed by the judgement debtors shall be in Form 16A, Appendix E under Order XXI Rule 41(2) of the Code of Civil Procedure in which the judgement debtors shall declare their assets as on the date of the award as well as of the current date i.e. date of swearing of the affidavit. The affidavit shall be accompanied with statement of all the bank accounts of the judgement debtors for the last three years.

**14.** Considering nature of the companies and their business relationship, the managing partners of the judgment debtor 1 and all directors of judgement debtors 2 and 3 are directed to file their personal affidavits setting out the following particulars:

- (i) All information and particulars with regard to their shareholding in judgment debtors 1, 3 and 4, their involvement in the affairs of said judgment debtors and the nature of steps taken by them with regard to the management of the judgment debtors 1, 3 and 4;
- (ii) The Profit & Loss Account and the Balance Sheets of judgment debtors 1, 3 and 4 for the last three years;
- (iii) The list of all the bank accounts of judgment debtors 1, 3 and 4;
- (iv) The names and residential addresses of the Directors of judgment debtors 1, 3 and 4 along with their PAN numbers and DIN numbers, as well as complete particulars of all moveable and immovable assets held in their personal names and the dates of their acquisition, and the nature of the right, title and interest therein;
- (v) The address of the Registered Office and the Corporate or branch offices, if any, of judgment debtors 1, 3 and 4;
- (vi) The location of the statutory records and books of account of judgment debtors 1, 3 and 4;
- (vii) The list of immovable assets, land and building etc. of judgment debtors 1, 3 and 4 as on the date of the award;

- (viii) The list of immovable assets, land and building of judgment debtors 1, 3 and 4 as on the date of filing the affidavit;
- (ix) The list of the movable assets of judgment debtors 1, 3 and 4, their location and value;
- (x) The details of the debtors and creditors of judgment debtors 1, 3 and 4 with their complete addresses; and
- (xi) The details of workmen/employees and any amount outstanding to them.
- (xii) Whether judgment debtors 1, 3 and 4 have assets/means to satisfy the decree.

**15.** The affidavits in terms of para 14 be filed within a period of four weeks from today with advance copy to the counsel for the decree holder. The concerned directors of the judgement debtors shall remain personally present on the next date of hearing to enable this Court to examine them, if required.

**16.** The judgement debtors shall not dispose of, alienate, encumber either directly or indirectly or otherwise part with the possession of any assets of judgment debtor nos. 1, 3 and 4 to the tune of Rs. 4,00,00,000/- except in the ordinary course of business and payment of salary and statutory dues.

**17.** List for hearing on 26<sup>th</sup> February, 2016.

**18.** The objections of the objector shall be taken up on the next date of hearing.

**Post script**

**19.** It has come to the notice of this Court that the execution cases for recovery of money are unreasonably delayed before the Trial Courts as the Courts seldom exercise the power under Order XXI Rule 41 of the Code of Civil Procedure. This Court, therefore, considers it necessary to send the copy of this order to all the District Judges for circulating it to the Trial Courts for implementation of Order XXI Rule 41 of the Code of Civil Procedure in its true letter and spirit.

**20.** The copy of this order be sent to all the District Judges. The copy of this order be also sent to the Delhi Judicial Academy to sensitize the Judges about the implementation of Order XXI Rule 41 of the Code of Civil Procedure in execution cases.

**21.** Copy of this order be given *dasti* to counsels for the parties under signature of Court Master.

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