

SUPREME COURT OF INDIA

Selvaraj

Vs.

Neelambal

S.L.P. (C) No. 20933 of 2003

(B. N. Agarwal and H. K. Sema JJ.)

16.08.2004

ORDER

1. Heard learned counsel for the parties.
2. Leave granted.
3. This appeal has been filed against the impugned order whereby the High Court has confirmed order dated 6th June, 2003, whereby petition filed under Order 21, Rules 97 and 98 of the *Code of Civil Procedure, 1908*, [for short 'the Code'] by the appellant has been dismissed by the Executing Court without any adjudication whatsoever.
4. Undisputedly, the judgment-debtor has been dispossessed and the decree has been executed during the pendency of this appeal. It is well settled that when under Order 21 Rules 97 and 98 of the Code, a petition is filed Executing Court cannot dismiss it without any adjudication. In this regard, it may be stated that under Order 21 Rule 58 of the Code, in certain circumstances, the Executing Court can dismiss a claim case without any adjudication, but there is no such provision either under Rule 97 or Rule 98 of Order 21 of the Code. # This being the position, we are of the view that the Executing Court was not justified in dismissing the petition filed by the appellant and the High Court committed an error of jurisdiction in upholding the said order.
5. Accordingly, the appeal is allowed, impugned orders passed by the High Court as well as the Executing Court are set aside and the matter is remitted to the Executing Court to register the petition under Order 21 Rules 97 and 98 of the Code, frame issues and adjudicate on the disputes between the parties after giving opportunity of adducing evidence to them and thereafter decide the matter in accordance with law.

No costs.