

ANDHRA PRADESH HIGH COURT

P. Narasaiah

Vs.

P. Rajoo Reddy

Civil Revn. Petn. No. 2413 of 1983

(Jeevan Reddy, J.)

29.04.1988

JUDGMENT

Jeevan Reddy, J.

1. This Civil Revision Petition is placed before me on a difference of opinion arising between two learned Judges of this Court. The question upon which difference of opinion has arisen is : whether a judgment- debtor, who does not get the payment made by him outside the Court recorded and certified under sub-rule (2) of Rule 2 of Order 21, Civil Procedure Code can be permitted to plead such payment, after the expiry of period of 30 days prescribed by Article 125 of the Limitation Act, in the execution proceedings taken by the decree-holder? Amareswari, J. has held that by virtue of Section 47, Civil Procedure Code the judgment-debtor is entitled to raise such a plea, while Upendralal Waghray, J. has held to the contrary. I will first state the relevant facts.

2. The respondent (decree-holder) obtained a decree for money on 26-7-1978. In the year 1979 he filed E.P. No. 20/1979 wherein the judgment-debtor filed a petition, E.A. No. 184/1980, on 20-8-1980, pleading that he has paid the entire decretal amount on 5-1-1979 to the father of the decree-holder under a receipt and, therefore, the E.P. is not maintainable. E.P. No. 20/1979 was dismissed. for default on 29-11-1980. Consequently, E.A. 184/80 was also dismissed. Sometime later, the decree-holder filed another Execution Petition, being E.P. 73/1981, on 23-2-1981. On receiving the notice of E.P., the judgment debtor (revision-petitioner) appeared and filed a counter raising the very same plea, viz., that he has paid the entire decretal amount on 5-1-1979 to the father of the decree-holder who was looking after the affairs of the decree holder; that he has already filed the receipt evidencing the payment in E.A. 184/80, and hence the Execution Petition is liable to be dismissed. The executing Court heard the parties and held, by its order dt. 18-8-1983, that it is not open to the judgment-debtor to raise such a plea inasmuch as he did not get the said payment recorded and certified under Order 21, Rule 2(2), Civil Procedure Code. It held that by virtue of sub-rule (3) of Rule 2 of Order 21, a payment which is not so recorded and certified, cannot be recognized by the Court. The judgment debtor, thereupon, filed the present Civil Revision Petition questioning the order of the learned District Munsif.

3. The Civil Revision Petition first came up before M.Jagannadha Rao, J., before whom the learned counsel for the judgment debtor contended that Article 125 of the Limitation Act, in so far as it prescribes a period of thirty days for the judgment-debtor to have the payment certified, is discriminatory and violative of Article 14 of the Constitution. The argument was that while prescribing such a period of limitation for judgment-debtor, no period of limitation is prescribed for the decree-holder to apply under sub-rule (1) of Rule 2 of Order 21. It was also argued that prescribing a short period of thirty days is also liable to be struck down under Article 14 of the Constitution, as being arbitrary. In view of the nature of the said contention, the learned Judge directed the Civil Revision Petition to be posted before a Division Bench. However, when the matter came up before the Division Bench, counsel for the judgment debtor did not argue the question as to the constitutionality of Article 125 of the Limitation Act. The arguments before the Division Bench - comprising of Amareswari and Upendralal Waghray, JJ. - centered round the question indicated at the inception of this judgment, viz., whether a judgment-debtor who does not get the payment outside the Court recorded under Order 21, Rule 2(2), Civil Procedure Code is entitled to plead the same after the expiry of 30 days from the date of said payment, in execution proceedings initiated by the D.H., and whether Section 47, Civil Procedure Code permits him to do so. Amareswari, J. was of the view, mainly influenced by the decision of the Supreme Court in M.P. Shreevastava Veena, AIR 1967 Supreme Court 1193 that since the plea raised by the judgment-debtor relates to execution, discharge or satisfaction of the decree, it can be raised and has to be decided by the executing Court. Section 47, the learned Judge observed, is designed to prevent multiplicity of proceedings, and the power of the Court under Section 47 is not controlled by Order 21, Rule 2 which, according to the learned Judge, deals with a different situation altogether. In that view, the learned Judge set aside the order of the executing Court and remanded the matter to the executing Court for determining the truth or otherwise of the plea raised by the judgment-debtor. Upendralal Waghray, J. was of the opinion that there is no irreconcilability between Order 21, Rule 2, and Section 47 of Civil Procedure Code. The learned Judge opined that while Section 47 confers jurisdiction on the executing Court to decide questions relating to execution, discharge, or satisfaction of the decree, Order 21, Rule 2 prescribes the procedure, while Article 125 of the Limitation Act prescribes the period of limitation for a certain class of applications. The substantive power of the executing Court under Section 47, the learned Judge observed, has to be exercised in accordance with the procedure prescribed by Order 12, Rule 2, and observing the provisions of Article 125 of the Limitation Act. In this view of the matter, the learned Judge upheld the order of the executing Court and dismissed the Civil Revision Petition. The said difference of opinion has occasioned the reference to a third Judge.

4. For a proper appreciation of the question it would be appropriate to set out Section 47, sub-rule (1) and (2) of Rule 1 of Order 21, Rule 2 of Order 21, Civil Procedure Code as amended by the Amendment Act, 1976, as well as Article 125 of the Limitation Act. They read thus : Section 47, Civil Procedure Code :

"47. (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.

(2) xx (omitted by Amendment Act, 1976 w.e.f. 1-2-1977).

(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-I : 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."

Order 21, Civil Procedure Code :

"R.1 : (1) All money, payable under a decree shall be paid as follows, namely :-
 (a) by deposit into the Court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank ; or
 (b) out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or
 (c) otherwise, as the Court which made the decree, directs.
 (2) Where any payment is made under Clause (a) or Clause (c) of sub-r.(1), the judgment debtor shall give notice thereof to the decree holder either through the Court or directly to him by registered post, acknowledgment due.....".
 "R.2 : (1) Where any money" payable under a decree of any kind is paid out of Court, or a decree of any kind is otherwise adjusted, in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.
 (2) The judgment-debtor or any person who has become surety for the judgment debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified ; and if, after service of such notice, the decree- holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.
 (2A) No payment or adjustment shall be recorded at the instance of the judgment debtor unless -
 (a) the payment is made in the manner, provided in Rule 1 ; or
 (b) the payment of adjustment is proved by documentary evidence; or
 (c) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice given under sub-rule (2) of Rule 1, or before the Court.
 (3) A payment or adjustment which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree".

Article 125 of the Limitation Act:

Description of application	Period	of	Time	from	which
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	limitation:	period begins to run:
xxx	xxx	xxx
125. To record an adjustment or satisfaction of a decree.	Thirty days.	When the payment or adjustment is made.
xxx	xxx	xxx

5. The object underlying Section 47 is to ensure that all questions relating to execution, discharge or satisfaction of the decree should be determined only by the executing Court, and not by a separate suit. The object is to avoid multiplicity of proceedings. Order 21 deals with execution of decrees. Rule 1 exhibits the concern of the rule-making authority to leave no room for frivolous pleas of payment of money due under a money decree. It contemplates the money due under such a decree to be paid in any of the three modes specified therein. Any other mode of payment is not recognized. The three modes are : (a) depositing the money in the Court empowered to execute the decree, or sending the money to that Court by postal money order or through a Bank; (b) direct payment to the decree-holder through postal money order or through a Bank, or "by any other mode wherein payment is evidenced in writing", and (c) in such manner as the Court passing the decree directs. Of these three modes, mode (b) deals with payment outside the Court and it is here that there is room for controversy. Even in this mode, normally no controversy is possible where payment is made by postal money-order or through a Bank; controversy often arises where the payment is made out of Court directly to the decree holder "by any other mode wherein payment is evidenced in writing". It is cases of this type which arise frequently for decision before the executing Court. In many cases the decree holder denies the receipt or the writing, as the case may be, and terms it as false or fabricated.

6. Coming to Rule 2, it deals with cases where the decree is satisfied or adjusted out of Court. It deals not only with money decrees, but with decrees of all kinds. In other words, it not only speaks of payment of money under a money decree, but also 'adjustment' of any other kind of decree. Sub-rule (1) says that where a decree is so satisfied or 'adjusted', the decree-holder shall certify such payment or adjustment to the Court which is to execute the decree, and the court shall record the same accordingly. Sub-rule (2) then says that in case of such payment/adjustment, the judgment-debtor may also inform the court of such payment or adjustment, and request it to record and certify the same. If any such information is laid before the Court, the Court shall issue notice to the decree-holder to show cause why such payment or adjustment be not recorded and certified. If the decree holder appears and denies the payment or adjustment, the Court shall make necessary enquiry and pass appropriate orders. Sub-rule (2-A) provides that a payment or adjustment which can be recorded or certified under Rule 2, is only a payment which is made in the manner provided in Rule 1, or where such payment or adjustment is admitted by the decree-holder in the Court, or in his reply to the notice given under sub-rule (2) of Rule 1 of Order 21. Sub-rule (1) of Rule 2 then declares that a payment or adjustment which has not been certified or recorded as contemplated by the said Rule "shall not be recognized by, any Court executing the decree". Article 125 of the Limitation Act prescribes thirty days' period of limitation for recording an adjustment or satisfaction of the decree from the date of payment or adjustment. The question is : where neither the decree-holder nor the

judgment-debtor gets the payment/adjustment recorded and certified as contemplated by Order 21, Rule 2, and where the decree-holder takes out execution of his decree, is it open to the judgment-debtor in such execution proceedings to plead such payment or adjustment, after the expiry of the period of 30 days from the date of payment/adjustment?

7. Sri L. Narasimha Reddy, learned counsel for the petitioner (judgment- debtor), submits that while Section 47 is a substantive provision defining the powers of an executing Court, Rules 1 and 2 of Order 21 are merely procedural in nature. These procedural Rules cannot control, or cut down the ambit or scope of Section 47. More important, sub-rule (2) which enables the judgment-debtor to inform the Court of such payment or adjustment, uses the expression 'may', while in the case of decree-holder sub-rule (1) of Rule 2 says that "the decree-holder shall certify such payment or adjustment to the Court.....". (Sub-r.(2) of Rule 2 says "the judgment-debtor.....also may inform the Court of such payment or adjustment, and apply to the Court....."). The rule-making authority must be deemed to have knowingly and deliberately used these two expressions in these two sub-rules. In other words, the judgment-debtor is not under an obligation to have such payment/adjustment recorded and certified by the Court; he may choose to do so, or may not choose to do so. If he does not choose to do so, his right to plead such payment/adjustment, as and when the decree-holder takes out execution, is not taken away. Section 47 contemplates that such a plea should be enquired into and determined by the executing Court. Counsel further argues that sub-Rule (3) of Rule 2 must be read consistent with sub-r.(2), and cannot equally control Section 47.

8. On the other hand, Sri R. Thimma Reddy, learned counsel for the respondent (decree-holder), submits that there is no inconsistency between Section 47 and Rules 1 and 2 of Order 21. Order 21 prescribes the procedure which must be followed while determining the questions relating to execution, discharge, or satisfaction of a decree by the executing Court-True it is that sub-rule (2) of Rule 2 of Order 21 uses the expression 'may'; but, this expression has to be understood as 'shall' by virtue of the mandatory provision contained in sub- r.(3). Sub-rule (3) expressly states that a payment or adjustment which has not been certified or recorded under sub-rule (1) or sub-rule (2) of Rule 2, "shall not be recognized by any Court executing the decree". Counsel submits that in view of the said provision, a judgment-debtor is under an obligation to have the payment/adjustment recorded and certified by the Court, if such payment or adjustment is made or arrived at outside the Court. Counsel also submits that such a construction would be consistent with the concern of the rule-making authority to leave no room for frivolous pleas of payment/adjustment, and should be adopted. This would also make the provision in Article 125 of the Limitation Act meaningful, contends the counsel.

9. Part-II of the Civil Procedure Code containing Sections 36 to 74 deals with execution of decrees and orders. Order 21 in the First Schedule to the Code also deals with the same subject. There can be no conceivable inconsistency between Sections 36 to 74, and the several Rules contained in Order 21. Indeed, Order 21 merely elaborates and provides detailed provisions to carry out the intent and purposes of the provisions contained in Sections 36 to 74. The Rules in the First Schedule to the Code, including Order 21, are referable to Part-X containing Sections 121 to 131. Section 121 says that the Rules in the First Schedule Shall have effect as if enacted in the body of the Code until annulled or altered in accordance with the provisions of the said Part. Section 122 empowers the High Courts in the country to make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and that the

Rules so made may annul, alter or add to all or any of the Rules in the First Schedule. Rules 1 and 2 of Order 21 are evidently based on the assumption that a judgment-debtor would not, ordinarily, pay the amount due under the money decree passed against him outside the Court without ensuring proper proof of such payment. Rules 1 and 2, therefore, make detailed provisions providing the manner in which the payment or adjustment outside the Court should be made. They also provide that if any such payment or adjustment is made outside the Court, it should promptly be got recorded and certified by the Court which is competent to execute the decree, either at the instance of the decree-holder or the judgment-debtor. It also declares that a payment or adjustment made outside the Court, which has not been certified or recorded in accordance with Rule 2, shall not be recognised by any Court executing the decree. Rule 2 of Order 21 does not deal with the payment or adjustment of the decree in Court, i.e., in execution proceedings taken by the decree-holder. (The judgment-debtor may well wait for execution proceedings, and go and pay the money - In case it is a money decree - or satisfy the decree in the appropriate manner where it is the decree of any other kind. The payment so made, or the satisfaction provided by him will naturally be recorded by the executing Court. There can be no controversy about his payment/adjustment in such a situation). A judgment debtor need not wait for the decree-holder to take out execution. As soon as the decree is passed, or at any time thereafter, the judgment-debtor can himself pay the money due under a decree; but this has to be done in any one of the three modes mentioned in Order 21, Rule 1(1). Now, the law says further that if money is paid or adjustment of decree of any kind is arrived at outside the Court, it should be promptly got recorded and certified as contemplated by Rule 2. This can be done either by the J.D. or by the decree-holder; but in the very nature of things, a judgment debtor should be more concerned in having such payment or adjustment recorded and certified by the Court. Article 125 of the Limitation Act provides a period of 30 days for applying to the Court for recording an adjustment or satisfaction of the decree, from the date of payment or adjustment. There is no provision for extending the said period. Since by virtue of sub-rule (3) of Rule 2 of Order 21 "a payment or adjustment, which has not been certified or recorded as aforesaid (in accordance with Rule 2) shall not be recognized by any Court executing the decree", any payment or adjustment not certified or recorded in accordance with Rule 2 of Order 21 is no payment or adjustment in law. Any such payment or adjustment cannot be recognized by the Court executing the decree - unless, of course, the decree-holder himself admits the same. Therefore, when a decree-holder takes out execution, the judgment-debtor will not be entitled to plead - if by the date of his plea a period of thirty days has expired from the date of payment or adjustment, as the case may be that he has paid the money due, or has otherwise adjusted the decree, outside the Court. It is, no doubt, true that the use of the expression 'may' in sub-rule (2) of Rule 2 has given room for controversy and argument; but, in my opinion, the said expression has to be construed and understood in the light of sub-rule (3) of Rule 2, and if so read, the expression 'may' is liable to be construed and understood as 'shall'. By placing this construction no inconsistency arises between Order 21, Rule 2 and Section 47. When Section 47 declares that all questions relating to execution, discharge or satisfaction of a decree shall be enquired into and determined only by the Court executing the decree and not by a separate suit, it does not mean that the provisions in Order 21, Rule 2 read with Article 125 of the Limitation Act should be, ignored. Indeed, one should read them together harmoniously. As stated hereinbefore, the several Rules in Order 21 supplement, illustrate and elaborate the provisions contained in Part-II of the Code. The object behind sub-rule (3) of Rule 2 of Order 21 is to shut out any plea of payment, or adjustment, which is not promptly got recorded and certified under the said Rule. The idea is to preclude any such pleas and leave no room for them.

10. Before I refer to the decisions on the point, it would be appropriate to notice the distinction between the present Article 125 of the Limitation Act, and the corresponding Article 174 in the 1908 Act. Article 174 of the Limitation Act, 1908, reads as follows : -

" Description of suit	Period of limitation:	Time from which period begins to run :
Article 174 For the issue of a notice under the same Code, to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be certified."	Ninety days.	When the payment or adjustment is made.

The language of Article 174 clearly indicated that it governed an application made by the judgment-debtor under sub-rule (2) of Rule 2 of Order 21, Civil Procedure Code whereas there are no words in the present Article 125 to confine it to an application by the judgment-debtor only. On the language of the present Article, it appears applicable both to an application by the decree-holder under sub-rule (1) of Rule 2 of Order 21, as well as to an application by the judgment-debtor under sub-rule (2) of Rule 2. Of course, this does not mean that a decree holder cannot admit a payment or adjustment beyond the period of thirty days. If he himself admits such payment or adjustment, no controversy arises and there is no occasion for any enquiry or determination. This distinction between the two Articles must be kept in mind while appreciating the observations in some of the decisions referred to hereinafter.

11. In *Subramanyam v. Ramaswami*¹, a Full Bench of the Madras High Court held clearly that "where a decree has been adjusted, if the decree-holder does not certify such adjustment to the Court, the judgment-debtor himself may apply to the Court to issue a notice to the decree-holder to show cause why such an adjustment should not be recorded as certified. Under Article 174, Limitation Act, he has 90 days in which to do this. If the decree-holder has not certified the adjustment and the judgment-debtor has not got the adjustment recorded within that period, such an adjustment cannot be recognized by the Court executing the decree....", it was held that such a bar applies even where the execution is taken out by the transferee decree-holder, and that a judgment-debtor is precluded from raising such a plea to oppose a transfer under Rule 16 of Order 21, C.P.C.

¹ AIR 1932 Mad 372

12. In *Humayun Properties v. Ferrazzinis Ltd*², it was observed that a payment of money under a decree or an adjustment, casts a duty upon the decree-holder to certify such payment or adjustment to the Court, whose duty it is to execute the decree; that, there is no particular form for such certification, nor any period of limitation. Where, however, the decree-holder has not done his duty, the judgment-debtor may, inform the Court of such payment or adjustment and apply to the Court to issue a notice to the decree-holder to show cause why such payment or adjustment be not recorded and certified, and that this gives rise to a judicial proceeding. If the decreeholder denies, the Court has to determine the said question. It was also observed that Article 174 of the Limitation Act prescribes a period of 90 days from the date of alleged payment

or adjustment for making such an application. In that case, a particular payment was neither certified by the decree-holder nor got recorded by the judgment-debtor and, therefore, it was held that the decree-holder is entitled to execute the decree.

13. In *Rajappa v. Krishnappa and Sons*³, a learned single Judge of the Karnataka High Court, Malimath, J., clearly ruled that an adjustment not recorded under Order 21, Rule 2 cannot be taken note of. This is what the learned Judge said :

"The second objection is in regard to some sort of an arrangement that was arrived at after the decree was passed. As there is no certification of adjustment as required under Order 21, Rule 2, of the Civil Procedure Code, the arrangement pleaded by the judgment debtor cannot be established by leading evidence, as such evidence is clearly precluded by the express provisions of Order 21, Rule 2 of the C.P.C."

14. In *K.C. Pillappa v. M. Muni Reddy*⁴, a learned single Judge of the Mysore High Court held that an application by a judgment-debtor under sub rule (2) of Rule 2 of Order 21 undoubtedly raises the question of satisfaction of the decree which has got to be determined as between the judgment-debtor and the decree-holder under Section 47 of the Code. The learned Judge observed that such an application would come within the ambit of Section 47, whether it is filed within the time prescribed by Article 174 of the Limitation Act, 1908, or after the expiry of the said period. The learned Judge observed that if the application is filed beyond the period prescribed by Article 174, it cannot be entertained either by reference to Article 181, or by treating it as a suit. Such an application has simply to be dismissed, and that an uncertified payment cannot be recognized by the executing Court.

15. It would be of interest to note that in Punjab sub-rule (3) of Rule 2 of Order 21 was repealed by Section 36 of the Punjab Relief of Indebtedness Act, 1934. Because of the said repeal, it was held that a payment or adjustment not recorded or certified under sub-rule (1) or (2) of Rule 2 can still be pleaded as a defiance if and when the decree-holder takes out execution of the decree. It was, however, affirmed by a learned single Judge in *Bholu Ram v. Kanhya*⁵, that in view of sub-rule (3) of Rule 2 of Order 21, if a payment out of Court is not certified by the decree-holder nor is an application made by the judgment-debtor under sub-R.(2) within 90 days as provided in Article 174 of the Indian Limitation Act, such payment cannot be pleaded as a defense in execution of the decree,

² AIR 1963 Cal 473

⁴ AIR 1959 Mys 155

³ AIR 1974 Kar 51

⁵ AIR 1963 Pun 133

because such payment cannot be recognized by the Court. But, since the position in the State of Punjab is different by virtue of repeal of sub- r.(3) by the aforesaid Act, it was observed that irrespective of the fact whether a payment or adjustment has been certified either at the instance of the decree-holder or the judgment-debtor, such payment can be pleaded as a defence if the decree-holder takes out the execution of the decree. The learned Judge followed two earlier decisions of the Lahore High Court in *Murli Dhar v. Firm Basheshar Lal Moti Lal*⁶, and *Daru Mal v. Todar*⁷,

16. To the same effect is another decision of the Punjab High Court in *Ramchand v. Wazir Chand*⁸,

17. It appears that on the question at issue herein, a difference of opinion had also arisen in Allahabad High Court, whereupon the matter was referred to a third Judge, Mukherji, J. All the three opinions are reported in *Akbar Ali v. Dr. Ishwar Saran*⁹, The third Judge agreeing with Desai, J. (Beg, J. contra), held that in law it is not possible for the executing Court to recognize an uncertified payment during the course of execution proceedings, and that certification of such payment can only be had if there is a proper prayer to that effect, whether by means of a separate application or in the objections filed by the judgment debtor, provided such prayer is made within 90 days of the payment. The learned Judge observed that the purpose of Order 21, Rule 2 is to shut out controversy, at a stage when the decree is actually being executed, in regard to the payment or adjustment of such decree. The learned Judge observed further that an enquiry which could be held by a Court considering the question under Section 47 of the Code, cannot relate to consideration of questions which in effect were in regard to payments. It was, however, observed that where the execution is allowed to proceed on the ground that the payment alleged to have been made by the judgment-debtor has not been certified, it is open to the judgment debtor to recover the excess amount from the decree-holder through a suit.

18. There are other decisions too to the same effect, but I do not think it necessary to refer to them. Suffice it to note that no decision taking a contrary view has been brought to my notice.

19. I shall now consider the decision of the Supreme Court in *M.P. Shreevastava v. Veena*¹⁰, which has really induced Amareswari, J. to take a contrary view. In this case, a decree for restitution of conjugal rights was made by a Court on 13-3-1961. On 21-5-1961 the respondent-wife returned to the residence of the appellant husband and offered to live with him, but she was not permitted to do so. She thereupon applied to the Court which passed the decree, to record the satisfaction of the decree inasmuch as the appellant-husband refused to allow her to resume conjugal relations and obey the decree. The Court, accordingly, recorded satisfaction, which order was confirmed on appeal, by the High Court. The matter was then carried by the husband in appeal to Supreme Court. Of the two questions urged, the first question was not allowed to be urged on the ground that it was not raised before the Court below. Therefore, only the second question survived for consideration, viz., "that the application filed by the respondent (wife) was not maintainable because at the material date no application for execution of the decree filed by the appellant (husband) was pending and

⁶ AIR 1938 Lah 126

⁸ AIR 1962 Punj 293

¹⁰ AIR 1967 SC1193

⁷ AIR 1938 Lah 602

⁹ AIR 1957 All 622

the District Court was, on that account, not a Court executing the decree". The argument was that inasmuch as the husband had not applied for executing the decree, an application of the nature filed by the wife in that case did not lie. In that connection, the Court observed that the wife's application cannot be brought under Order 21, Rule 2 inasmuch as the said Rule contemplates adjustment, and in that case there was no adjustment. It was observed "adjustment contemplates mutual agreement, and in the present case, there is no evidence of any consent on the part of the appellant who was never willing to take back the wife and resume conjugal relations. Order 21, Rule 2. contemplates adjustment of the decree by consent express or implied - of the parties; where there is no such consent, Order 21, Rule 2 does not apply.....". Firstly, the said observations must be understood in the context of and having regard to the nature of the decree concerned therein, and may not be relevant in the case of a money decree, or other types of decrees. Sub-rule (2) of Rule 2 of Order 21, it must be remembered contemplates an enquiry and

determination by the Court if the judgment-debtor informs the Court (evidently by an application) of the payment or adjustment and if, on notice being given, the decree-holder denies the same. Now coming back to the decision of the Supreme Court, having made the above observations, the Court proceeded to observe (At page 1195) :

"But Order 21, Rule 2 prescribes a special procedure for recording adjustment of a decree, or for recording payment of money paid out of Court under any decree. However, the plenary power conferred by Section 47, C.P. Code upon the Court executing the decree to determine all questions arising between the parties to the suit in which the decree was passed, and relating to execution, discharge or satisfaction of the decree, is not thereby affected. Whereas Order 21, Rule 2 deals with the procedure to be followed in a limited class of cases relating to discharge or satisfaction of decree, where there has been payment of money or adjustment or satisfaction of the decree by consensual arrangement, Section 47, C.P. Code deals with the power of the Court executing the decree.....".

It is these observations which appear to have mainly influenced Amareswari, J. to hold that even if a payment or adjustment is not certified in accordance with Rule 2 of Order 21, it can still be pleaded and has to be enquired into as and when the decree-holder applies for execution, by virtue of Section 47. I am, however, unable to read the said observations in the manner understood by the learned Judge. It may firstly be pointed out that in the very same decision it was also observed, in para 13, that "there is, in our judgment, no antithesis between Section 47 and Order 21, Rule 2 ; the former deals with the power of the Court and the latter with the procedure to be followed in respect of a limited class of cases relating to discharge or satisfaction of decree". Secondly, the whole discussion in that case related to the question whether it was open to the judgment-debtor (wife) in that case to file an application to record satisfaction, when indeed the husband himself had not applied for, or taken out execution? It was held, after referring to a large number of cases, that such an application is maintainable, and can be filed. In the said decision there is no reference at all to sub-rule (3) of Rule 2, nor was it a case where the question of the nature arising herein, arose for consideration. The observations extracted hereinabove were made to indicate that even though the wife's application did not fall under Order 21, Rule 2, it fell within the ambit of Section 47.

20. For the above reasons, I hold, agreeing with Upendralal Waghay, J. that the payment allegedly made by the judgment-debtor on 5-1-1979 not having been recorded and certified in accordance with Order 21, Rule 2(2), Civil Procedure Code cannot be recognized by the executing Court in E.P. No. 73/1981, because the application alleging such payment was made, even in the earlier E.P., (E.P. No. 20/1979), beyond 30 days of the payment.

21. Civil Revision Petition, accordingly, fails and is dismissed. There shall be no order as to costs.

Petition dismissed.