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**(1969) 01 MP CK 0007**

**Madhya Pradesh High Court**

**Case No:** Miscellaneous F.A. No. 44 of 1967

State of M.P.

APPELLANT

Vs

Firm Haji Sk. Faizulla Allabux

RESPONDENT

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**Date of Decision:** Jan. 13, 1969

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 45 Rule 15, 144, 151

**Citation:** (1972) MPLJ 526

**Hon'ble Judges:** K.L. Pandey, J

**Bench:** Single Bench

**Advocate:** Mama Gupta, for the Appellant; R.K. Shrivastava, for the Respondent

**Final Decision:** Allowed

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**Judgement**

@JUDGMENTTAG-ORDER

K.L. Pandey, J.

This appeal by the judgment-debtor is directed against an order dated 16 November 1966 whereby the District Judge, Rewa, declined to order restitution consequent upon variation of a money decree by the Supreme Court on the ground that it was not covered by the directions given by this Court under Order 45, rule 15 of the Code of Civil Procedure. The judgment-debtor too has filed an application for such directions, if necessary [Miscellaneous Civil Case No. 119 of 1967], This order shall dispose of that application also.

The fact material for the disposal of this appeal are these. The respondent filed Civil Suit No. 36 of 1952 in the Court of the District Judge, Rewa, claiming Rs. 22,996-8-8. The Judge awarded a decree for Rs. 554-11-0 only against the judgment-debtor. In appeal, the Judicial Commissioner, Vindhya Pradesh, enhanced that amount to Rs. 20,307-14-8. The judgment-debtor filed an appeal to the Supreme Court (Civil Appeal No. 334 of 1956. The Supreme Court reduced the amount to Rs. 17,320-5-8 and gave

directions for costs.

On 17 January 1964, the judgment-debtor made to this Court an application under Order 45, rule 15 of the Code. On that application, this Court passed on 10 February 1964 the following order:

Let a certificate for recovery of costs according to the decree dated 18 January 1861 of the Supreme Court in Civil Appeal No. 834 of 1956 and the order dated 5 November 1962 taxing the costs be transmitted to the District Judge, Rewa. The Supreme Court's decree contains inter alia the direction that the costs of Civil First Appeal No- 78 of 1953 of the Court of the Judicial Commissioner Vindhy Pradesh, shall be paid and received by each party in proportion to the success in the appeal before the Supreme Court. The District Judge shall determine the amount of these costs according to this direction and make an order for their recovery accordingly.

When the District Judge received the order of the Supreme Court as transmitted to it in pursuance of the above order, both parties applied for execution of the order relating to costs, which were subsequently fully satisfied. In the meanwhile, on 28 July 1964, the judgment-debtor made an application under sections 144 and 151 of the Code for restitution. It claimed the excess amount (which had already been paid) by which the Supreme Court had reduced the decree and interest at 6% per annum. The District Judge dismissed that application as barred by time. In Miscellaneous First Appeal No. 21 of 1965 dated 6 December 1965, Naik J. held on the authority of [Mahijibhai Mohanbhai Barot Vs. Patel Manibhai Gokalbhai and Others](#), that it was an application for execution to enforce the order of the Supreme Court, that it was governed by the 12 years' rule prescribed by Article 113 of the Limitation Act and, therefore, it was within time. When the case went back to the District Court, it now held that it had no jurisdiction to entertain the application for restitution because it was not covered by the directions given by this Court on 10 February 1964..

Having heard the counsel, I have formed the opinion that the order of the District Judge, which is challenged in this appeal, is grounded upon a misconception of the function of the High Court under Order 45, rule 15 of the Code and the true nature and effect of this Court's order dated 10 February 1964. No doubt the provisions of rule 15 are mandatory in the sense that the decree cannot be executed without an order of the appropriate High Court transmitting the record to the Court executing it: *Mussammat Bhagwanta Kuer v. Dewan Zamir Ahmad Khan* ILR 3 Pat. 596 and *Madarsa Hakimia and Coronation High School Society v. Mulla Ali Bhai* Letters Patent Appeal No. 35 of 1963, decided on the 6th August 1964. But the function of the High Court under this rule is purely ministerial: In the matter of the petition of *Kailash Secondary Dabla* 1 LB 6 Cal. 594 ; *Premlall Mullick v. Sumbhoonath Roy* ILR 22 Cal. 960 and *Krishna Bhoopati Deo Garu v. Raja of Vizianagaram* ILR 88 Mad. 832. In the last mentioned case, a Division Bench of the Madras High Court observed inter alia that a provision like rule 15 "was made because the High Court should act as intermediary for carrying out the orders of His Majesty in Council for the reason

that the Privy Council did not deal direct with subordinate Courts. In this view, it is obvious that all that is required for conferring jurisdiction on the Court executing the decree is an order of the High Court transmitting the decree or order. It is true that sub-rule (2) of rule 15 also provides that the High Court "shall (upon the application of either party) give such directions as may be required for execution of the same", but that envisages a situation where some directions may be required and does not make it incumbent on the High Court to give directions in regard to the entire scope and effect of the executable part of the decree. It is open to the High Court to give directions only in regard to that part of the decree which in its view requires some clarification and leave the rest, which does not need any clarification, without any directions. Indeed, no directions may be given at all: *Rani Rituraj Kuer v. Raja Deo Singh* ILR 14 Luck. 243. The reason is that the transmission of the decree or order, and not any such direction, constitutes the foundation of jurisdiction of the executing Court to execute it. That being so, the District Judge was in error in thinking that it had no jurisdiction to order restitution because it was not covered by any specific direction of this Court in the order dated 10 February 1964.

This is not all. In the order dated 10 February 1964, a reference was made to the decree of the Supreme Court containing inter alia directions relating to costs and this Court gave certain directions only about costs because in its view they were necessary. When the order does not expressly limit the scope of execution of the decree only in regard to costs, it could not be construed as making such limitation by implication. It is hardly necessary to point out that, on an application to file the decree or order of the Supreme Court, this Court has, in fact, no jurisdiction to do so : *Bhiki Ram v. Dhanpat Rai* ILR 11 Lah. 365

Finally, when the question of execution of the decree or order of the Supreme Court was raised before the District Judge, Rewa, the only ground on which it was first opposed was that it was barred by time. As indicated elsewhere, that defence ultimately failed. The point, however, is that the plea of want of jurisdiction now urged was not then taken. That being so, it should not be allowed to be raised at a subsequent stage : *Mussammatt Bhagwanta Kuer v. Dewan Zamir Ahmed Khan* (supra) and *Madarsa Hakimia and Coronation High School Society* (supra).

In view of the discussion in the foregoing paragraphs, the submission made by the counsel for the respondent to the effect that the application made by the judgment-debtor to this Court on 17 January 1964 for transmission of the decree or order of the Supreme Court was, in substance, an application for execution cannot be accepted and all arguments grounded thereon must be rejected as untenable.

The result is that this appeal succeeds and is allowed. The order of the District Judge, Rewa, dated 16 November 1966 is set aside and he is directed to proceed with the execution of the decree in accordance with law. The respondent shall bear his own costs and pay those incurred by the appellant. Hearing fee in this Court Rs. 100.

In the view that I have taken of the order which has been successfully challenged in this appeal, it is not necessary to pass any order on the application under Order 45, rule 15 of the Code.