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Date: 21/10/2025

Erramreddy Indrasena Reddy Vs Palvai Amarender Reddy

Civil Revision Petition No. 5195 of 2006

Court: Andhra Pradesh High Court

Date of Decision: June 24, 2011

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 21 Rule 11, Order 21 Rule 12, Order 21 Rule 13, Order 21 Rule 32, Order 21 Rule 35#Legal Services Authorities Act, 1987 â€" Section 21#Penal Code, 1860 (IPC) â€" Section 379, 380, 488

Hon'ble Judges: K.G. Shankar, J

Bench: Single Bench

Advocate: K. Subba Rao, for the Appellant; B. Narayana Reddy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.G. Shankar, J.
The decree holder in E.P. No. 412 of 2000 in O.S. No. 126 of 1997 on the file of the II Additional Junior Civil Judge,

Warangal laid this revision questioning the orders of the execution Court dated 09.08.2004. The decree holder laid the execution petition under

Order 21 Rule 32 of the CPC (Code of Code of Civil Procedure) seeking for the arrest and detention of the judgment debtor in the civil prison for

not honouring the decree. Through a very well written impugned order, the execution Court dismissed the execution petition. Inter alia, the

execution Court held that petition under Order 21 Rule 32 CPC would not lie and an execution petition under Order 21 Rule 35 Indian Penal

Code might lie against the judgment debtor. The learned Judge also held that the execution Court cannot go beyond the decree.

2. The third daughter of the decree holder by name Sobha was given in marriage to the judgment debtor in 1986. It is the case of the judgment

debtor that the decree holder settled 680 square yards of house plot in Survey No. 1003 situate at Hunter Road, Srinivasanagar Colony,

Hanumakonda, in favour of his daughter Sobha towards pusupu kunkuma by announcing the same in the presence of the elders and the members

of the family. It is the further case of the judgment debtor that he constructed a two portioned house bearing door No. 1-7-859 in the plot received

by his wife by way of settlement from her father, that the premises constructed by the judgment debtor consists of two portions and that the rear

portion of the premises was used as residential premises and the front portion of the premises has been used as office. The wife of the judgment

debtor (Sobha) gave birth to a daughter by name Keerthana and a son by name Karthik.

3. Unfortunately, Sobha died shortly after she gave birth to her son. It is indeed the case of the judgment debtor that Sobha was suffering from

heart ailment even prior to her marriage and that Sobha died on account of her health problems . Be that as it may, fortunately there is No. dispute

about the nature of the death of Sobha, whether it was natural, owing to ill-health or was suspicious.

4. The dispute lies elsewhere. After the demise of Sobha, misunderstandings developed between the decree holder and the judgment debtor. The

judgment debtor contends that the decree holder forced the judgment debtor to marry a girl, whom the judgment debtor declined to marry and that

the decree holder developed contempt towards the judgment debtor since then. The decree holder on the other hand contends that the

misunderstandings are in view of the attitude of the judgment debtor in attempting to grab 340 square yards constituting half of the alleged settled

site. According to the decree holder, 340 square yards alone was gifted to Sobha and that the judgment debtor has been trying to lay claim over

the entire 680 square yards of vacant site.

5. As disputes arose between the decree holder and the judgment debtor, the decree holder laid O.S. No. 126 of 1997 against the judgment

debtor in respect of 340 square yards of site. It was a suit by the decree holder against the judgment debtor seeking for perpetual injunction. The

judgment debtor got a suit filed as the next friend of a minor child in O.S. No. 1100 of 1998 seeking for a perpetual injunction against the decree

holder. The judgment debtor in fact obtained a temporary injunction in O.S. No. 1100 of 1998.

6. Alleging that despite temporary injunction against the decree holder, the decree holder trespassed on to the property covered by O.S. No.

1100 of 1998 along with his supports, broke open the locks of the premises and took away the articles found therein, the judgment debtor lodged

a complaint before Subedari Police Station. The complaint was registered as Crime No. 6 of 1999 for the offences u/s 379, 380 and 488 Indian

Penal Code. The judgment debtor also filed a case as the next friend of his minor children in O.S. No. 71 of 1998 on the file of the II Additional

District Judge, Warangal seeking for partition of the properties of the decree holder herein as the children of the judgment debtor as well as in their

capacity as the heirs of the deceased Sobha, third daughter of the decree holder.

7. Thus, the decree holder laid a suit in O.S. No. 126 of 1997 on the file of the II Additional Junior Civil Judge, Warangal. The judgment debtor in

his turn filed a suit in O.S. No. 1100 of 1998 on the file of the same Court. The suit laid by the judgment debtor was as the next friend of his minor

children. Both the suits before the learned II Additional Junior Civil Judge, Warangal were filed for perpetual injunction. The judgment debtor filed

another suit on behalf of his minor children before the II Additional District Judge in O.S. No. 71 of 1998 seeking for partition. That apart, he

lodged a police complaint, which was registered as FIR in Crime No. 6 of 1999 of Subedari Police Station. The misunderstandings were leading

to the piling up of cases against both sides, so much so the elders intervened to settle the disputes between the decree holder and the judgment

debtor.

8. The cases were consequently referred to Lok Adalat, Warangal. The Lok Adalat, Warangal passed an award u/s 21 of the Legal Services

Authorities Act, 1987 on 28.08.2009. The Lok Adalat award was that O.S. No. 126 of 1997 was decreed conditionally. The conditions were

that the judgment debtor should pay Rs. 1,48,000/- to the decree holder before the end of November, 1999. On such payment, the house plot

measuring 340 square yards which was the subject matter of O.S. No. 126 of 1997 should be ""retained"" by the judgment debtor.

9. The award further ordered that the house plot should be retained by the decree holder in case of default by the judgment debtor in the payment

of Rs. 1,48,000/- payable by the judgment debtor to the decree holder before the end of November, 1999. The decree holder claimed that the

judgment debtor did not comply with the condition and committed default in paying Rs. 1,48,000/- to the decree holder within the time prescribed

and that the judgment debtor, however, has been interfering with the 340 square yards covered by O.S. No. 126 of 2007. E.P. No. 412 of 2000

consequently was laid by the decree holder under Order 21 Rule 32 Code of Civil Procedure. As already pointed out, the execution petition was

dismissed by the execution Court.

10. The point for consideration is whether the execution in E.P. No. 412 of 2000 would lie under Order 21 Rule 32 CPC and whether the decree

holder is entitled to the relief of arrest and detention of the judgment debtor in the civil prison as prayed for.

11. This is a case of an unfortunate award by the Lok Adalat. I deem it appropriate to quote the Lok Adalat award verbatim for the purpose of

subsequent discussion. The operative portion of the award is

In view of the compromised effected in O.S. No. 1100/98 and settled in Lok Adalath the suit of the Plaintiff in O.S. 126/97 is decreed

conditionally as under:

O.S. No. 126/97 on the file of II Addl. M.M. is decreed conditionally. The Defendant shall pay Rs. 1,48,000/- to the Plaintiff in O.S. 126/97 by

the end of November, 1999. On such payment the property house plot measuring 340 sq.yards out of sy.no. 1003, shall be retained by the

Defendants. In case of demise of the Plaintiff before November, 1999, the house plot will devolve on Y. Leela and B. Geeta, the daughters of

Plaintiff in O.S. 126/97. In default house plot will be retained by the Plaintiff.

12. As can be seen from the award, the Lok Adalat did not touch O.S. No. 71 of 1998 on the file of the II Additional District Court, Warangal

nor did consider Crime No. 6 of 1999 of Subedari Police Station. The award was confined to O.S. Nos. 1100 of 1998 and 126 of 1997 on the

file of the II Additional Junior Civil Judge, Warangal. This is not unfortunate but is curious. When there are disputes between the rival parties and

when the Lok Adalat acts as an Arbitrator to resolve the disputes between the contending parties, usually, all disputes are referred to the Lok

Adalat except those disputes which are prohibited by law from being entertained by the Lok Adalat. Even then, the partition suit laid by the

judgment debtor on behalf of his children and the FIR lodged by the judgment debtor were not referred to the Lok Adalat as can be seen from the

award. What is unfortunate is the inappropriate manner in which the award was drafted. After declaring that the judgment debtor (referred to as

the Defendant in the award) should pay Rs. 1,48,000/- to the decree holder (referred to as the Plaintiff in the award) before the end of November,

1999, the award at the end stated that the house plot should be retained by the Plaintiff in case of default. In between the clause as to the period

before which the judgment debtor should pay the money and the default clause, another condition was incorporated. Inter alia, the confusion is

whether the default clause was in respect of the first part of the award or the second part of the award.

13. The operative portion of the award may be intersected into various directions. The award did not speak about the fate of O.S. No. 1100 of

1998 as to whether it was decreed or dismissed. With reference to O.S. No. 126 of 1997, the award reads:

i) O.S. No. 126 of 1997 was decreed conditionally;

ii) The judgment debtor shall pay Rs. 1,48,000/-to the decree holder before the end of November, 1999;

iii) If such payment is made, the judgment debtor shall retain 340 square yards of house plot, which was subject matter of O.S. No. 126 of 1997;

iv) If the decree holder dies before the end of November, 1999, the house plot of 340 square yards which was subject matter of O.S. No. 126 of

1997 should devolve upon Leela and Geetha, the surviving daughters of the decree holder; and

v) In default, the house plot should be retained by the decree holder.

14. There is any amount of confusion and controversy regarding the actual possession of the 340 square yards of plot, which is the subject matter

of O.S. No. 126 of 1997. It is the stand of the decree holder that the decree holder has been in possession of the same. On the other hand, it is

the case of the judgment debtor that a total extent of 680 square yards of house site was settled by the decree holder in favour of his daughter

Sobha and that the extent of 340 square yards of house plot forming the subject matter of O.S. No. 126 of 1997 was part of the property so

settled by the decree holder upon his daughter Sobha. The judgment debtor claimed that after the demise of Sobha, he has been in possession of

the entire 680 square yards of house plot part of which is the subject matter of O.S. No. 126 of 1995. On the other hand, it is the case of the

decree holder that the property covered by O.S. No. 126 of 1997 had been in his possession throughout.

15. Now the controversy is as to who is in possession of this piece of 340 square yards of house plot. Sri K. Subba Rao, learned Counsel for the

decree holder contended that the decree holder has been in possession of the same and that it is evident from the last sentence of the award that

the decree holder should retain the disputed property in case of default by the judgment debtor in paying Rs. 1,48,000/- to the decree holder

within the stipulated time.

16. He submitted that the award deployed the word ""retained"" and did not order that the decree holder should take possession of the property.

His contention consequently is that the decree holder has been in possession of the EP schedule property.

17. Sri B. Narayana Reddy, learned Counsel for the judgment debtor applied the same logic to the contention of the judgment debtor claiming that

the judgment debtor has been in possession of the plaint schedule property. In the award, it was recited that the judgment debtor shall reopen the

EP schedule property in the event the judgment debtor complies with the condition of payment of Rs. 1,48,000/- within the time stipulated by the

award. Thus, the award used ""shall be retained"" in respect of the EP schedule property in favour of the decree holder as well as the judgment

debtor. It is the contention of the learned Counsel for the judgment debtor that if the possession of the decree holder is upheld on the strength of

the recital in the award that the decree holder shall retain the EP schedule property, the logic would apply with equal vehemence to the claim of the

judgment debtor since the award ordained that the judgment debtor himself should retain the EP schedule property in the event he complied with

the condition of payment of money. As already pointed out, this is the unfortunate situation where the award was drafted rather in a haphazard

manner. Where the award deployed the usage of the word ""retention"" of the property both in favour of the decree holder as well as in favour of the

judgment debtor, there is No. alternative but to construe that the Lok Adalat did not issue any finding as No. one could raise before the Lok

Adalat that the property had been in the possession of the decree holder or the judgment debtor. It would appear that the award used the word

retain"" in a very loose and general sense. I am not prepared to draw any adverse inference either in favour of the decree holder or in favour of the

judgment debtor from the award prima facie to determine as to who is in possession of the EP schedule property between the decree holder and

the judgment debtor.

18. The execution Court went into this aspect and repeatedly considered the recitals of the award that the judgment debtor should retain the EP

schedule property in the event he complied with the conditional terms of the award. Unfortunately, the last sentence of the award again deployed

the same word ""retain"" inasmuch as the award concluded that the decree holder should retain the EP schedule property in the event the judgment

debtor committed default. It would appear to a slip on the part of the execution Court in the otherwise extremely well written order. I shall make it

clear that it is not possible to determine as to who amongst the decree holder and the judgment debtor has been in possession of the EP schedule

property from the recitals in the award. I shall look at the overall evidence let in by both sides to determine this aspect.

19. Curiously, the award recited that in the event the decree holder died, before the end of November, 1999, EP schedule property should

devolve upon the surviving daughters of the decree holder. First, the award did not state that the EP schedule property should devolve upon the

daughters of the decree holder on the occurrence of both the conditions, viz., the death of the decree holder, and more important, the commission

of default by the judgment debtor. The award reads as if in the event the decree holder dies before the end of November 1999, the EP schedule

property automatically devolves upon the surviving daughters of the decree holder irrespective of the judgment debtor complying with the condition

of payment of Rs. 1,48,000/-. Prima facie, it could not have been the intention of either side in view of the conditions (i) to (iii) referred to by me

that if the judgment debtor complied with the condition, the judgment debtor would acquire title to the EP schedule property. At any rate, it is not

for the execution Court much less for the revisional Court to go into the mind of the parties and the Lok Adalat at the time of the granting of the

award by the Lok Adalat. The award of the Lok Adalat deserves to be read as it is and understood. However, not only by the end of November,

1999, even by 2000 when the execution petition was laid, the decree holder was alive. Consequently, the term in the award that the surviving

daughters of the decree holder shall take possession of the EP schedule property in the event the decree holder dies before the end of November,

1999 has outlived itself and has No. force as of now. The fate saved the decree holder and the judgment debtor from entering into another list

regarding the meaning and the effect of condition No. (iv) of the award of the Lok Adalat. In fact, Condition Nos. (i) to (iii) and (v) of the award

constitute one set; Condition No. (iv) of the award is an oddman. As Condition No. (iv) outlived itself, the rest of the conditions would come into

play.

20. The award ordained that the judgment debtor shall be entitled to the EP schedule property in the event he paid Rs. 1,48,000/- to the decree

holder before the end of November, 1999. The award further envisages that in the event the judgment debtor committed default, the decree holder

should be entitled to the EP schedule property. Admittedly, the judgment debtor did not pay the amount of Rs. 1,48,000/-mentioned in the award.

The judgment debtor, however, contended that he did not commit any default for the default clause to come into operation.

21. The case of the judgment debtor is that the decree holder and the judgment debtor entered into a compromise at the behest of mediators and

that the terms of the mediation inter alia are that the decree holder shall return the articles taken away by him from the house of judgment debtor,

that the decree holder shall return the value of the Indra Vikas Patras where the minors were nominees, that the value of the articles and Indra

Vikas Patras should be adjusted towards part of Rs. 1,48,000/- payable by the judgment debtor to the decree holder and that if there is any

balance due, the judgment debtor should pay the same to the decree holder within the time stipulated. The learned Counsel for the judgment

debtor contended that the decree holder did not abide by the agreement and failed to return the articles taken away by him from the house of the

judgment debtor in the EP schedule property and that he did not inform the judgment debtor as to what amount is still due after giving credit to the

value of the articles taken away by the decree holder from the house of the judgment debtor and after giving credit to the value of the Indira Vikas

Patras so as to enable the judgment debtor to pay the same by way of compliance of the condition imposed against him to pay Rs. 1,48,000/-.

Indeed, the judgment debtor examined himself as RW.1 and examined 3 other witnesses in support of his case. The judgment debtor let in

evidence regarding the understanding between him and the decree holder. I do not wish to go into and decide whether the judgment debtor proved

the terms of the compromise between the decree holder and the judgment debtor since what is sought to be executed is the award of the Lok

Adalat. The execution Court is concerned with the award and not with the other terms of compromise between the decree holder and the

judgment debtor as long as the compromise had not been recorded by the Court and had not become part of the decree. Therefore, it is irrelevant

as to what were the alleged terms of the compromise. What is germane to the enquiry is as to what the terms of the award are and whether the

award became executable. I, therefore, reject the plea of the judgment debtor in limini in respect of his claim as to the terms of compromise

reached between him and the decree holder.

22. Once the defence set up by the judgment debtor regarding the circumstances in which he did not pay Rs. 1,48,000/- to the decree holder

within the stipulated time is negatived, the claim of the decree holder that the judgment debtor did not comply with the conditions automatically

stands proved. That apart, the judgment debtor as RW.1 himself admitted that he did not pay Rs. 1,48,000/- on or before 30.11.1999 in terms of

the Lok Adalat award. Where the decree holder is seeking to execute the award, other terms of compromise as alleged by the judgment debtor do

not come into play, as they were not part of the award. The award alone should be read to determine the terms of the award and to execute the

same.

23. As already pointed out, the word ""retain"" as used in the award does not help in determining the person in possession of the EP schedule

property, for the reasons already enumerated. Apart from the wording of the award, the decree holder himself admitted as PW.1 that structures

exist in the EP schedule property and that he did not know who had made those constructions. Indeed, the judgment debtor contended that the

decree holder settled as much as 680 square yards of house plot in favour of Sobha and that the members of the family of Sobha including the

judgment debtor and the children had been in possession of the property ever since the settlement. It is the decree holder who claimed that 340

square yards out of the alleged 680 square yards alone was settled in favour of Sobha and that the remaining 340 square yards of house plot

constituting the EP schedule property was not settled in favour of Sobha and had been in the possession of the decree holder himself.

24. In the execution petition, the decree holder had been proceeding on the assumption that he had been in possession of the plaint schedule

property. In column No. 9 of EP No. 412 of 2000, the decree holder contended that the judgment debtor has been interfering with the possession

of the plot and that the judgment debtor had been trying to trespass into the EP schedule property. Indeed, the decree holder did not specifically

contend anywhere that he has been in possession of the schedule property. However, a plain reading of column No. 9 of the execution petition

would indicate that the case of the decree holder is that he has been in possession of the EP schedule property, that the judgment debtor has been

interfering with the possession of the decree holder over the EP schedule property, that the activity of the judgment debtor is tantamount to

violation of the award and that the judgment debtor, therefore, shall be detained in the civil prison for a period of 30 days. Thus, it is the case of the

decree holder that an injunction has been granted in favour of the decree holder and that the judgment debtor violated the decree exposing himself

to punishment under Order 21 Rule 32 Code of Civil Procedure.

25. I, therefore, would first verify whether the award granted such a perpetual injunction in favour of the decree holder. Evidently, the decree

holder claimed in the suit in O.S. No. 126 of 1997 that he has been in possession of the EP schedule property. It is equal true that the judgment

debtor in his turn has been asserting that he has been in possession of the entire 680 square yards of house plot including the EP schedule property

ever since the gift by the decree holder in favour of Sobha. The alleged settlement of the property in favour of Sobha is only oral. Consequently,

there is No. document to examine whether the claim of the decree holder is true or the claim of the judgment debtor is true. Indeed, the decree

holder marked Ex.A.1 (referred to as Ex.P.1). As against Ex.A.1, the judgment debtor marked Ex.B.1 (marked as Ex.R.1). Ex.A.1 dated

11.04.1999 is an agreement between the decree holder and the judgment debtor as much as Ex.B.1. In fact, Ex.A.1 and B.1 are identical. Ex.B.1,

however, contains a recital at the end of the terms of the agreement that the decree holder agreed to return all the articles taken away by him. Inter

alia, the decree holder contends that the alleged sentence was an interpretation. At any rate, as pointed out by me repeatedly, what is sought to be

executed is not Ex.A.1 and Ex.B.1, but the award of the Lok Adalat. Consequently, it is irrelevant as to what the terms of Exs.A.1 and B.1 are.

Further, Exs.A.1 and B.1 per se do not establish as to who is in possession of the EP schedule property.

26. More importantly, the decree holder himself as PW.1 admitted that structures exist in the EP schedule property albeit he pleads ignorance as

to who made those constructions. This ignorance on the part of the decree holder itself shows that the decree holder has not been in possession of

the EP schedule property. Further, during the pendency of the execution proceedings, the execution Court appointed an Advocate Commissioner

to examine the presence of structures in the EP schedule property; for the very presence of structures would negate the claim of the decree holder

since the very suit described the EP schedule property as vacant house plot. Exs.C.1 to C.9 are various proceedings relating to the Advocate

Commissioner. The Advocate Commissioner pointed out the existence of structures in the EP schedule property.

27. Thus, it is established that there are structures in the EP schedule property as on today. It may be noticed that the decree holder was

considered to be entitled to retain the property. The Lok Adalat award to this extent pre-supposed that the decree holder has been in possession

of the property. This presumption is found to be incorrect where structures have come up in the EP schedule property subsequent to the filing of

the suit and before the decree holder sought for to execute the award. Either the decree holder did not have possession as on the date of suit or

has lost possession some time before the execution proceedings were commenced. In either event, the decree holder is not entitled to execute the

award as the suit itself was for perpetual injunction in respect of vacant house plot.

28. That apart, there are very curious circumstances against the decree holder in this case. The learned Judge who passed the impugned order

recorded in the impugned order that the decree holder laid the petition under Order 21 Rule 32 Code of Civil Procedure. Indeed, I also referred

to the case as a petition laid by the decree holder under Order 21 Rule 32 Code of Civil Procedure. However, the caption of the petition reads

that it is an application laid under Order 21 Rule 11 Code of Civil Procedure. The schedule reads that it was a petition under Order 21 Rule 12

and 13 Code of Civil Procedure. Order 21 Rule 12 CPC deals with application for the attachment of movable property whereas Order 21 Rule

13 CPC is a provision relating to the application for attachment of immovable property.

29. The execution petition is indeed in respect of immovable property. But it is not a petition for the attachment of the immovable property but for

the arrest and detention of the judgment debtor in the civil prison for a period of 30 days. Such provision is contained only in Order 21 Rule 32

Code of Civil Procedure. The execution Court, therefore, was right in proceeding with the case treating the execution petition as a petition under

Order 21 Rule 32 Code of Civil Procedure. In fact, Sri K. Subba Rao and Sri B. Narayana Reddy, learned Counsel for the decree holder and the

judgment debtor respectively advanced their submissions before me on the ground that the execution petition is a case under Order 21 Rule 32

CPC only. I, therefore, treated the execution petition as a petition filed under Order 21 Rule 32. It is settled law that No. proceedings can be

rejected in limini for incorrect quoting of the provision of law. The relief sought for by the decree holder is a relief provided by Order 21 Rule 32

Code of Civil Procedure. I consequently treat this case as a petition under Order 21 Rule 32 Code of Civil Procedure.

30. There is a typographical mistake in the impugned order. The execution petition was laid as E.P. No. 412 of 2000 in O.S. No. 126 of 1997.

The impugned order and the decree in the impugned order read that it was in E.P. No. 412 of 2000 in O.S. No. 1100 of 1998. The E.P. is not in

O.S. No. 1100 of 1998 but is in O.S. No. 126 of 1997. However, No. prejudice was caused to either side on this point. Neither side urged this

aspect as a ground to pass any order including the order of remand. I, therefore, recorded that the execution petition was indeed a petition under

Order 21 Rule 32 CPC in execution of the award in O.S. No. 126 of 1997.

31. Having clarified these two technical aspects, I now propose to consider whether the very execution petition is maintainable. Order 21 Rule 32

CPC envisages that if a relief including the relief of injunction is granted against a judgment debtor, if the judgment debtor violates the same, he is

liable to be detained in the civil prison. Alleging that the judgment debtor violated the terms of the award, the decree holder sought for the

execution under Order 21 Rule 32 Code of Civil Procedure.

32. The decree holder contends that a perpetual injunction has been granted in his favour and against the judgment debtor restraining the judgment

debtor from interfering with the possession of the decree holder over the EP schedule property. For the reasons already set out, the decree holder

did not even establish his exclusive possession over the EP schedule property. That apart, the Lok Adalat award did not grant any perpetual

injunction in favour of the Plaintiff. I have already narrated the terms of the award. In terms of Clauses (i) to (iii) and (v), it is evident that the Lok

Adalat directed the judgment debtor to pay Rs. 1,48,000/- to the decree holder on or before 30.11.2009. If the judgment debtor complies with

the award, he should retain the EP schedule property. On the other hand, if the judgment debtor did not comply with the conditional award, the

decree holder should retain the property. The award did not whisper that the decree holder was granted a perpetual injunction against the

judgment debtor. Consequently, assuming that the decree holder has been in possession of the EP schedule property and the judgment debtor has

been attempting to occupy the EP schedule property, it would not be a violation of the award of the Lok Adalat. It would be a separate and in fact

a new cause of action. The decree holder should perhaps file a fresh suit.

33. The execution Court pointed out that the decree holder might execute the decree under Order 21 Rule 35 Code of Civil Procedure. I do not

wish to offer any comment or view regarding the observation of the execution Court in this regard. Such a question arises in the event the decree

holder lays a petition under Order 21 Rule 35 Code of Civil Procedure. Inasmuch as the relief sought for is under Order 21 Rule 32 Code of Civil

Procedure, where the award did not grant a perpetual injunction in favour of the decree holder, the decree holder is not entitled to execute the

award under Order 21 Rule 32 CPC seeking for the arrest and detention of the judgment debtor in the civil prison.

34. The learned Counsel for the decree holder contended that it is for the decree holder to execute the decree in any of the modes provided by the

Code. Indeed, his contention is correct. However, the decree holder cannot execute the decree in a mode not permitted by law. Order 21 Rule 32

CPC would apply in the event of a perpetual injunction only. The Lok Adalat award did not grant such a perpetual injunction in favour of the

decree holder. Consequently, the decree cannot be executed under Order 21 Rule 32 Code of Civil Procedure. As rightly submitted by the

learned Counsel for the judgment debtor, the award is more or less a money decree. The decree holder would, therefore, be entitled to execute

the decree considering the same as money decree and not as a decree for the violation of perpetual injunction granted in favour of the decree

holder. The learned Counsel for the judgment debtor inter alia contended that he is ready even now to pay the balance due if any to the decree

holder after deducting the value of the articles and Indira Vikas Patras. Where such a condition is No. part of the award, the judgment debtor is

not entitled to raise such a contention. At any rate, this aspect is an academic consideration where the decree holder is not entitled to execute the

decree seeking for the arrest and detention of the judgment debtor in the civil prison under the provision of Order 21 Rule 32 Code of Civil

Procedure.

35. The trial Court, therefore, is perfectly justified in concluding that the decree holder is not entitled to execute the decree as a decree under

Order 21 Rule 32 CPC on the ground that the decree holder did not obtain a decree for perpetual injunction against the judgment debtor. The

dismissal of the execution petition consequently is justified. The order of the execution Court does not suffer from any illegality or material

irregularity for the revisional Court to interfere with the impugned order.

36. This Civil Revision Petition, consequently, is dismissed confirming the impugned order. There shall be No. order as to costs.