

dated 19.04.2018 and 04.10.2019 passed by the Executing Court and essentially restored the execution proceedings initiated by the respondent.

3. Brief facts of the case are that the Trial Court, by its judgment and decree dated 26.08.2002, allowed the suit filed by the respondent herein and directed the appellant to pay Rs. 2,18,000/- (Rupees Two lakhs and eighteen thousand only) with interest from 02.09.1985 till the actual payment.
4. After a decade, i.e. on 26.09.2012, the respondent filed for execution of the aforesaid decree in Execution Application No. 16-B/2002 before the Executing Court. While notice had been issued to the appellant-defendant in the aforesaid Execution Application, the Executing Court had further directed the respondent to pay process fee as well as list of movable properties as mandated under Order XXI Rule 17 of the Code of Civil Procedure, 1908¹, for the purpose of issuing an attachment warrant against the judgment debtor.

¹ CPC

5. However, the Execution Proceedings were then adjourned on various dates in between 30.01.2013 to 22.04.2018 for the same purpose. Finally, the Executing Court, *vide* order dated 19.04.2018, dismissed the aforesaid Execution Application on account of non-compliance by the respondent in furnishing the list of movable property for attachment, non-payment of process fee and not entering appearance in the proceedings for more than five years.
6. Thereafter, on 17.05.2019, after more than a year of the dismissal order, the respondent preferred an application under Order XXI Rule 106 of the CPC seeking restoration of the execution proceedings along with an application under Section 5 of the Limitation Act, 1963 seeking condonation of delay in filing such an application.
7. The Executing Court, *vide* its order dated 04.10.2019, rejected the application preferred by the respondent on the sole ground that the application was not presented within the stipulated period of 30

days as mandated under Order XXI Rule 106(3) of the CPC.

8. Aggrieved by the aforesaid dismissal, the respondent preferred the Miscellaneous Appeal No.93 of 2019 before the High Court under Order XLIII Rule 1(ja) of the CPC challenging the order dated 04.10.2019.

9. The High Court, *vide* the impugned order, held that in the facts of the case, there was no question of invoking the power under Order XXI Rule 105 and 106 of the CPC by the Executing Court since the execution proceeding was dismissed in default and for non-payment of process fee for not furnishing the details for attachment of immovable property and, such proceeding cannot be restored by filing an application under Order XXI Rule 106 of the CPC as provision in Section 151 CPC is the only provision to consider such prayer. Therefore, it was held that the Executing Court committed illegality in applying Rule 106 of Order XXI of the CPC and not restoring the execution proceedings pending before it. As such, the orders dated 19.04.2018 and 04.10.2019 passed by the Executing Court were set aside and the High

Court allowed the appeal preferred by the respondent.

10. Aggrieved by the impugned order, the appellant-judgment debtor is before us.
11. We have heard the learned counsel for the parties and perused the material on record.
12. While perusing the record of proceedings before the Executing Court, what has heavily weighed with this Court is the conduct of the respondent before the Executing Court. A bare perusal of the orders passed by the Executing Court from 30.01.2013 to 22.04.2018 would ex-facie show that the respondent herein was granted more than 5 years to comply with the repeated directions of the Executing Court to remedy the defects including payment of process fee and furnishing a list of movable properties. It is astonishing to notice that in each of these orders, a period of three days was granted to the respondent to comply with the said directions but the respondent, being the decree-holder and applicant before the Executing Court, remained consistently and blissfully absent. Such a conduct on the part of the

respondent led to the matter being adjourned for more than five years before the Executing Court finally dismissed it strictly in terms of the mandate of Order XXI Rule 17 (1A) of the CPC.

13. The respondent's submission in this regard before the High Court as well as before us is that Order XXI Rule 17 (1A) of the CPC had no application in the facts and circumstances of the case as the application has not been rejected on account of not remedying the defect, but was rather dismissed for non-prosecution, which does not warrant application of the said provision. We fail to understand how such a contention would come to the aid of the respondents given their conduct throughout before the Executing Court for almost five years.

14. Furthermore, even after such an order of dismissal was passed by the Executing Court, the respondent took another year to prefer an application seeking restoration of the execution proceedings. It is blatantly apparent that the respondent's conduct in initiating execution proceedings a decade after the money decree was passed and then remaining absent

before the Executing Court for a period of five years, and yet taking another year in filing a restoration application post the dismissal of execution application reeks of nothing but non-diligent conduct throughout.

15. Even if it were assumed that the facts of the case did not demand application of Rule 17 (1A) of Order XXI of the CPC by the Executing Court while dismissing the execution application, the mere conduct of the decree-holder, which had been laden with lethargy and passivity throughout makes it unjustifiable to grant any relief to the respondent.
16. The respondent had allowed his cause to suffer for the reason of his own negligence and lackadaisical approach. The above action, or rather inaction, on the part of the respondent is not condonable by this Court and, therefore, the respondent is not entitled to any equitable relief.
17. A litigant who is not vigilant and prompt towards his cause must not be allowed to claim equity before a Court of law. Accordingly, the appeal is allowed and the impugned order of the High Court

is set aside. As such, the orders dated 19.04.2018 and 04.10.2019 passed by the Executing Court in Execution Application No. 16-B/2002 dismissing the execution proceedings initiated by the respondent and dismissing the restoration application respectively are restored.

18. Pending application(s), if any, shall stand disposed of.

.....**J.**
(VIKRAM NATH)

.....**J.**
(SANDEEP MEHTA)

NEW DELHI
MARCH 17, 2025