[2025] 5 S.C.R. 2810 : 2025 INSC 1044

Tahir V. Isani
v.
Madan Waman Chodankar, (Since Deceased) Now Through His Legal Representatives & Ors.

(Civil Appeal No. 6391 of 2025)

06 May 2025

[Vikram Nath and Sandeep Mehta, JJ.]

Issue for Consideration

Whether the High Court was justified in holding that since the appellant was a transferee *pendent lite* of judgment debtor, therefore, in view of provisions of Rule 102 of Or.XXI of CPC, the application filed by the appellant under Rules 97 and 101 of Or.XXI CPC was not maintainable.

Headnotes†

Code of Civil Procedure, 1908 – Or.XXI, RR.97, 98, 99, 100, 101, 102 – In 1996, respondent no.1-tenant filed a special civil suit no.97/1996/B against MK for dissolution of partnership, recovery of profit and ejectment – No issues relating to ownership of the property which was leased out to respondent no.1 – Appellant herein had purchased the said property not from any party to the said suit, *i.e.* the plaintiff or defendant, but from owner M/s. R Pvt. Ltd., who was not a party to the proceedings – In the said suit decree was granted in favour of respondent no.1 – Respondent no.1 filed an application for execution of decree – Appellant moved an application u/Or.XXI, Rules 97 and 101 of CPC objecting to execution of decree – Application of respondent no.1 was dismissed by the Executing Court – Aggrieved, decree-holder preferred writ petition – The High Court set aside the order of the Executing Court and it also closed the enquiry – Correctness:

Held: The Executing Court was right in rejecting the application of respondent no.1 – The appellant in the present case does not trace his title from the judgment-debtor, *i.e.* the MK and therefore, he is not a transferee *pendente lite* of the judgment-debtor – The appellant is a *bona fide* buyer who had bought

the suit property from M/s R Pvt. Ltd., *vide* registered sale deed dated 24.04.2007, who traced their title from the original owner, Mrs. M, *vide* registered sale deed dated 16.01.1988 – The transferor, M/s R Pvt. Ltd., of the appellant was not a party to the suit bearing Special Civil Suit No. 97/1996/B, the decree of which has been put to execution – They were third party, having received the ownership rights from the original owner in 1988 – Thus, even if the appellant did buy the subject-property in 2007, during the pendency of the suit between the MK and the present respondents, the bar of Rule 102 of Order XXI does not affect or prohibit the appellant from raising his objections before the Executing Court under Rules 97 and 101 and subsequently receive its adjudication under Rules 98 and 100 – Thus, the impugned order of the High Court is set aside and the Executing Court is directed to proceed with the enquiry – The Executing Court is directed to decide the application u/Or.XXI, Rules 97 and 101 CPC on its own merits. [Paras 14-16]

Code of Civil Procedure, 1908 – Order XXI, R.102 – Scope of – Discussed:

Held: The whole scheme of Rule 102 of Order XXI intends to preserve the idea of achieving finality of the judicial decisions – The provision imbibes the principle of *"interest reipublicae ut sit finis litium" i.e.*, it is in the interest of the State that there should be an end to litigation – In a suit pending between a plaintiff and a defendant as to the right to a particular estate, the decision of the court in that case shall be binding not only on the litigating parties, but also on those who derive title under them by alienations (transfer) made while the suit was pending, whether such alienees, *i.e.* transferees, had or had not notice of the pending proceedings – Therefore, Rule 102 of Order XXI intends to protect the interests of the decree-holder against the attempts of unscrupulous judgment-debtors and their subsequent transferees who indulge in activities and leave no stone unturned to deprive the decree-holders from reaping the benefits of the decree granted in their favour – The Rule being equitable in nature, therefore, estops further creation of rights as it explicitly states that nothing in Rules 98 and 100 shall apply to the resistance or obstruction being made by the transferee *pendente lite* of judgment-debtor. [Para 9]

Code of Civil Procedure, 1908 – Order XXI, R.102 – Ingredients of – Discussed:

Held: Rule 102 of Order XXI expressly lays down the ingredients as to when it can be applied – For a case to fall under Rule 102, it is a condition precedent that there exists a decree for the possession of immovable property – Secondly, there must be a resistance or an obstruction in the execution of the said decree – Thirdly, such obstruction or resistance must be made by a person to whom the judgment-debtor has transferred the property – Fourthly, such transfer must have occurred after the institution of the original suit, i.e. the one in which the decree was passed – If the aforesaid ingredients are made out, Rule 102 prohibits the protection of Rules 98 and 101 to such errant transferee of judgment-debtor – The transferee of a judgment-debtor who traces his title to the immovable property, that is the subject matter of a pending suit, is not entitled to seek the remedy available under Rules 97 to 102 of Order XXI – However, Rule 102 of Order XXI applies only to a person to whom the judgment-debtor has transferred the immovable property which was subject matter of that suit pendente lite – If the person who is resisting or obstructing the execution of the decree for possession of such property, is not the transferee of judgment debtor, *i.e.* he does not trace his title from judgment-debtor, bar of Rule 102 does not apply to him. [Paras 11, 13]

Case Law Cited

Usha Sinha v. Dina Ram and Others **[2008] 4 SCR 1192 : (2008) 7 SCC 144;** *Jini Dhanrajgir and Another v. Shibu Mathew and Another* **[2023] 5 SCR 551 : (2023) 20 SCC 76 – relied on.**

Bellamy v. Sabine **(1857) 1 De G & J 566 – referred to.**

List of Acts

Code of Civil Procedure, 1908; Transfer of Property, 1882.

List of Keywords

Order XXI, R.97; Order XXI, R.102; Transferee *pendente lite* of the judgment-debtor; Execution; Title to the immovable property; Equitable; *Interest reipublicae ut sit finis litium;* Objections before the Executing Court; Ingredients of Order XXI, Rule 102; Resistance or Obstruction.

Tahir V. Isani v. Madan Waman Chodankar, (Since Deceased) Now Through His Legal Representatives & Ors.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6391 of 2025

From the Judgment and Order dated 25.07.2022 of the High Court of Judicature at Bombay at Goa in WP No. 86 of 2022

Appearances for Parties

Advs. for the Appellant:
Ninad Laud, Ivo Dcosta, Guruprasad Naik, Ms. Ishani Shekhar, Sahil Tagotra.

Advs. for the Respondents:
Yashraj Singh Deora, Sr. Adv., Priyesh Mohan Srivastava, M/S. Mitter & Mitter Co..

Judgment / Order of the Supreme Court

Order

1. Leave granted.

2. This appeal assails the correctness of judgment and order dated 25th July, 2022, passed by the High Court of Bombay at Goa[1] in Writ Petition No.86 of 2022, whereby the learned Single Judge allowed the writ petition, and after setting aside the order dated 17th September, 2021, passed by the Executing Court, allowed the application Ext.D-100 dated 22nd October, 2019, and thereby discontinued the enquiry under Order XXI Rules 97 and 101 of the Code of Civil Procedure, 1908[2]. The above impugned order was passed placing reliance upon the provisions contained in Order XXI Rule 102 of the CPC.

3. Relevant facts necessary for adjudication of the present appeal are as under: -

   3.1 Mrs. Maria Eduardo Apolina Gonsalves Misquita was the owner of plot of land measuring 477 square meters with a two-floor building ground + first standing thereon registered at No.1624,

1 Hereinafter, referred to as 'High Court'

2 In short, "CPC"

Book No.B(5)(new), page-156 (reverse) in the Land Registration Office, Panaji bearing Matriz No.958.

3.2 A part of the aforesaid property on the ground floor, measuring 123 square meters with plinth area and approximately 89.78 square meters area of building, was leased out on rent to Madan Waman Chodankar (respondent no.1), *vide* deed dated 22nd February, 1977.

3.3 Later on, respondent no.1 entered into a partnership on 13th March, 1977 with Dyaneshwar Keshav Malik and others ('Maliks') for setting up a hardware business and other allied products. The business of the said firm was to be carried out from a portion of the aforesaid leased premises. However, the tenancy as per the partnership was to continue with respondent no.1.

3.4 The original owner, Mrs. Misquita, *vide* registered sale deed dated 16th January, 1988, sold the entire property to M/s. Rizvi Estate and Hotels Pvt. Ltd. Thereafter, an agreement was executed between the purchaser, M/s. Rizvi Estate and Hotels Pvt. Ltd and the Maliks (sub-lessee) for surrendering the possession in order to enable the purchaser to demolish the building, construct a new multi-storied building and thereafter provide space to the sub-lessee upon construction of the new building and in the meantime provide alternate space to the sub-lessee. In the said document of 16th April, 1988 respondent no.1 was a confirming party.

3.5 Respondent no.1 filed a Regular Civil Suit No.112/88/C for injunction against M/s. Rizvi Estate and Hotels Pvt. Ltd. as they sought to demolish portion of the building apparently in the light of the agreement dated 16th April, 1988. In 1989, M/s. Rizvi Estate and Hotels Pvt. Ltd. preferred an application for eviction of respondent no.1 before the Court of Rent Controller being Rent Case No.17 of 1989 alleging that there has been sub-letting by respondent no.1 to Maliks, which was contrary to the lease deed dated 22nd February, 1977.

3.6 In 1996, respondent no.1 filed a Special Civil Suit No.97/1996/B against Maliks for dissolution of partnership, recovery of profit and ejectment. The written statement filed by Maliks in the

said suit clearly stated that all parties had surrendered their rights in favour of M/s. Rizvi Estate and Hotels Pvt. Ltd. on 11th April, 1988.

3.7 Meanwhile, the Court of Civil Judge, Jr. Division, *vide* judgment dated 22nd July, 1999, decreed the injunction suit filed by respondent no.1 and restrained M/s. Rizvi Estate and Hotels Pvt. Ltd. from demolishing the building. The decree and judgment of the Civil Judge was carried in appeal by way of Regular Civil Appeal No.91/99, which was dismissed, *vide* order dated 24th December, 2001.

3.8 M/s. Rizvi Estate and Hotels Pvt. Ltd., *vide* registered sale deed dated 24th April, 2007, sold the property in question to the appellant, Tahir V. Isani. Thereafter, the Maliks executed a surrender deed on 5th October, 2007 in favour of the appellant after accepting Rs.10 lakhs.

3.9 The Trial Court hearing, the suit for dissolution of the partnership and eviction of Maliks decreed the Special Civil Suit No.97/1996/B in favour of the respondent no.1 (being decree-holder now), *vide* an *ex parte* judgment dated 24th April, 2008, as the Maliks did not contest the suit any further.

3.10 Respondent no.1 filed an application for execution of the decree dated 24th April, 2008, which was registered as Execution Application No.22 of 2008 (B). In February 2009, the appellant moved an application under Order XXI Rules 97 and 101 of CPC objecting to the execution of the decree. The said application was opposed by the respondent no.1.

3.11 The appellant applied for framing of issues on 18th August, 2011. The Executing Court while framing issues, *vide* order dated 5th September, 2013, dealt with the issue relating to Section 52 of the Transfer of Property Act, 1882 on the ground that that the sale deed dated 24th April, 2007, was prior to the decree and further noted that the tenancy rights had been surrendered by a written agreement dated 11th April, 1988.

3.12 The evidence was being recorded in the proceedings under Order XXI Rules 97 and 101 of CPC, in which the statement of the appellant was also recorded sometime around 2019. It

was at this stage, i.e. after ten years, that the legal heirs of respondent no.1, who were brought on record on account of his death, moved an application to discontinue the enquiry on the basis of doctrine of *lis pendens*. The Executing Court dismissed the application of the respondent, *vide* order dated 17th September, 2021. Aggrieved, the decree-holder preferred Writ Petition No.86 of 2022, which has since been allowed by the impugned order dated 25th July, 2022. Hence, the appellant is before us.

4. This Court while issuing notice on 2nd September, 2022 had passed an order of *status quo* of possession with regard to the suit property.

5. We have heard learned counsel for the parties and perused the material on record. Before proceeding further, it would be worthwhile to briefly refer to the findings recorded by the Executing Court while dismissing the application dated 20th December, 2019, and also the findings recorded by the High Court in the impugned order dated 25th July, 2022.

6. The Executing Court recorded the following reasons: -

   i. The suit in question i.e. 97/1996/B was only for dissolution of partnership and recovery of profits and ejectment. It did not deal with the title to the property in question.

   ii. There was no issue relating to ownership of the said property as admittedly respondent no.1 had claimed to be a tenant under a lease deed dated 22nd February, 1977 and subsequently, having sub-let the same had formed a partnership with Maliks.

   iii. The appellant had purchased the property not from any party to the said suit, i.e. the plaintiff or the defendant, but from the owner M/s. Rizvi Estate and Hotels Pvt. Ltd., who was not a party to the proceedings in which decree was granted in favour of respondent no. 1.

   iv. The appellant being the owner of the property in question had a right to raise objection under Order XXI Rules 97 and 101 of CPC and the Executing Court was bound to enquire into and thus, adjudicate upon the said objection.

v. It relied upon a judgment of this Court in the case of ***Dev Raj Dogra and others v. Gyan Chand Jain and others***[3] and concluded that the doctrine of *lis pendens* was not applicable to the present case and, therefore, the enquiry should be continued and brought to its logical conclusion.

7. The High Court was of the view that since the appellant was a transferee *pendente lite* of judgment debtor, therefore, in view of provisions of Rule 102 of Order XXI of CPC, the application filed by the appellant under Rules 97 and 101 of Order XXI CPC was not maintainable. It accordingly allowed the writ petition filed by respondent no. 1, and set aside the order of the Executing Court dated 17th September, 2021, thereby allowing the application, Ext.D-100 and closing the enquiry.

8. In order to appreciate the controversy at hand, we deem it fit to reproduce hereinbelow the relevant provisions of Order XXI of CPC as applicable to the present case: -

"*Resistance of delivery of possession to decree-holder or purchaser*

97. Resistance or obstruction to possession of immovable property.—(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

98. Orders after adjudication.—(1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),—

3 (1981) 2 SCC 675

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

99. Dispossession by decree-holder or purchaser.—(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

100. Order to be passed upon application complaining of dispossession.—Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,—

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

101. Question to be determined.—All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

102. Rules not applicable to transferee lite pendente.—Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgement-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation.—In this rule, "transfer" includes a transfer by operation of law."

9. The whole scheme of Rule 102 of Order XXI intends to preserve the idea of achieving finality of the judicial decisions. The provision imbibes the principle of "*interest reipublicae ut sit finis litium*" i.e., it is in the interest of the State that there should be an end to litigation. In a suit pending between a plaintiff and a defendant as to the right to a particular estate, the decision of the court in that case shall be binding not only on the litigating parties, but also on those who derive title under them by alienations (transfer) made while the suit was pending, whether such alienees, i.e. transferees, had or had not notice of the pending proceedings. In this regard, we are benefitted by the decision of this Court in ***Usha Sinha v. Dina Ram and others***[4]***,*** where this Court had the occasion to deal with the scheme of Rule 102 of Order XXI, and held that: -

4 (2008) 7 SCC 144

"17. Rule 102 clarifies that Rules 98 and 100 of Order 21 of the Code do not apply to transferee pendente lite. That Rule is relevant and material and may be quoted in extenso:

> "102. *Rules not applicable to transferee pendente lite*.—Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person."

Bare reading of the Rule makes it clear that it is based on justice, equity and good conscience. A transferee from a judgment-debtor is presumed to be aware of the proceedings before a court of law. He should be careful before he purchases the property which is the subject-matter of litigation. It recognises the doctrine of *lis pendens* recognised by Section 52 of the Transfer of Property Act, 1882. Rule 102 of Order 21 of the Code thus takes into account the ground reality and refuses to extend helping hand to purchasers of property in respect of which litigation is pending. **If unfair, inequitable or undeserved protection is afforded to a transferee pendente lite, a decree-holder will never be able to realise the fruits of his decree. Every time the decree-holder seeks a direction from a court to execute the decree, the judgment-debtor or his transferee will transfer the property and the new transferee will offer resistance or cause obstruction. To avoid such a situation, the Rule has been enacted**."

(emphasis supplied)

Therefore, Rule 102 of Order XXI intends to protect the interests of the decree-holder against the attempts of unscrupulous judgment-debtors and their subsequent transferees who indulge in activities

and leave no stone unturned to deprive the decree-holders from reaping the benefits of the decree granted in their favour. The Rule being equitable in nature, therefore, estops further creation of rights as it explicitly states that nothing in Rules 98 and 100 shall apply to the resistance or obstruction being made by the transferee *pendente lite* of judgment-debtor.

10. Recently, this Court in the case of ***Jini Dhanrajgir and another v. Shibu Mathew*** **and another**[5] noted the plight of the decree-holders in our country. The Court quoted a Privy Council decision in 1872 and concluded that the observations made therein still hold true, where Privy Council had stated that the difficulties of litigants in India indeed begin when they have obtained a decree. For the ready reference, the relevant extract is quoted hereinbelow: -

> **"**. . . **More than a century and a half back, the Privy Council (speaking through the Right Hon. Sir James Colville, J.) in *Raj Durbhunga* v. *Coomar Ramaput Sing* [1872 SCC OnLine PC 16] lamented that the difficulties of litigants in India indeed begin when they have obtained a decree**. A reference to the above observation is also found in the decision of the Oudh Judicial Commissioner's Court in *Kuer Jang Bahadur* v. *Bank of Upper India Ltd.* [*Kuer Jang Bahadur* v. *Bank of Upper India Ltd.*, 1925 SCC OnLine Oudh JC 217] **It was ruled there that the courts had to be careful to ensure that the process of the court and the laws of procedure were not abused by judgment-debtors in such a way as to make the courts of law instrumental in defrauding creditors, who had obtained decrees in accordance with their rights**.
>
> **2.** Notwithstanding the enormous lapse of time, we are left awestruck at the observation [*Raj Durbhunga* v. *Coomar Ramaput Sing*, 1872 SCC OnLine PC 16] of the Privy Council which seems to have proved prophetic. **The observation still holds true in present times**

5 (2023) 20 SCC 76

> **and this case is no different from cases of decree-holders' woes commencing while they are in pursuit of enforcing valid and binding decrees passed by civil courts of competent jurisdiction. The situation is indeed disquieting, viewed from the perspective of the decree-holders, but the law, as it stands, has to be given effect whether the court likes the result or not**. . ."
>
> **(emphasis supplied)**

11. While it is important to protect the interests of decree-holders, who hold an enforceable decree in their favour, it cannot be gainsaid that such interests cannot be blanketly protected. Rule 102 of Order XXI expressly lays down the ingredients as to when it can be applied. For a case to fall under Rule 102, it is condition precedent that there exists a decree for the possession of immovable property. Secondly, there must be a resistance or an obstruction in the execution of the said decree. Thirdly, such obstruction or resistance must be made by a person to whom the judgment-debtor has transferred the property. Fourthly, such transfer must have occurred after the institution of the original suit, i.e. the one in which the decree was passed. If the aforesaid ingredients are made out, Rule 102 prohibits the protection of Rules 98 and 101 to such errant transferee of judgment-debtor.

12. In ***Usha Sinha*** (*supra*), the Court also had the occasion to deal with the mischief of such transferees who engage in conveyance *pendente lite*. The Court quoted with approval the *locus classicus* from English law on the doctrine of *lis pendens* ***Bellamy v. Sabine***, [(1857) 1 De G & J 566], wherein the English Court recognised that the intent behind such provision is to stop the vicious cycle of introducing subsequent new buyers (alienees) while a suit is already pending. If such principle is not applied, the Court held that there would be no certainty that the litigation would ever come to an end. This Court noted with disapproval the mischief being created by such transferees and their vendors, being the judgment-debtor, who transfer the immovable property at any time after the institution of the suit and held as follows: -

"18. Before one and a half century, in ***Bellamy* v. *Sabine*** [(1857) 1 De G & J 566 : 44 ER 842] , Lord Cranworth, L.C. proclaimed that **where a litigation is pending between a plaintiff and a defendant as to the right to a particular estate, the necessities of mankind require that the decision of the court in the suit shall be binding not only on the litigating parties, but also on those who derive title under them by alienations made pending the suit, whether such alienees had or had not notice of the pending proceedings. If this were not so, there could be no certainty that the litigation would ever come to an end**.

. . .

23. It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent court. The doctrine of "*lis pendens*" prohibits a party from dealing with the property which is the subject-matter of suit. "*Lis pendens*" itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. **Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee *pendente lite*. It declares that if the resistance is caused or obstruction is offered by a transferee *pendente lite* of the judgment-debtor, he cannot seek benefit of Rules 98 or 100 of Order 21**.

. . .

26. For invoking Rule 102, it is enough for the decree-holder to show that the person resisting the possession or offering obstruction is claiming his title to the property after the institution of the suit in which decree was passed and sought to be executed against the judgment-debtor. If the said condition is fulfilled, the case falls within the mischief of Rule 102 and such applicant cannot place reliance either on Rule 98 or Rule 100 of Order 21."

(emphasis supplied)

Therefore, it is absolutely clear, that the transferee of a judgment-debtor who traces his title to the immovable property, that is the subject matter of a pending suit, is not entitled to seek the remedy available under Rules 97 to 102 of Order XXI. At the cost of repetition, we state that the whole scheme of Rule 102 of Order XXI read with Section 52, Transfer of Property Act, 1882 is to protect the interest of a decree-holder who has successfully attained a decree of possession of an immovable property.

13. However, Rule 102 of Order XXI applies only to a person to whom the judgment-debtor has transferred the immovable property which was subject matter of that suit *pendente lite*. If the person who is resisting or obstructing the execution of the decree for possession of such property, is not the transferee of judgment-debtor, i.e. he does not trace his title from judgment-debtor, bar of Rule 102 does not apply to him. That is to say that if the person who is resisting or obstructing the decree for possession has received the property from person other than the judgment-debtor, such person is competent to gain the benefit of Rules 97 to 101 of Order XXI. In fact, he is entitled to such benefit even if he had been transferred the immovable property *pendente lite*, i.e. during the pendency of the suit, in which the decree was passed.

14. Coming now to the facts of the present case, we are of a considered view that the Executing Court was right in rejecting the application, Ext. D-100, not only for the reasons given by the Executing Court in the order dated 17th September, 2021, but also for the following reasons: -

    a) The appellant in his application of February 2009 filed under Order XXI Rule 97 and 101 of CPC had mentioned all the facts in detail including the details about the sale deed dated 24th April, 2007, as also the surrender deed dated 5th October, 2007. The filing of the application by the respondent, Ext.D-100 in 2019 after ten years itself was belated and *mala fide*. The said application ought to have been filed in the very beginning. The plea taken that in the cross-examination, the admission of the appellant about the surrender deed dated 5th October, 2007, gave cause to the respondent to file the application for closing the enquiry was completely untenable. The fact regarding the

surrender deed dated 5th October, 2007, was mentioned in the application under Order XXI Rules 97 and 101 of CPC filed in February 2009.

b) The Executing Court upon an application filed by the appellant in 2011 had framed the issues in 2013 and had directed for conducting the enquiry. At that stage also the respondent did not object to the same and participated in the enquiry. It took six years for the respondent to move the application and that too on a totally lame and untenable ground. The High Court committed serious error in allowing the writ petition and closing the enquiry.

c) The appellant being the owner of the property in question had a right to object and ensure that there was no collusive decree which was sought to be executed.

15. The appellant in the present case does not trace his title from the judgment-debtor, i.e. the Maliks and therefore, he is not a transferee *pendente lite* of the judgment-debtor. The appellant is a *bona fide* buyer who had bought the suit property from M/s Rizvi Estate and Hotels Pvt. Ltd., *vide* registered sale deed dated 24th April, 2007, who traced their title from the original owner, Mrs. Misquita, *vide* registered sale deed dated 16th January, 1988. The transferor, M/s Rizvi Estate and Hotels Pvt. Ltd., of the appellant was not a party to the suit bearing Special Civil Suit No. 97/1996/B, the decree of which has been put to execution. They were third party, having received the ownership rights from the original owner in 1988. Thus, even if the appellant did buy the subject-property in 2007, during the pendency of the suit between the Maliks and the present respondents, the bar of Rule 102 of Order XXI does not affect or prohibit the appellant from raising his objections before the Executing Court under Rules 97 and 101 and subsequently receive its adjudication under Rules 98 and 100.

16. In view of the above discussion, the appeal deserves to be allowed. The impugned order dated 25th July, 2022, passed by the High Court is set aside. The Executing Court is directed to proceed with the enquiry, conclude the same and bring it to its logical conclusion in accordance with law.

17. It is made clear that the Executing Court will decide the application under Order XXI Rules 97 and 101 of CPC on its own merits and uninfluenced by any observations made by us in this order.

18. Pending application, if any, stands disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan