



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**CMPMO No.408 of 2024 along
with CMPMO No. 417 of 2024.**

Reserved on : 09.08.2024.

Date of decision: 20.08.2024.

1. CMPMO No.408 of 2024.

Sumit Khanna and anotherPetitioners.

Versus

Kanchan Sunil Adani and othersRespondents.

2. CMPMO No. 417 of 2024.

Sumit Khanna and anotherPetitioners.

Versus

**Kamal Arjan Mirchandani and others
.....Respondents.**

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting?¹ Yes

**For the Petitioner(s) : Mr. Shivank Singh Panta,
Advocate, in both the
petitions.**

**For the Respondent(s): Mr. Viren Sibal and Mr.
Pawan Gautam, Advocates,
for respondents No.1 and 2,
in both the petitions.**

¹***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

Tarlok Singh Chauhan, Judge

Since common questions of law and facts arise for consideration in both these petitions, therefore, they were taken up together for hearing and are being disposed of by a common judgment.

2. The respondents/deGREE-holders (hereinafter referred to as the 'respondents') are yet to enjoy the benefit of the decree that has been passed in their favour and the petitioners/judgment-debtors (hereinafter referred to as the 'petitioners') have made all attempts to frustrate the respondents to such an extent that they would lose interest in enjoying the fruits of the decree passed in their favour.

3. The Hon'ble Supreme Court has made certain pertinent observations regarding difficulties faced in execution of the decree in ***Griesheim GMBH (Now Called AIR Liquide Deutschland GMBH) vs. Goyal MG Gases Private Limited (2022) 11 SCC 549*** wherein it was observed as under:

"2. It is an old saying that the difficulties of the litigant in India begin when he has obtained a decree. The evil was noticed as far back in 1872 by the Privy Council in relation to the difficulties faced

by the decree holder in execution of the decree, *General Manager, Raj Durbhunga v. Coomar Ramaput Sing*, 1872 SCC OnLine PC 16(Moo IO p.612). After more than a century, there has been no improvement and still the decree holder faces the same problem what was being faced in the past. A litigant coming to Court seeking relief is not interested in receiving a paper decree when he succeeds in establishing his case. What he primarily wants from the Court of Justice is the relief and if it is a money decree, he wants that money what he is entitled for in terms of the decree, must be satisfied by the judgment debtor at the earliest possible without fail keeping in view the reasonable restrictions/rights which are available to the judgment debtor under the provisions of the statute or the code, as the case may be.”

4. In ***Jini Dhanrajgir and another vs. Shibu Mathew and Anr. Etc. AIR 2023 SC 2567***, the Hon'ble Supreme Court while dealing with a case where there was resistance on behalf of the judgment debtor to deliver the possession to the decree holder made the following pertinent observations:

“2. More than a century and a half back, the Privy Council (speaking through the Right Hon. Sir James Colville) in *The General Manger of The Raj Durbhunga, Under the Court of Wards vs. Maharajah Coomar Ramaput Singh (1871-72) 14 Moo IA 605*

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 vs. Bank of Upper India Ltd. Lucknow](#) AIR 1925 Oudh 448. 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.

3. Notwithstanding the enormous lapse of time, we are left awestruck at the observation of the Privy Council which seems to have proved prophetic. The observation still holds true in present times 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. In [Martin Burn Ltd. vs. Corporation of Calcutta](#) AIR 1966 SC 529, this Court held that a court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

5. The Hon'ble Supreme Court in **Mumtaz Yarud Dowla Wakf vs. M/s Badam Balakrishna Hotel Pvt. Ltd. and others AIR 2023 SC 5491** observed as under:

"2. A legal journey adopted by the appellant with periodical stoppages orchestrated in the process at behest of respondent no(s). 1 and 2 brought the lis back to the place where it started, forcing it to undertake a fresh guard by the impugned order.

3. This case is a classic example of the unfortunate situation taken note of and lamented by Right Honorable Sir James Colville in General Manager of the Raj Durbhunga v. Maharajah Coomar Ramaput Sing, 1872 SCC OnLine PC 16,

"These proceedings certainly illustrate what was said by Mr. Doyne, and what has been often stated before, that the difficulties of a litigant in India begin when he has obtained a Decree..."

The situation not only continues but has become more prevalent."

6. Earlier to that, a three Judge Bench of the Hon'ble Supreme Court in **Rahul S. Shah vs. Jinendra Kumar Gandhi and others (2021) 6 SCC 418** while taking into consideration the decision of the Privy Council in

Raja Durbhunga's case (supra) observed as under:

"23. This court has repeatedly observed that remedies provided for preventing injustice are actually being misused to cause injustice, by preventing a timely implementation of orders and execution of decrees. This was discussed even in the year 1872 by the Privy Counsel in The General Manager of the Raja Durbhunga v. Maharaja Coomar

Ramaput Sing 1872 SCC OnLine PC 16 which observed that the actual difficulties of a litigant in India begin when he has obtained a decree. This Court made a similar observation in [Shub Karan Bubna @ Shub Karan Prasad Bubna v Sita Saran Bubna](#) (2009) 9 SCC 689, wherein it recommended that the Law Commission and the Parliament should bestow their attention to provisions that enable frustrating successful execution. The Court opined that the Law Commission or the Parliament must give effect to appropriate recommendations to ensure such amendments in [the Code of Civil Procedure, 1908](#), governing the adjudication of a suit, so as to ensure that the process of adjudication of a suit be continuous from the stage of initiation to the stage of securing relief after execution proceedings. The execution proceedings which are supposed to be handmaid of justice and sub-serve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice.

24. *In respect of execution of a decree, [Section 47](#) of CPC contemplates adjudication of limited nature of issues relating to execution i.e., discharge or satisfaction of the decree and is aligned with the consequential provisions of Order XXI. [Section 47](#) is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute*

relates to the execution, discharge or satisfaction of the decree. Thus, the objective of [Section 47](#) is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.

25. These provisions contemplate that for execution of decrees, Executing Court must not go beyond the decree. However, there is steady rise of proceedings akin to a re-trial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the Executing Court and the decree holder is deprived of the fruits of the litigation and the judgment debtor, in abuse of process of law, is allowed to benefit from the subject matter which he is otherwise not entitled to.

26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the Courts first issue show cause notice asking the judgment debtor as to why the decree should not be executed as is given under Order XXI Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgement debtor sometimes misuses the provisions of Order XXI Rule 2 and Order XXI Rule 11 to set up an oral plea, which invariably leaves no option with the Court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.

27. This is anti-thesis to the scheme of Civil Procedure Code, which stipulates that in civil suit, all questions and issues that may arise, must be decided in one and the same trial. Order I and Order II which relate to Parties to Suits and Frame of Suits with the object of avoiding multiplicity of proceedings, provides for joinder of parties and joinder of cause of action so that common questions of law and facts could be decided at one go.”

“40. In [Ghan Shyam Das Gupta v. Anant Kumar Sinha](#) (1991) 4 SCC 379, this Court had observed that the provisions of the Code as regards execution are of superior judicial quality than what is generally available under the other statutes and the Judge, being entrusted exclusively with administration of justice, is expected to do better. With pragmatic approach and judicial interpretations, the Court must not allow the judgment debtor or any person instigated or raising frivolous claim to delay the execution of the decree. For example, in suits relating to money claim, the Court, may on the application of the plaintiff or on its own motion using the inherent powers under Section 151, under the circumstances, direct the defendant to provide security before further progress of the suit. The consequences of non-compliance of any of these directions may be found in Order XVII Rule 3.

41. Having regard to the above background, wherein there is urgent need to reduce delays in the execution proceedings we deem it appropriate to

issue few directions to do complete justice. These directions are in exercise of our jurisdiction under [Article 142](#) read with [Article 141](#) and [Article 144](#) of the Constitution of India in larger public interest to subserve the process of justice so as to bring to an end the unnecessary ordeal of litigation faced by parties awaiting fruits of decree and in larger perspective affecting the faith of the litigants in the process of law.

42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned directions:

42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third party interest and further exercise the power under Order XI Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.

42.2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.

42.3. After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

42.4. Under [Order XL Rule 1 of CPC](#), a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.

42.5. The Court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

42.6. In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.

42.7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under [Section 151](#) CPC, demand security to ensure satisfaction of any decree.

42.8. The Court exercising jurisdiction under [Section 47](#) or under [Order XXI of CPC](#), must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

42.9. The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10. The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A.

42.11. Under [section 60](#) of CPC the term "...in name of the judgment- debtor or by another person in trust

for him or on his behalf” should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

42.12. The Executing Court must dispose of the Execution Proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

42.13 The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.

42.14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the Court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the Executing Courts.”

7. Though, the aforesaid observations were primarily meant for the Civil Courts. But, I see no reason why the aforesaid observations should not apply to a statutorily constituted authority like RERA which has been constituted for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal.

8. Adverting to the facts of the case, a decree was passed in favour of the respondents by the Real Estate Regulatory Authority ("**RERA**") on 08.07.2022. The operative portion whereof reads as under:

"RELIEF:

Keeping in view the abovementioned facts, this Authority in exercise of powers vested in it under various provisions of the Act issues the following orders/directions:

- i. The Complaints are allowed.*
- ii. In the complaint No. RERAHPIUCTA09210046 titled as Mrs. Kamal Arjan Mirchandani and another versus Sumit Khanna/Unimexx Builders, the respondent promoter is directed to a refund of Rs. Sixty Five Lakhs and Rs. Seven Lakhs and Forty Nine Thousand (total amounting to Rs. Seventy Two Lakhs and Forty Nine Thousand Only) along with interest at the SBI highest marginal cost of lending rate plus 2% as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation & Development) Rules, 2017. The present highest MCLR of SBI is 7.7% hence the rate of interest would be 7.7%+2% i.e. 9.7%. It is clarified that the interest on the sale consideration of Rs. Sixty-Five Lakhs shall accrue from the date when the complainant parted with the possession of the Mumbai Flat i.e. 29.06.2018 till date the amount and interest thereon is refunded. It is further clarified that the interest on the amount of*

Rs. Seven Lakhs and Forty Nine Thousand shall be payable from the dates on which different payments were made by the Complainant to the respondent till date the amount and interest thereon is refunded.

iii. In the complaint No. RERAHPKUCTA09210047 titled as Mrs. Kanchan Sunil Idani versus Sumit Khanna/Unimexx Builders, the Respondent promoter is directed to refund of Rs. Sixty Five Lakhs and a sum of Rs. Six Lakh (total amounting to Rs. Seventy One Lakhs only) along with interest at the SBI highest marginal cost of lending rate plus 2% as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation & Development) Rules 2017. The present highest MCLR of SBI is 7.7% hence the rate of interest would be 7.7%+2% i.e. 9.7%. It is clarified that the interest on the sale consideration of Rs. Sixty Five Lakhs shall accrue from the date when the complainant parted with the possession of the Mumbai Flat i.e. 29.06.2018 till date the amount and interest thereon is refunded. It is further clarified that the interest on the amount of Rs. Six Lakhs shall be payable from the dates on which different payments were made by the Complainant to the respondent, till the date the amount and interest thereon is refunded.

iv. The refund along with interest is to be paid by the respondent to the Complainants within 60 days from the date of passing of this order.

v. That in view of Section 61 of the Act which prescribes the maximum penalty that could be imposed for the contravention of any other provision

of the Act other than Section 3 and 4, as five percent of the total cost of the project. The Authority, considering all facts of the case, deems appropriate to impose a penalty of Rs.Ten Lakhs in each case separately for contravention of the provisions of the Act especially Section 11,12, 14 and 18 of the Act *ibid*.

vi. That in case the respondent promoter fails to or does not fully comply with the aforesaid orders within sixty days from the date of passing of this order, then exercising powers under Section 63 of the Act *ibid* the respondent promoter will be liable to pay additional penalty of Rs.five thousand per day for every day, for both cases separately till such default continues (after sixty days), till compliance of the orders.

vii. The Complainant shall be at liberty to approach the Adjudicating Officer for compensation under Section 71 of the Act *ibid*.”

9. The respondent-decree holder filed execution proceedings and details of such proceedings are set out in a tabulated form and read thus:

"S. N.	DATE	PARTICULARS	ANNEXURE
1.	26.07.23	The HPRERA issued notice in Execution Proceedings.	Annexure R/2
2.	21.08.23	The present Petitioner enters appearance and seeks time to file objections.	Annexure R/3
3.	-	Appeal filed before RERA Appellate Authority at Chandigarh, by the present Petitioner dismissed due to	Annexure R/4

		<i>non-compliance of Section 43(5) of the Real Estate (Regulation and Development) Act, 2016 (in short, 'the Act').</i>	
4.	07.10.23	<i>Petitioner does not comply with the order dated 23.08.2023 passed by HPRERA and seeks further time to file objections. This order has been concealed before the present petition.</i>	<i>Annexure R/5</i>
5.	25.11.23	<i>The Execution Proceedings before HPRERA were scheduled to be heard, however, they were adjourned at the behest of HPRERA</i>	<i>Annexure R/6</i>
6.	02.12.23.	<i>Order impugned in the present petition where the right to the objections were closed. It had been concealed that HP RERA sent an e-mail clarifying that the order is dated 02.12.2023.</i>	<i>Annexure R/7</i>
7.	06.12.23	<i>Screenshot of email dated 06.12.2023 sent by HPRERA</i>	<i>Annexure R/8</i>
8.	26.12.23	<i>The petitioner appears before HPRERA, vakalatnama not filed.</i>	<i>Annexure R/9.</i>
9.	20.01.24	<i>Petitioner does not appear.</i>	<i>Annexure R/10</i>
10.	-	<i>In the interregnum, the Petitioner another appeal, 4/HP/2023, before the RERA Appellate Authority, challenging order dated 02.12.2023 (erroneously marked by HP RERA as order dated 07.10.2023) wherein the right to file objections of the Petitioner stood closed</i>	
11.	28.02.24	<i>The Petitioner sought advantage of the pendency of the above-mentioned appeal in execution proceedings</i>	<i>Annexure R/11</i>
12.	09.05.24	<i>The above-mentioned appeal came to be dismissed vide order dated 09.05.2024, in view of non-compliance of Section 43(5), again.</i>	<i>Annexure R/12</i>
13.	18.05.24	<i>Thereafter, the HPRERA, granted further 2 weeks' time to deposit the decretal amount</i>	<i>Annexure R/13</i>
14.	25.06.24	<i>The petitioner deposited RC of two</i>	<i>Annexure R/14</i>

		<p>vehicles. It was also directed by the HP RERA that the decretal amount be deposited by the next date of hearing.</p> <p>On the same date, in another execution petition, the Petitioner was committed to civil imprisonment on account of non-payment of the decretal amount in those proceedings.</p>	
15.	12.07.24	The proceedings in execution before HP RERA were adjourned on account of pendency of the present CMPMO listed before this Hon'ble Court.	Annexure R/15
16.	19.07.24	The petitioner challenged order dated 25.06.2024 (wherein he was committed to civil imprisonment in another execution proceeding) by preferring an appeal before RERA appellate which came to be dismissed."	Annexure R/16

10. It is vehemently argued by Shri Shivank Singh Panta, learned counsel for the petitioners that since RERA has failed to follow the provisions of the Code of Civil Procedure ("**CPC**"), more particularly, the provisions of Order 21 Rules 11A, 37, 39 and 40, therefore, the orders as assailed in these petitions deserve to be quashed and set aside and consequently the matters be remanded back to RERA.

11. On the other hand, Shri Viren Sibal, learned counsel for respondents No.1 and 2 has vehemently argued that there is no violation of the provisions of CPC and there

is no illegality in the orders dated 18.05.2024 and 25.06.2024 and these petitions are nothing but an abuse of the process of the Court given the fact that one of the respondents is over 80 years of age and the execution petition had been filed more than one year back and yet they have not been able to reap the benefits of the decree and get back their hard earned money.

12. I have heard the learned counsel for the parties and have gone through the material placed on record.

13. At the outset, the moot question is whether the provisions of the CPC in its entirety would apply to the proceedings of RERA or only those provisions as specifically find mention in the Act alone would be applicable.

14. In order to decide this question, one would have to refer to Section 35 of the Real Estate (Regulation and Development) Act, 2016 (for short 'Act'), which reads as under:

“35. Powers of Authority to call for information, conduct investigations.—(1) Where the Authority considers it expedient to do so, on a complaint or suo motu, relating to this Act or the rules or regulations made thereunder, it may, by order in writing and recording reasons therefor call

upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.

(2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—

(i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) issuing commissions for the examination of witnesses or documents;

(iv) any other matter which may be prescribed.”

15. A perusal of sub-section(2) of Section 35 of the Act would go to indicate that the Authority has been vested with the same powers as are vested in the Civil Court under the CPC while trying a suit in respect of the matters set out in sub-section and nothing more and nothing less.

16. Meaning thereby, the RERA clearly enumerates those provisions of CPC that are applicable to the proceedings before it. Thus, the Legislature has expressly made only the aforementioned provisions of CPC applicable to the RERA and is, therefore, deemed to have intentionally excluded the other provisions of CPC from its applicability to the proceedings. Therefore, according to the principles of *expressio unius*, it can conveniently be held that vide the *expressio unius* principle, the RERA clearly enumerates the provisions of CPC that are applicable to the proceedings before it and on the same principle, the Legislature is, therefore, deemed to have intentionally excluded all other provisions of CPC from applying to the proceedings before the RERA.

17. In taking this view, this Court is duly supported by the judgment of the Hon'ble Supreme Court in ***Ethiopian Airlines vs. Ganesh Narain Saboo (2011) 8 SCC 539*** wherein it was observed as under:

*“65. However, notwithstanding the fact that proceedings of the National Commission are "suits" under the [Carriers Act](#), vide the *expressio unius* principle, [The Consumer Protection Act, 1986](#) clearly enumerates those provisions [of the CPC](#) that are*

*applicable to proceedings before the consumer fora. Such provisions include 13(4), in which the [Consumer Protection Act, 1986](#) vests those powers vested in a civil court under [the CPC](#) to the District Forum. However, according to the principle of *expressio unius*, because the legislature expressly made the aforementioned provisions [of the CPC](#) applicable to the consumer proceedings, the legislature is, therefore, deemed to have intentionally excluded all other provisions [of the CPC](#) from applying to the said proceedings. This is particularly true since, as explained above, the [Consumer Protection Act, 1986](#) sets forth an exhaustive list of procedures, distinguishable from those required under [the CPC](#), that the consumer redressal fora must follow. Therefore, since the [Consumer Protection Act](#) does not state that Section 86 applies to the consumer Fora's proceedings, that Section [of the CPC](#) should be held to be not applicable."*

18. Apart from the above, it needs to be noticed that even though the petitioners would vehemently argue that the principles of natural justice as also the provisions of CPC have been violated, however, the record speaks otherwise, as can be seen from the details of the proceedings set out in the tabulated form (supra).

19. The record reveals that the petitioner was granted sufficient time to file objections and his right to file objections was closed by the RERA on 02.12.2023. The petitioner thereafter preferred an appeal No.3/HP of 2023 and 4/HP of 2023 before the Haryana Real Estate Appellate Tribunal at Chandigarh. However, these appeals were also dismissed on the grounds mentioned therein on 09.05.2024. It was thereafter that the matter was listed before the RERA on 18.05.2024 for hearing. But, the petitioner again prayed for time and also submitted that the Authority had no power under the RERA Act, 2016, to issue arrest warrants. The RERA, in turn, recorded its satisfaction that the petitioner with the sole object of delaying the process of execution and with a view to defeat/delay/obstruct the process of execution was not making payment of the decretal amount despite being repeatedly asked by the Authority. It further observed that the judgment debtor despite directions to file list of undertaking of assets had failed to do so and there was every likelihood of the judgment debtor absconding or leaving the jurisdiction of the Authority so as to defeat the process of the execution. The Authority also recorded its satisfaction that the judgment debtor had concealed and

intentionally not disclosed its assets to escape the liability imposed upon him. The operative portion of the order passed by RERA reads as under:

“The judgment debtor is granted a further period of two weeks to deposit the decretal amount along with up to date interest and penalty in both the cases failing warrant of arrest shall be issued against Sh. Sumit Khanna as per the procedure prescribed in the Himachal Real Estate Regulatory Authority (Adjudication of Execution Petition) Regulations No.3 of 2020. Superintendent of Police, Shimla is directed to arrest JD Sh. Sumit Khanna after two weeks and to produce him before this Authority on or before the next date of hearing in execution of this warrant. The office of this Authority is directed to prepare warrant as per appendix XII of the Himachal Real Estate Regulatory Authority, (Adjudication of Execution Petition) Regulations No.3 of 2020 and issue the same to Superintendent of Police, Shimla.”

20. A perusal of the aforesaid order would reveal that the petitioner was granted further period of two weeks to deposit the decretal amount along with up-to-date interest and penalty in both the cases and it is only in case the petitioner failed to comply with these directions that warrant of arrest was ordered to be issued against petitioner No.1 as per the procedure prescribed in the

Himachal Real Estate Regulatory Authority (Adjudication of Execution Petition) Regulations No.3 of 2020. In these circumstances, it is too late in the day for the petitioners to complain that no show-cause notice as envisaged in Order 21 Rule 37 of CPC had been issued to them. After-all, what Order 21 Rule 37 of CPC contemplates is discretionary power to permit the judgment debtor to show cause against detention in prison and reads as under:

“37. Discretionary power to permit judgment-debtor to show cause against detention in prison.—(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court 1 [shall], instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

²[Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.]

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor."

21. Noticeably, the petitioners did not choose to file the objections and having participated in the proceedings did not even object to the procedure adopted by the RERA, if at all they were aggrieved.

22. Clearly, in such circumstances, the petitioners had acquiesced and waived off their right, if any, which may have been available to them under the CPC.

23. It further needs to be observed that even after passing the order dated 18.05.2024, the petitioners did not choose to assail the same and rather chose to get themselves arrested.

24. Having not paid a single paisa, the petitioners would still argue that the principles of natural justice have not been followed despite their having participated in the proceedings before the RERA and being fully aware of the orders passed from time to time and despite the dismissal of their appeals by the Appellate Authority.

25. Clearly, the instant case(s) is/are one of the grossest abuse of the process of the Court wherein an octogenarian has been un-necessarily dragged into litigation before this Court.

26. Accordingly, not only do I not find any merit in these petitions but, as observed above, find the same to be the grossest abuse of the process of the Court. Consequently, both these petitions are dismissed with costs of Rs.25,000/- (Rupees Twenty Five Thousand) each to be paid by the petitioners to respondents No.1 and 2.

27. Pending application(s), if any, also stands disposed of.

(Tarlok Singh Chauhan)
Judge

20th August, 2024.
(krt)