

1. This correction/modification application has been moved on behalf of respondent nos. 14, 15 and 16 seeking correction/modification of judgment and order dated 21.03.2025 to the extent that District Judge, Mathura, shall get an inventory of all movable and immovable properties including cash, bank accounts, ornaments etc. prepared immediately and a report is submitted by officiating Receiver, Kunwar Pal Singh Tomar before Committee of Management is constituted.

2. In view of said fact, judgment and order dated 21.03.2025 is modified to the extent that after Paragraph No. 64, following paragraphs are added:-

"65. The District Judge, Mathura, is hereby requested to get the complete inventory prepared of all movable and immovable properties of Dauji Temple, including cash, bank accounts, ornaments etc. immediately, within a period of two days from today. When the management is handed over to newly constituted Committee of Management, the inventory so prepared shall also be passed on.

66. Further, Registrar (Compliance) is hereby directed to communicate this order along with earlier judgment and order dated 21.03.2025 to District Judge, Mathura, within 24 hours, for necessary compliance."

3. The correction/modification application stands disposed of.

(2025) 3 ILRA 116
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.03.2025

BEFORE

THE HON'BLE ROHIT RANJAN AGARWAL, J.

Matters Under Article 227 No. 11807 of 2024

Smt. Santosh Awasthi ...Petitioner
Versus
Smt. Urmila Jain ...Respondent

Counsel for the Petitioner:
Rama Goel Bansal, Shalini Goel

Counsel for the Respondent:
Arvind Srivastava

Civil Law-The Constitution of India,1950-Artcle 227 - The Code of Civil Procedure, 1908-Section 115, Order 21 Rule 97,102 - The Transfer of Property Act-1882-Section 52-

Revisonal court had exceeded its jurisdiction by dismissing the application filed under Order XXI Rule 97 by the petitioner before the executing court while exercising revisional jurisdiction under Section 115 CPC--- The executing court has also failed in its endeavour to decide the execution case pending before it since the year 2014, and after framing the issue of res judicata had postponed the matter to be decided at the final stage--- Where it is an admitted fact that the property was transferred during pendency of the suit and petitioner is a transferee pendente lite and hit by provisions of Section 52 of the Transfer of Property Act, the executing court should have, at the very outset, proceeded to pass the order in pursuance of Rule 102--- Matter is remanded to the executing court to pass necessary orders on the application moved under Order XXI Rule 97 CPC in accordance with law within a period of one month. **(Para 34, 35 & 37)**

Petition disposed of. (E-15)

List of Cases cited:

1. Siddamsetty Infra Projects Pvt. Ltd. Vs Katta Sujatha Reddy & ors., 2024 SCC OnLine SC 3214
2. Shingara Singh Vs Daljit Singh & anr., 2024 SCC OnLine SC 2823
3. Usha Sinha Vs Dina Ram 2008 (7) SCC 144

4. Sriram Housing Finance and Investment Vs Omesh Misra Memorial Charitable Trust 2024 (15) SCC 176
5. Silverline Forum Pvt. Ltd. Vs Rajiv Trust & anr.(1998) 3 SCC 723
6. Surya Dev Rai Vs Ram Chander Rai 2003 (6) SCC 675
7. Radhey Shyam & anr. Vs Chhabi Nath & ors. 2009 (5) SCC 616
8. Periyamal Vs V. Rajamani, Civil Appeal No. 3640-3642 of 2025

(Delivered by Hon'ble Rohit Ranjan Agarwal, J.)

1. Heard Ms. Rama Goel Bansal, learned counsel for petitioner and Sri Arvind Srivastava, learned counsel for respondents.

2. This writ petition under Article 227 of Constitution of India has been filed assailing the order dated 05.08.2024 passed by Additional District Judge, Court No. 1, Jhansi in Civil Revision No. 59 of 2024.

3. Facts, in brief, leading to filing of present petition are that one Malti Devi was the original owner of property in question. She had sold 1.8 Acres of land to one Roop Chand Jain, which includes the property in dispute. On 03.12.1976 Roop Chand Jain carved out different plots from the property purchased by him and sold one part to one Sushila Kumari, wife of Ram Narayan. In the sale deed plot number was mentioned as '767'.

4. Similarly, on 20.05.1979 Urmila Jain purchased an area of 9 decimal of plot no. 776 from Malti Devi. She also purchased plot nos. 771, 770, 772, 773, 774, 775, 768 and 766 total measuring 2.5 Acres. Sushila

Kumari expired some time in the year 1986, she was survived by her husband Ram Narayan Verma and sons Naveen Prakash, Anand Prakash, Ratnesh Verma and Rajesh Verma. Urmila Jain filed a suit for permanent injunction on 28.01.1991 which was registered as Suit No. 33 of 1991 against Ram Narayan and his sons in respect of plot no. 776 and 771. On 30.01.1991 Ram Narayan filed an affidavit that Smt. Sushila Kumari had purchased part of plot no. 767 measuring 25 x 50 feet and 25 x 50 feet. The trial court had granted temporary injunction in favour of Urmila Jain and restrained the defendants from interfering in peaceful possession of plaintiff in respect of plot no. 776 and 771.

5. On 21.01.1991 a correction deed/titimma was executed by Power of Attorney holder of Roop Chand Jain in favour of Ram Narayan and plot no. 767 was changed to 776. On 16.04.1991 Ram Narayan alongwith his sons filed Suit No. 151 of 1991 for relief of permanent injunction against Prakash Chand Jain, Kailash Chand Jain and Urmila Jain in respect of plot no. 21, 22 and over plot no. 776. An application for grant of temporary injunction was moved which was rejected by the trial court, against which a miscellaneous appeal was preferred by Ram Narayan which was dismissed on 17.05.2000. Both, the Original Suit No. 33 of 1991 and 151 of 1991 were clubbed together. During pendency of both the suits, Ram Narayan executed a sale deed in respect of property in dispute in both the suits to one Smt. Santosh Awasthi on 12.01.2001. Smt. Santosh Awasthi got map sanctioned from Jhansi Development Authority on 23.01.2002.

6. Original Suit No. 33 of 1991 filed by Urmila Jain was decreed on 14.10.2003, while the suit filed by Ram Narayan being Suit No. 151 of 1991 was

dismissed. Ram Narayan filed Civil Appeal No. 96 of 2003 against the judgment dated 14.10.2003. The said appeal was dismissed on 13.04.2010. Urmila Jain on 16.12.2010 filed Execution Case No. 40 of 2010, in the said execution case Smt. Santosh Awasthi filed an impleadment application on 17.01.2011. The said application was dismissed in default on 04.08.2012, a recall application was moved which was again dismissed on 18.09.2013. Another recall application was moved on 19.10.2013 to recall the order dated 18.09.2013 which was rejected on merits on 22.01.2014.

7. Petitioner, Smt. Santosh Awasthi, on 21.07.2010 instituted Suit No. 341 of 2010 for the same relief for which Suit No. 151 of 1991 was filed by Ram Narayan. The said suit was dismissed on 20.09.2022. During pendency of Suit No. 341 of 2010 petitioner Smt. Santosh Awasthi filed application under Order XXI Rule 97 CPC which was registered as Misc. Case No. 6 of 2014. The said application was contested by Urmila Jain, who filed her objections on the ground of maintainability of the same. On 16.05.2024 trial court framed issue in regard to res judicata but observed that the issue of res judicata will be decided at the final stage after completing all the evidences of parties. Aggrieved by the said order, Civil Revision No. 59 of 2024 was filed by Urmila Jain which has been allowed by the order impugned dated 05.08.2024. Hence, this writ petition.

8. Learned counsel for petitioner submits that scope of Section 115 CPC is very limited and the court can only view the order impugned within the parameters given under Section 115 CPC. Revisional power is not akin to appellate court. According to her, the revisional court had not only set aside the

order passed by the trial court but had travelled beyond its jurisdiction and had rejected the application filed under Order XXI Rule 97 CPC. She then contended that from perusal of the order impugned it transpires that court was of the opinion that the issue of res judicata should be decided by trial court as a preliminary issue and revisional court should have remanded the matter to trial court to decide it as a preliminary issue but it committed the mistake and instead dismissed the application filed under Order XXI Rule 97 as well as Rule 101 read with Section 151 CPC.

9. According to her, the right of petitioner should have been adjudicated by execution court itself as petitioner is a lawful owner of property in question since the year 2002 and in garb of decree of Original Suit No. 33 of 1991 the application has been rejected and matter has not been adjudicated by the courts till date. It was further contended that the correction deed/titimma was executed in favour of original holder of the land who has transferred the same to the petitioner who is a bonafide purchaser and, thus, the executing court should have heard her before the application was being dismissed. She has relied upon the various judgments of Apex Court rendered in cases **Hindustan Petroleum Corporation vs. Dilbahar Singh (2014) 9 SCC 78, Jhau Lal & another vs. Mohan Lal & others, AIR Online 2013 SC 498, Tmt. Kasthuri Radhakrishnan & others vs. M. Chinniyan and another AIR 2016 SC 609 and Jini Dhanrajgir & another vs. Shibu Mathew & another etc., Civil Appeal No. 3758-3796/2023 arising out of SLP(C) Nos. 28258-28296/20181**, decided on 16.05.2023.

10. Sri Arvind Srivastava, learned counsel for respondents, submitted that the sale deed was executed by original owner

Roop Chand Jain in favour of Smt. Sushila Kumari in respect of plot no. 767 and not 776. An affidavit was filed in Original Suit No. 33 of 1991 by Ram Narayan admitting that he has no concern with plot no. 776. It was after institution of Original Suit No. 33 of 1991 that a correction deed/titimma was executed by the alleged Power of Attorney holder of Roop Chand Jain in respect of land sold in favour of Sushila Kumari and number was corrected from 767 to 776. He then contended that Ram Narayan had also filed a suit in the year 1991 against the answering respondent and both the suits were clubbed together and was finally decided in the year 2003 and suit filed by respondent was decreed while the suit filed by Ram Narayan was dismissed. It was during pendency of the suit that the suit property was transferred by Ram Narayan in favour of petitioner and, thus, it is hit by Section 52 of the Transfer of Property Act and *lis pendens* will apply.

11. He further contended that petitioner who had purchased the property in the year 2001 was well aware of the pendency of the suit and did not choose to file any appeal against the judgment rendered in the year 2003 decreeing the suit in favour of answering respondent. The appeal was preferred by Ram Narayan which was ultimately dismissed in the year 2010 against which no second appeal was preferred and the judgment became final. Further, petitioner herself instituted the Suit No. 341 of 2010 against the respondent claiming same relief which was there in Suit No. 151 of 1991 which was dismissed on 20.09.2022, against which no appeal till date has been preferred and it has become final between the parties *inter se*. It was also contended that during pendency of the suit of the year 2010 petitioner had moved an impleadment application in execution

proceedings which was dismissed twice and, thereafter, in the year 2014 application under Order XXI Rule 97 CPC was filed.

12. According to learned counsel, the application filed under Order XXI Rule 97 CPC is not maintainable as it is barred by principle of Order IX Rule 9 CPC as no fresh suit can be filed after dismissal of Suit No. 341 of 2010. Further, after dismissal of Suit No. 151 of 1991 filed by Ram Narayan, an application under Order XXI Rule 97 CPC was filed by petitioner which is barred by principle of *res judicata* as it has been moved by transferee *pendente lite* which is not maintainable. It is also contended that the application under Order XXI Rule 97 CPC is barred by Order XXI Rule 102 CPC as it has been moved by transferee *pendente lite*. He lastly contended that the order passed by the trial court on 16.05.2024 was not an interlocutory order and same is a final order which has been rightly interfered by the revisional court. He has relied upon the judgment of Apex Court rendered in cases of **Shalini Shyam Shetty & another vs. Rajendra Shankar Patil (2010) 8 SCC 329**, **Roshan Deen vs. Preeti Lal (2002) 1 SCC 100**, **Radhey Shyam & another vs. Chhabbi Nath & others (2009) 5 SCC 616**, **State of West Bengal & others vs. Samar Kumar Sarkar (2009) 15 SCC 444**, **Gadde Venkateswara Rao vs. Government of A.P. and others (1965) Supreme Today 247**, **Sadhana Lodh vs. National Insurance Co. Ltd. & another (2003) 3 SCC 524**, **Waryam Singh & another vs. Amarnath & another (1954) AIR SC 215**, **Ouseph Mathai & others vs. M. Abdul Khadir (2001) 8 Supreme 262**, **Mohd. Inam vs. Sanjay Kumar Singhal & others (2020) 0 Supreme (SC) 423**, **Usha Sinha vs. Dina Ram & others (2008) 7 SCC 144**, **Shingara Singh vs.**

Daljit Singh & another (2024) SCC Online SC 2823, Siddamsetty Infra Projects Pvt. Ltd. vs. Katta Sujatha Reddy & others (2024) SSC Online SC 3214, Sriram Housing Finance and Investment India Limited vs. Omesha Mishra Memorial Charitable Trust (2024) 15 SCC 176, Suresh Chand Jain vs. IIIrd Addl. District Judge (2001) 10 SCC 508, Silverline Forum Pvt. Ltd. vs. Rajiv Trust & another (1998) 3 SCC 723, Regional Manager, Region II, State Bank of India, Zonal Office, Garh Road, Meerut & others vs. Pradeep Goel (1992) All WC 857, Hari Vishnu Kamath vs. Ahmad Ishaque & others (1955) AIR SC 233, State of Gujarat vs. Vakhatsingji Vajesinghji Vaghela (dead) & others (1968) AIR SC 1481 and M.M.T.C. Limited vs. Commissioner of Commercial Tax & others (2009) 1 SCC 8.

13. I have heard learned counsel for the parties and perused the material on record.

14. The entire dispute hinges around plot no. 776 purchased by both the parties. It is not in dispute that Sushila Kumari on 03.12.1976 had purchased plot no. 767 through registered sale deed from Roop Chand Jain. On 20.05.1979 Urmila Jain purchased 9 decimal of plot no. 776 from Malti Devi. It was after the death of Sushila Kumari when the suit was filed by Urmila Jain, that Ram Narayan, husband of Sushila Kumari, got a correction deed/titimma executed by power of attorney holder of Roop Chand Jain and plot no. was changed from 767 to 776.

15. Admittedly, before the correction deed/titimma was carried out Ram Narayan filed an affidavit on 30.01.1991 that Sushila

Kumari had purchased the plot no. 767 in Original Suit No. 33 of 1991 filed by Urmila Jain. It was during pendency of suit filed by Urmila Jain and Ram Narayan, that the property in dispute was purchased by petitioner on 12.01.2001 from Ram Narayan. The suit filed by Urmila Jain was decreed on 14.10.2003 and the suit filed by Ram Narayan was dismissed, against which Civil Appeal No. 96 of 2003 was filed which was also dismissed on 13.04.2010.

16. Petitioner, during this period, never moved an application for becoming the party in appeal, and after the appeal was dismissed and execution case was filed by the decree holder Urmila Jain, an impleadment application was filed by the petitioner which was rejected thrice. In the meantime, petitioner also instituted Suit No. 341 of 2010 which was dismissed on 20.09.2022 against which no appeal was preferred.

17. Petitioner, during pendency of the said suit, moved an application under Order XXI Rule 97 CPC before the executing court which was also being contested by the decree holder and objections were raised as to the maintainability on the ground that application is hit by doctrine of lis pendens. The decree holder also objected that application is barred by the provisions of res judicata and it should be decided first by the executing court. The trial court on 16.05.2024 having framed the issue in regard to res judicata, but observed that it will be decided at the final stage after completing all evidences of parties. The order of executing court was subjected to revision under Section 115 CPC by the decree holder respondent.

18. Section 52 of The Transfer of Property Act lays down the doctrine of lis pendens. The effect of the aforesaid provision is not to annul all voluntary

transfers effected by the parties to a suit but only to render it subservient to the rights of the parties thereto under the decree or order which may be made in that suit. Its effect is only to make the decree passed in the suit binding on the transferee if he happens to be third party person even if he is not a party to it.

19. Recently, Apex Court in **Siddamsetty Infra Projects Pvt. Ltd. Vs. Katta Sujatha Reddy and others, 2024 SCC OnLine SC 3214** while considering the doctrine of *lis pendens* held that very purpose of *lis pendens* is to ensure that the process of Court is not subverted and rendered infructuous. In the absence of the doctrine of *lis pendens*, a defendant could defeat the purpose of suit by alienating the suit property. Relevant paragraph nos. 47 and 49 are extracted hereunder;

*"47. In short, the doctrine of *lis pendens* that Section 52 of the Transfer of Property Act encapsulates, bars the transfer of a suit property during the pendency of litigation. The only exception to the principle is when it is transferred under the authority of the court and on terms imposed by it. Where one of the parties to the suit transfers the suit property (or a part of it) to a third-party, the latter is bound by the result of the proceedings even if he did not have notice of the suit or proceeding. The principle on which this doctrine rests was explained by Lord Turner in Bellamy v. Sabine11 as follows:*

"It is, as I think, a doctrine common to the courts both of Law and Equity and rests, as I apprehend, upon this foundation that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations pendente lite were permitted to

*prevail. The plaintiff would be liable in every case to be defeated by the defendants alienating before the judgment or decree, and would be driven to commence his proceedings *de novo*, subject again to be defeated by the same course of proceedings."*

49. The purpose of *lis pendens* is to ensure that the process of the court is not subverted and rendered infructuous. In the absence of the doctrine of *lis pendens*, a defendant could defeat the purpose of the suit by alienating the suit property. This purpose of the provision is clearly elucidated in the explanation clause to Section 52 which defines "pendency". Amending Act 20 of 1929 substituted the word "pendency" in place of "active prosecution". The Amending Act also included the Explanation defining the expression "pendency of suit or proceeding". "Pendency" is defined to commence from the "date of institution" until the "disposal". The argument of the respondents that the doctrine of *lis pendens* does not apply because the petition for review was lying in the registry in a defective state cannot be accepted. The review proceedings were "instituted" within the period of limitation of thirty days. The doctrine of *lis pendens* kicks in at the stage of "institution" and not at the stage when notice is issued by this Court. Thus, Section 52 of the Transfer of Property Act would apply to the third-party purchaser once the sale was executed after the review petition was instituted before this Court. Any transfer that is made during the pendency is subject to the final result of the litigation."

20. In **Shingara Singh Vs. Daljit Singh and another, 2024 SCC OnLine SC 2823**, Apex Court while considering the earlier decision rendered in case of **Usha**

Sinha Vs. Dina Ram 2008 (7) SCC 144 held that doctrine of *lis pendens* applies to an alienation during the pendency of the suit whether such alienees had or had no notice of the pending proceedings. Relevant paragraph no. 11 is extracted hereunder;

*"11. In Usha Sinha v. Dina Ram 2 this Court held that the doctrine of *lis pendens* applies to an alienation during the pendency of the suit whether such alienees had or had no notice of the pending proceedings. The following has been held I paras 18 & 23:*

"18. Before one-and-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."

21. In Sriram Housing Finance and Investment Vs. Omesh Misra Memorial Charitable Trust 2024 (15) SCC 176, Apex Court observed that under Rule 97 of Order XXI it is only the decree holder who is entitled to make an application in case where he is offered resistance or obstruction by any person. Further, Rule 99 pertains to making a complaint to Court against dispossession of immovable property by person in possession of the property by the holder of decree or purchaser thereof.

22. In the instant case, the application under Order XXI Rule 97 has been moved by a transferee pendente lite/petitioner, who had purchased the property from the plaintiff of Suit No. 151 of 1991 on 12.01.2001, while the suit was decided on 14.10.2003. She never became party to the suit nor to the appeal. In fact Suit No. 341 of 2010 instituted by her was dismissed on 20.09.2022, against which no appeal till date has been filed.

23. In Silverline Forum Pvt. Ltd. vs. Rajiv Trust & another (1998) 3 SCC 723 the Apex Court while interpreting the words "all questions arising between the parties to a proceeding on an application under Rule 97" held that it envelopes only such question as would legally arises for determination between those parties. The Court is not obliged to determine a question merely because resister raised it.

24. The Court further held that question which the executing court is obliged to determine under Rule 101, must

possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g., if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property.

25. Rule 102 of Order XXI clearly bars its applicability to transferee pendente lite and the same is extracted hereunder;

“Order 21 Rule 102 CPC
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.

Explanation- In this rule, “transfer” includes a transfer by operation of law.”

26. Petitioner before this Court is admittedly a transferee pendente lite and has not denied the factum of purchase of disputed property from Ram Narayan in the year 2001 when both the original Suits No. 33 of 1991 and 151 of 1991 were pending consideration. In view of the judgment rendered by Apex Court in case of **Shingara Singh (Supra), Siddamsetty Infra Projects Pvt. Ltd. (Supra), Sriram Housing Finance and Investment (Supra)** and the judgment rendered in **Silverline Forum Pvt. Ltd. (Supra)**, petitioner being a transferee pendente lite cannot maintain application under Rule 97 of Order XXI and is bound by the decree,

and further barred by Rule 102 of Order XXI.

27. Further, petitioner has not denied the rejection of his impleadment application during execution proceedings and, thereafter, dismissal of the suit instituted by her in the year 2010. Once such is a situation petitioner has to justify maintaining her application under Order XXI Rule 97 CPC.

28. Question which arises for consideration, at this juncture, is whether the executing court was justified in passing the order dated 16.05.2024 when objections were raised by decree holder Urmila Jain as to the maintainability of the application under Order XXI Rule 97 and the same being barred by the provisions of res judicata. Admittedly, executing court had framed the issue of res judicata but had proceeded to hold that the said issue would be decided after considering the evidences at final stage.

29. Looking to the settled legal proposition and provisions of Rule 102 once it is an admitted case that petitioner is a transferee pendente lite the executing court should not have proceeded with the application any more and at the very first instance should have decided the objections raised by decree holder in the light of the doctrine of lis pendens and Rule 102. In case the issue of res judicata was framed by the executing court it should have decided and not waited for taking any evidence further and postponing it.

30. The law is settled as far as doctrine of lis pendens is concerned, once it is admitted to a party that he has purchased the property during pendency of the suit, then such transfer is hit by provisions of

Section 52 of the Transfer of Property Act. If such is the case the application under Order XXI Rule 97, at the very first instance, was not maintainable. The executing court had wrongly dragged the matter for almost 10 years from the year 2014 to 2024 in keeping the application pending filed under Order XXI Rule 97 CPC.

31. However, considering the argument raised by petitioner's counsel as to the maintainability of civil revision against the order dated 16.05.2024, I find that it was not a case decided and only the executing court after framing the issue of res judicata had postponed the matter to be decided at the final stage. In case the revision was entertained by the revisional court and had found that the issue of res judicata was to be adjudicated first, it should have remanded the matter to the executing court for deciding it first. The revisional court should not have exceeded its jurisdiction and rejected the application filed under Order XXI Rule 97 CPC itself once the application was pending before the executing court.

32. Reliance placed upon the various decisions of Apex Court does not help the respondent counsel as the judgment relied upon in case of **Surya Dev Rai Vs. Ram Chander Rai 2003 (6) SCC 675, Radhey Shyam and another Vs. Chhabi Nath and others 2009 (5) SCC 616**, clearly hold that the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion.

33. In the instant case the revisional court had assumed the jurisdiction of

executing court and dismissed the application filed under Order XXI Rule 97, though observing that the issue of res judicata should have been decided first. The revisional court at the most could have remanded the matter with certain directions, it cannot assume the role of a executing court while exercising revisional jurisdiction, as the order dated 16.05.2024 does not fall in the category of case decided.

34. After giving thoughtful consideration, I find that the revisional court had exceeded its jurisdiction by dismissing the application filed under Order XXI Rule 97 by the petitioner before the executing court while exercising revisional jurisdiction under Section 115 CPC. However, the executing court has also failed in its endeavour to decide the execution case pending before it since the year 2014, and after framing the issue of res judicata had postponed the matter to be decided at the final stage.

35. In such a case where it is an admitted fact that the property was transferred during pendency of the suit and petitioner is a transferee pendente lite and hit by provisions of Section 52 of the Transfer of Property Act, the executing court should have, at the very outset, proceeded to pass the order in pursuance of Rule 102 CPC.

36. Recently, on 06.03.2025, the Supreme Court in **Periyamal vs. V. Rajamani, Civil Appeal No. 3640-3642 of 2025** issued necessary directions for the executing court throughout the country for expediting the execution proceedings, relying upon the earlier decisions. Relevant paragraphs are extracted hereunder:-

"72. Before we close this matter, we firmly believe that we should say

something as regards the long and inordinate delay at the end of the Executing Courts across the country in deciding execution petitions.

73. It is worthwhile to revisit the observations in *Rahul S. Shah (supra)* wherein this Court has provided guidelines and directions for conduct of execution proceedings. The relevant portion of the said judgment is reproduced below:

“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 10 in relation to third-party interest and further exercise the power under Order 11 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.

42.5. 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.

42.8. The court exercising jurisdiction under Section 47 or under Order 21 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 21 as well as grant compensatory costs in accordance with Section 35-A.

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.

(Emphasis supplied)

74. The mandatory direction contained in Para 42.12 of *Rahul S. Shah (supra)* requiring the execution proceedings to be completed within six months from the date of filing, has been reiterated by this Court in its order in *Bhoj Raj Garg v. Goyal Education and Welfare Society, Special Leave Petition (C) Nos. 19654 of 2022.*”

37. Considering the facts and circumstances of the case, the order dated 05.08.2024 passed by Additional District Judge, Court No. 1, Jhansi in Civil Revision No. 59 of 2024 as well as the order of executing court dated 16.05.2024 passed in Misc. Case No. 6 of 2024 are hereby set aside. The matter is remanded to the executing court to pass

necessary orders on the application moved under Order XXI Rule 97 CPC by the petitioner in accordance with law keeping in mind the decisions of Apex Court rendered in cases of **Shingara Singh (Supra)**, **Siddamsetty Infra Projects Pvt. Ltd. (Supra)**, **Sriram Housing Finance and Investment (Supra)**, **Silverline Forum Pvt. Ltd. (Supra)** and **Periyammal (Supra)** as well as Rule 102 CPC and considering the doctrine of lis pendens, within a period of one month from the date of receipt of a certified copy of this order.

38. With the aforesaid directions, writ petition stands disposed of.

(2025) 3 ILRA 126
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 12.03.2025

BEFORE

THE HON'BLE RAJIV GUPTA, J.
THE HON'BLE SAMIT GOPAL, J.

Application U/S 482 No. 13742 of 2021
 With
 Application U/S 482 No. 13816 of 2021

Mohd. Khalid ...Applicant
Versus
State of U.P. & Anr. ...Opposite Parties

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 Sri Ashutosh Upadhyay, Sri Birendra Singh,
 Sri Ajay Kumar Singh, G.A.

Criminal Law – Criminal Procedure Code, 1973 - Section 482 - Negotiable Instruments Act, 1881 – Sections 138 & 142- Application U/s 482 – Larger Bench – constituted to address whether filing of a Impleadment application in a complaint filed

under Section 138 of the N.I. Act is valid, if filed solely against the proprietor without naming the company as an accused - Different High Court benches had given conflicting decisions - The reference arose due to conflicting High Court rulings interpreting *Aneeta Hada v. Godfather Travels*. – Later, the Supreme Court in *Pawan Kumar Goel v. St. of U.P.* clarified that if a company is involved, it must be named as an accused in the complaint. Also, once the legal time limit (limitation period) for taking action under Section 142 is over, no new accused can be added - held – no additional accused can be impleaded subsequent to filing of a complaint once the limitation prescribed for taking of cognizance of the offence under section 142 of the NI Act, has expired – hence, the reference was thus answered - and the matter will resume before the concerned Single Judge – Application is pending. (Para – 9, 10, 11)

Application Pending. (E-11)

List of Cases cited:

1. Mohd. Khalid Vs St. of U.P. & anr. - Criminal Misc. Application U/S 482 No. 11600 of 2021 decided on 19.08.2021,
2. Gaurav Sabbarwal Vs St. of U.P. - Criminal Misc. Application U/S 482 No. 1224 of 2021 – decided on 19.08.2021,
3. Aneeta Hada Vs Godfather Travels and Tours Private Limited: (2012) 5 SCC 661,
4. Pawan Kumar Goel Vs St. of U.P. & anr.: 2022 SCC OnLine SC 1598.

(Delivered by Hon'ble Samit Gopal, J.)

1. Heard Ms. Pushpila Bisht and Shri Ashish Malhotra, learned counsels for the applicant, Shri Ajay Kumar Singh, Holding Brief of Shri Birendra Singh, learned counsel for the O.P. No.2, Shri A.N. Mulla, Shri Shashi Shekhar Tiwari and Shri Jitendra Kumar Jaiswal, learned AGAs for