

**Kariyappa Vs. Haladappa**

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**Court :** Karnataka

**Decided On :** Aug-19-1988

**Reported in :** AIR1989Kant163; ILR1988KAR3269

**Judge :** K. Shivashankar Bhat, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 21, Rule 32(5)

**Appeal No. :** Civil Revn. Petn. No. 3285 of 1987

**Appellant :** Kariyappa

**Respondent :** Haladappa

**Advocate for Def. :** U.L. Narayana Rao, Adv. for ;M. Raghavendrachar, Adv.

**Advocate for Pet/Ap. :** H.G. Ramesh, Adv.

**Judgement :**

ORDER

1. This Civil Revision Petition is by the decree-holders, whose execution case was rejected by the Executing, Court. On 26-2-1988, after hearing the learned Counsel for the petitioner, I had allowed the petition and directed the Executing Court to proceed with the execution. On the said date, even though the respondent had been served with the notice of the C.R.P. he was not present and he was not represented by any Counsel. Thereafter, I.As . I to III were filed by the

respondent, seeking the said order to be recalled and other incidental reliefs. The reason for his absence and non-representation at the time of the said disposal of the C.R.P. is fully explained by the respondent. Sri H. G. Ramesh, the learned Counsel for the decreeholder, fairly did not oppose the said I.As. Consequently, my order dated 26-2-1988 is recalled. The learned Counsel for both parties were ready for arguments on merits of the C.R.P. and they were fully heard.

2. A few facts are necessary to be stated. Decree-holder filed a suit seeking a decree against the defendants 'for permanent injunction restraining them from trespassing into the suit schedule sites and putting any structure thereon and also from interfering with the plaintiff's peaceful possession and enjoyment thereof.' It is not necessary to refer to the incidental relief sought in the plaint. The schedule gave the particulars of three sites as K.Nos. 16, 17 and 18. In the plaint, it was averred that the defendants were trying to put up some structure on the properties of the plaintiff under the guise of putting up a shed in the site No. 19 belonging to defendant. This suit was ultimately numbered as O.S. 133/1972 (on transfer from another Court, where it was filed as O.S.417/1970). The suit was dismissed on 26-6-1974. But, on appeal, the suit was decreed on 25-8-1975, in R.A. No. 138/1974. The Second Appeal, R.S.A.No. 1089/1975 filed by the defendants was dismissed by this Court at the stage of admission.

3. In the course of arguments, it was brought to my notice that, subsequently, the defendants filed a suit O.S.104/1976 for a declaration of their title and possession of these properties. The suit was dismissed on 8-8-1983, and the appeal R.A.No. 5/1983 filed by them is pending in the Court of the District, Judge, Shimoga. It seems the Appellants in the said appeal filed I.A.III seeking, inter, alia, stay of the execution in Execution Case , No. 82/1984 (i.e. the execution case, out of which, the present C.R.P. has arisen). But the said I.A.III was rejected by the learned District Judge by his order dated 3-9-1986, holding that, obviously, the suit properties were with the respondents therein. The said appeal R.A. 5/1983, however, is still pending.

4. In this execution case, the decree holder filed I.A.I. on 17-10-1984, for an order to appoint a Commissioner for removal of the superstructure unauthorisedly built

by the judgment-debtor in violation of the injunction decree. The Executing Court rejected the execution case and the said I.A.I. observing that, (i) the execution petition does not disclose as to when and on what date the judgment-debtor violated the decree and put up the construction, when the judgment-debtor has specifically pleaded in his objection to the execution case, that the superstructure was constructed in the year 1968, (ii) it was not brought to the notice of the Court 'by filing any of the affidavits of the adjacent inhabitants to satisfy the Court that prima facie, there is a violation of perpetual injunction and judgment-debtor has done so intentionally in violation of the decree', (iii) 'even if this Court conducts an enquiry in order to provide an opportunity for the decree-holder to prove the violation of the perpetual injunction, he may not succeed because now after this order he has to find out some day, time and evidence in order to strengthen his case.' Under these circumstances, the petition was held to be very vague.

5. Another reason of the Executing Court is found in para 8 of its order, thus :

'8. No. doubt the defendant's suit O.S.104/76 which has been dismissed by the Hon'ble Civil Judge, Shimoga, on 8-8-1983 is for declaration of title to the petition schedule premises and also for possession. Even if it has been considered that they have sought for possession, it cannot be held that the decree-holder is in possession of the property unless he shows prima facie that he has been continued to be in possession of the suit schedule property on the strength of the decree obtained in R.A. No. 138/74 and the judgment-debtor has violated the decree and put up this construction. Putting up any kind of superstructure is not an easy thing. It requires hours of business with sufficient men, material and money and also high influence. So under the above said circumstances, I hold that the decree-holder-petitioner has not made out a prima facie case as to the cause of action, time and date of violation of the decree. So I hold that both of these applications are liable to be dismissed.....'

6. In the objection statement filed by the judgment-debtor to the I.A. in the execution case, he stated that, the house referred by the decree-holder was put up in the year 1968. There is a suggestion that the decree-holder dispossessed the judgment-debtor after the appeal R.A. 138/1974 was allowed and, therefore,

question of trespass did not arise. It is admitted by him that, he along with others had filed a suit for possession from the decree-holder.

7. From a narration of the above facts, following inferences are inevitable :-

i) The suit properties were in lawful possession of the decree-holder as on the date of the suit, O.S. No. 133/1972.

(ii) The judgment-debtor has been restrained from interfering with the peaceful possession of the decree-holder in respect of the schedule properties.

(iii) Schedule properties are described as three sites.

(iv) The suit was filed at a time, when the judgment-debtor attempted to put up a shed.

(v) The judgment-debtors cannot assert that they were in lawful possession of the suit properties on the date of the suit, O.S.133/1972.

(vi) Nowhere there is a clear assertion or finding as to whether the suit schedule properties comprised any superstructure or not, though from the description of the sites in the schedule to the plaint, it is possible, prima facie, to infer that the suit properties were vacant sites on the date of the suit.

(vii) The execution case is not barred by any law of limitation.

(viii) The claim of the judgment -debtor and others seeking possession of the properties is pending in appeal.

8. The prayer for the appointment of a Commissioner for the removal of superstructure was made as per I.A.I. in execution case, as already stated.

9. Sri Ramesh, learned Counsel for the petitioner, contended that - (A) it was not open to the judgment-debtor to contend that the superstructure existed even prior to the suit having regard to the description of the properties in the injunction decree; (B) under O. 21 R. 32(5), C.P.C., the superstructure put up by the judgment-debtor can be directed to be removed in execution even though the

decree is one of prohibitory injunction; (C) at any rate, decree holder is entitled to seek execution of the decree under O. 21R. 32(I), CPC, by seeking the detention of the judgment-debtor in civil prison or by attachment of his property.

10. Sri U. L. Narayana Rao, learned Counsel for the respondent, read an extract from the written statement of the decree-holder, in the suit (second suit referred earlier) filed by the judgment-debtor and others, to show that, admittedly, a house existed already in the suit properties. The learned Counsel further contended that material placed before the Court was insufficient to take any action under O. 21 R. 32(I) C.P.C., as there was no wilfull failure to obey the decree. It was also contended that the provision of O.21 R. 32(5) was inapplicable to the decree in question, which is nothing but a decree of prohibitory injunction.

Re. Order 21 Rule 32(5) C.P.C.

11. Order 21 Rule 32 provides for execution of decree for specific performance, for restitution of conjugal rights or for an injunction and O. 21 R. 32(5) governs the execution of a decree for specific performance of contract or a decree of injunction. The word 'injunction' is not controlled by its nature being mandatory or prohibitory. Therefore, Sri Ramesh, contends that the scope of O. 21 R. 32(5) should not be confined to injunctions other than prohibitory. The learned Counsel urged that, limiting the scope of O. 21 R. 32(5) to mandatory injunctions would result in hardship to a decree-holder of a prohibitory injunction, compelling the latter to file a fresh suit to realise the fruits of his earlier decree.

12. Before adverting to the decisions of other High Courts cited before me in this connection, it is necessary to refer to the decisions of this Court.

13. In *Moulie v..Hiraji*, 1963 Mys LJ(Supp) 479, the decree-holders sought execution of a decree which was in the nature of a prohibitory injunction. The execution sought was under O. 21 R. 32(I) by the detention of the judgment-debtors in civil prison. That decision has no relevancy to consider the question pertaining to the scope of O. 21 R. 32(5).

14. *Gundila Manjappa Shetty v. Manjakke Shedthi*, AIR 1961 Mysore 268, again does not help the petitioner's contention as to the scope of O. 21 R. 32(5). There, by a perpetual injunction, the judgment-debtor was restrained from interfering with the right of the decree-holder to take water from the water course. By deepening his land after the decree, the judgment-debtor made the water to percolate into his land causing diminution in the supply of water to the land of the decree-holder. Hence, an order was sought under O. 21 R. 32(l) C.P.C. seeking the detention of the judgment-debtor in the civil prison. The Executing Court made an order directing the judgment-debtor either to lower the water course abutting his land so that water may not percolate into his land or to suitably raise the level of his land, failing which, the judgment-debtor has to be detained in the civil prison. This decision was challenged without success before this Court. It was held at paras 9 to 12, that the direction of the Executing Court was not made under O. 21 R. 32(5), but the one made in pursuance of sub-r. (1) of R. 32 of O. 21 and such an order of the Executing Court was made only to give an opportunity to the judgment-debtor to obey the decree.

15. In *President Roshan Mosque v. Sharfunnissa*, ILR (1986) Kant 3243 the defendants took forcible possession of a property in respect of which the decree-holder had obtained an order of injunction against them from interfering with the possession of the decree-holder. Hence, the execution case was filed seeking delivery of possession of the property, which was termed as one for restitution of the property to decree-holder. Such a relief was held not possible under S. 144 C.P.C., as the said provision comes into play only when as a result of the decree, a party has taken possession of a property and then the said decree is reversed or modified. At para 10, it is observed : -

'10. Order 21 Rule 32 C.P.C. clearly lays down as to how a decree for injunction can be executed. Order 21 Rule 32 C.P.C. says that where a decree for injunction is passed and where he had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced by his detention in the civil prison, or by the attachment of his property, or by both. This is the only mode of execution of a decree for permanent injunction. Rule 32 does not contemplate the restitution at all. The remedy available to a party in such a case of forcible dispossession is by

way of suit.'

Rule 32 of Order 21 of C.P.C., thus was held inapplicable to effect restitution of the properties, possession of which was lost to the decree-holder in spite of a decree prohibiting the judgment-debtor from interfering with the possession of decree-holder.

16. The view taken generally by various High Courts, is that sub-r. (5) of O. 21 R. 32 is applicable only to mandatory injunctions and if a prohibitory injunction is disobeyed, a fresh cause of action arises and the remedy is to be by filing a fresh suit. This principle is stated in a Full Bench decision of Delhi High Court in Sarup Singh v. Daryodhan Singh : AIR1972 Delhi142 . After referring to the illustration to the said sub-r. (5), the Full Bench stated :

'6 This shows that act which is authorised by sub-rule (5) to be done consists of something which may be done so far as practicable by the decree-holder himself at the expense of the judgment-debtor. The decree of the Court directing the judgment debtor to quit and vacate the premises cannot constitute an act which may, without the will and violation of the judgment-debtor, be done by the decree-holder.

Obviously, the decree-holder cannot vacate the premises in place of the judgment-debtor and deliver its possession to himself and recover its costs. Reference may also be made to the distinction in the language of sub-r (3) of R. 35 and of sub-r. (5) of R. 32; while in the former, the possession is to be delivered through its officers, in the latter the act is to be done by the decree-holder or by (and not through) another person. consequently, obedience of the injunction to vacate cannot be done by any officer or other person appointed by the Court as well.'

17. To the same effect are the rulings in Nari Chinnabba Chetty v. E. Chengalroya Chetty : AIR1950 Mad237 , Joseph v. Makkaru Pillai : AIR1960 Ker127 . Murari Lai v. Nawal Kishore and Evuru Venkata Subbayya v. Srishti Veerayya : AIR 1969 AP92 . Earlier rulings of the other High Courts have been referred in these decisions.

18. However, two more decisions are required to be referred : (i) Harihar Pandey v. Mangala Prasad Singh : AIR1986 All9 and (ii) Ram Charan Sikdar v. Jogamaya Basu : AIR1978 Cal193 .

19. In the Calcutta case cited by Sri Ramesh, the decree-holder was obstructed in the use of the pathway by the pillars constructed by the judgment-debtor, after the decree for permanent injunction was passed against the judgment-debtor. The Executing Court directed the removal of the obstruction and directed the decree-holder to take steps for execution by removing the obstacles raised by the judgment-debtor. This order was reversed by the appellate Court holding that in the absence of a mandatory injunction, such an order cannot be made, in execution of a decree.

20. After referring to the Gundila case AIR 1961 Mysore 268 and a decision of Madras High Court : (1977)2MLJ19 , the learned Judge upheld the order of the Executing Court and held that the decree-holder is entitled to the protection of the executing Court in the exercise of his right to use the pathway. The ratio has to be inferred from page 194, wherein, after referring to the decision of Madras High Court, it was observed : AIR1978 Cal193 :

'7 ..... Order 21 R. 32(5) of the Code is not invoked by the decree-holders on the ground that the appellants as judgment-debtors have not performed any positive act directed by the Court but that they are preventing the clearance of the shrubs by the decree-holders for the proper use of the pathway. Such interference with the clearance of the thorny shrubs will amount to an indirect attempt on the part of the judgment-debtors to interfere with the plaintiffs' user of the pathway. If, in fact, the judgment-debtors have not obstructed or prevented the clearance of the shrubs by the decree-holders, they would not have approached the executing court for the appointment of a Commissioner to clear the thorny shrubs. As such circumstances, it was held that the application under O. 21 R. 32(l) and (5) was maintainable .....

This again cannot be read as laying down the proposition in the terms argued by Sri Ramesh. The decision of this Court in Gundila's case was relied and the ratio has to be applied to the power of the Court under O - 21 R. 32(l) enabling it to

enforce the prohibitory injunction in terms of the said provision.

21. In the Allahabad case AIR 1986AR 9 also, disputes pertained to a right of passage. The decree in effect was a decree restraining the judgment-debtor from obstructing, the user of the pathway. Since, there were obstructions, the decree-holder sought in execution the attachment of the offending constructions, removal of them and detention of the judgment-debtor in civil prison. The contention of the judgment-debtor that such an execution of the decree was impermissible, was rejected. Paras 16 to 18 may usefully be quoted here:

'16. The various clauses of R. 32 i.e. 1, 2 and 3 are but indirect methods devised to enforce compliance of injunction decrees each being an intermediate step for further action. From this we cannot, however, conclude that execution of decree for prohibitory injunction should end there. When the judgment-debtor commits gross violation of the decree so as to nullify the very decree the execution cannot be so limited and the decree-holder driven to file a fresh suit. Such an interpretation cannot be entertained and would be taking rather a too technical and narrow view of the matter. The law has always expressed its dislike for multiplicity of proceedings and has leaned in favour of an interpretation which would prevent multiplicity of proceedings rather than the one which will generate it.

17. The significant words used there are the court may 'in lieu of or in addition to all or any of the processes aforesaid i.e. attachment of property or detention in civil prison. This expression enlarges the scope of authority of the court to execute the decree in the manner provided in sub-r. (1) or (2) and also under sub-r. (5). The rule empowers the court to 'direct that the act required to be done' may be done so far as practicable by the decree-holder etc. What some courts have interpreted is that the term 'act required to be done' only refers to a mandated act under the decree. This narrow meaning, in my view, cannot be assigned to this term for the act referred to may relate to the one for which decree for specific performance had been granted or to any other act also the performance of which may be essential for enforcing the decree.

18. We must now examine as to what prevents the court from executing the decree for prohibitory injunction under sub-r. (5)? According to some High Courts

the expression 'an act required to be done' limits its use only to mandatory decree. 'An act required to be done' cannot necessarily mean a positive act only and may also include acts which one is precluded from doing by the decree. When a decree restrains a party from doing a particular act it must imply that he shall not act in a manner so as to cause the very act to be done or performed which he was precluded from doing. He must not allow himself to become an instrument for disobeying the injunction and must avoid doing anything that may cause its infringement.'

Thereafter General Clauses Act was relied as to the scope of the word 'act' so as to include 'illegal omission'. Referring to sub-rr. (1) to (5) of O. 21 R. 32, it was held :

'19..... The rules are merely a device to achieve an objective. i.e. to enforce the decree granted to a party and must not be allowed to be frustrated by any kind of highhandedness displayed by the party bound by it. In my view, therefore, there is nothing in O. XXI, R. 32, CPC, to prevent execution of the decree for prohibitory injunction also, in appropriate cases of course under sub-r. (5) thereof. Causing of obstruction to the passage by judgment-debtors was in clear violation of the decree. The decree-holder had the right to either have him sent to civil prison or to proceed under sub-r. (5) without first resorting to sub-cl. (1) or (2).'

The High Court, proceeded to say that when the decree prohibited the judgment-debtor from carrying any obstruction to the passage it implied keeping the way free of obstruction and any act as would cause an obstruction on the passage to be removed must be deemed to be an act 'required to be done' by the judgment-debtor within the broader meaning of this term.

The ratio of the decision of this Court (referred earlier) is that the power to restore the status quo ante was inferred as part of the power vested under O. 21, R. 32(I). In the exercise of its power, the Court may afford a proper opportunity to the judgment-debtor to obey the injunction order by such a direction, so that prohibitory injunction is fully respected. If the judgment-debtor fails to comply with such a direction, he can be proceeded against under O. 21 R. 32(I) itself.

22. The basic principle that governs all such situations is the one found at para 11 of AIR 1961 Mysore 268, as --

'(11)..... It is, in my opinion, indisputable that a person disobeys an injunction not only if he fails to perform an act which he is directed to do but also when he does an act which he is prohibited from doing. There is as much disobedience in the one case as in the other.

The decree-holder was therefore clearly entitled to ask the executing Court to direct the judgment-debtor to obey the injunction and in default to commit him to civil prison.'

23. However, the Allahabad decision assumes that an obligation to restrain from acting in a particular manner would include an obligation to erase the effect of an act performance of which was prohibited and this obligation can be enforced under O. 21 R. 32(5); doing of an act is equated to undoing of the effect of the prohibited act with respect, I cannot agree to this reasoning. If the 'act to be done' under the decree also includes 'an act to undo' the prohibited act then certainly provisions of O. 21 R. 32(5) will be attracted. The language of the said provision does not provide for such an interpretation. The Parliament, while amending several provisions of the Code of Civil Procedure in the year 1976, is presumed to have been aware of the earlier interpretations given to O. 21 R. 32(5) by several High Courts; but it has not amended this provision, thereby accepting the views of those High Courts.

24. Consequently, I am of the view, that the provisions of O. 21, R. 32(5), CPC is inapplicable to enforce the terms of a prohibitory injunction.

Re. Order 21, Rule 32(I):

25. The learned Counsel for the petitioner contended that dismissal of execution case, without giving an opportunity to the decree-holder to seek an appropriate remedy under O. 21, R. 32(I) resulted in failure on part of the Executing Court to exercise its jurisdiction, while the learned Counsel for the respondent contended that the contents of the execution case were vague and no case for invoking this

provision was made out. The contentions (A) and (C) of the learned Counsel fall for consideration, while examining this question.

26. Sri Narayana Rao relied on Shivamurthy v. Dannamma Devi Cycle Mart : AIR1987 Kant26 wherein, it was held that under O. 21 R. 32(I) C.P.C., the Court cannot make an order of detention of the person unless it is satisfied that the person had an opportunity of obeying the decree and yet has willfully disobeyed it. The learned Counsel urged that the burden of bringing out the case to invoke the said provision was entirely on the decree-holder, for which purpose, the following observations at page 2131 (of ILR Kant) : (at p. 28 of AIR) in Shivamurthy's case were referred :

'7 ..... Hence, what is required of the person seeking execution of the decree for injunction under the sub-rule is to place materials before the executing Court as would enable it to conclude (i) that

the person bound by the decree was fully aware of the terms of the decree and its binding nature upon him; and (ii) that that person has had an opportunity of obeying such decree, but has willfully i.e., consciously

and deliberately, disobeyed such decree, so that it can make an order of his detention as sought for. Thus, the onus of placing materials before the executing Court for enabling it to record a finding that the person against whom the order of detention is sought has had an opportunity of obeying the decree for injunction, but has willfully disobeyed it, lies on the person seeking such order of detention, test the person seeking deprivation of the liberty of another cannot do so without fully satisfying the Court about its need.'

27. It is for the decree-holder to prove the willful disobedience of the decree by the judgment-debtor. 'Willful disobedience' is a question of fact, existence of which has to be inferred from direct or circumstantial evidence. In a particular case, the decree-holder may establish the factum of willful disobedience on the part of the judgment-debtor, by the circumstances of the case including the nature of the plea taken by the Judgment-debtor in answer to the execution case. If the conduct of the judgment-debtor as revealed from his plea read with the circumstances of the

case leads to a conclusion that the said conduct was a deliberate one, and the judgment-debtor was consciously attempting to ignore the decree, the Executing Court may be justified in drawing -the inference that there has been a wilfull disobedience. The nature and quantum of the evidence or material to draw such an inference, and to discharge the onus cast on the decree-holder cannot be formulated in abstract terms. Each case would depend upon the facts and circumstances involved therein.

28. In Shivamurthy's case : AIR1987 Kant26 , an inference was drawn by the Executing Court against the judgment-debtor 'merely on the basis of rival arguments heard by it and not on the basis of any material placed before it by the parties' (vide para 4 of the said decision). Therefore, the said order of the Executing Court was reversed by this Court.

29. Having regard to the particular facts and circumstances of a case 'willful disobedience' may also be inferred, by the Executing Court after giving an opportunity to the judgment-debtor to undo the wrong by him earlier, in violation of the terms of the decree, as happened in Gundila's case AIR 1961 Mys 268. willfulness connotes a 'deliberate action', conduct moulded by an obstinacy to act, consciously disregarding an injunction against such a conduct. For example, in the case of a right of way, the judgment-debtor may plead that on a particular day, he had to put up a fence across it to avert a major disaster and not with a view to obstruct the decree-holder. He may agree to the removal of the obstruction or agree to provide a convenient alternate pathway to the decree-holder, when called upon to do so under O. 21, R. 32(I), C.P.C.; in such a situation, disobedience cannot be termed as willful. But the initial onus to place the relevant material for an action against the judgment-debtor will be always on-the decree-holder,

30. It was argued by the learned Counsel for the petitioner that Executing Court cannot go behind the decree and the basis on which the said decree was passed. On this hypothesis, it was argued that the decree -holder continued in possession of the sites in question. The observations of the Supreme Court in Ramaswamy Aiyengar v. T. N. V. Kailash Thevar : [1951]2SCR292 and of this Court in Moulia v. Hiraji, 1963 Mys LJ (Supp) 479 were referred.

31. It is certainly true that the parties to a decree cannot be allowed to go behind the terms of the decree made by a competent Court. Public policy requires that the stability of a decree cannot be allowed to be disturbed by a party to the decree which has become final and to go behind it and put forth a contradictory stand. If principles of res judicata would bar the party from taking a contention which is opposed to the basis of an earlier decree to which he was a party, it is all the more necessary to apply this salutary principle in execution proceedings also. In *Burn & Co. v. Their Employees* : (1957)ILLJ226SC , the Supreme Court observed, regarding the doctrine of res judicata :

' (6)..... but the principle underlying it, expressed in the maxim 'interest rei publicae ut sit finis litium' is founded on sound public policy and is of universal application. (Vide Broom's Legal Maxims,

Tenth Edition, page 218). 'The rule of res judicata is dictated' observed Sir Lawrence Jenkins C.J. in *Sheoparsan Singh v. Ramnandan Prasad Narayan Singh*, 43 Ind. App. 91: ILR 43 Cal 694: AIR 1916 PC 78,'by a wisdom which is for all time'.

32. It was contended that the facts of this case reveal that the possession of the suit properties is with the decree-holder and on this basis the decree was made. This finding has been affirmed by this Court in R.S.A. 1089/1975 and subsequently followed in I.A.III in R.A. 5/83 referred already; it will be destroying the finality of such a decree, if the Executing Court is to hold otherwise. Since, I am remitting the case to the Executing Court, I am not giving any finding on this question at this stage.

33. It is not the case of the judgment-debtor that the execution case is barred by limitation. Therefore, non-mentioning of the date of the alleged obstruction or trespass in contravention of the terms of decree cannot have much significance, at the outset of the proceedings. Therefore, the said reasoning of the lower Court has to be set aside.

34. The learned Counsel for the petitioner pleaded for an opportunity to invoke O. 21 R. 32(I) to safeguard the interest of the decree-holder. Such a plea was also

made before the Executing Court, as is clear from its observations at para 7 of its order, when it says :

'Even if this court conducts an enquiry in order to provide an opportunity for the decree-holder to prove the violation of the perpetual injunction, he may not succeed because now after this order he has to find out some day, time and evidence in order to strengthen his case. So under the above said circumstances, I hold that the petition is very vague.'

Obviously, there has been misconception on the part of the decree-holder as to the procedure to be adopted and the provisions of law to be invoked. Interest of justice requires that proper opportunity should be given to the decree-holder to set right the course of proceedings.

35. Consequently, I set aside the order under revision and remit the matter to the Executing Court, with liberty to the parties to file additional or further applications or statements and to produce appropriate materials, in support of their respective contentions.

C.R.P. is allowed and the case is remitted back to the Executing Court.

36. Ordered accordingly.

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