HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

****

CIVIL REVISION PETITION No.3444 OF 2016

Between:

1. Md. Showkath Ali, S/o. Ghouse Saheb,
   Occ: Business, R/o. Near Big Mosque,
   Ongole Town, Prakasam District.
2. Md.Hameed, S/o. Ghouse Saheb,
   Occ: Business, R/o. Near Big Mosque,
   Ongole Town, Prakasam District. …. Petitioners

Versus

1. Chebrolu Saraswathamma,
   D/o. Late Ananthaiah, R/o.D.No.1-120A(3),
   4th Lane, Gopalanagar, Ongole Town,
   Prakasam District. …. Respondent.

DATE OF ORDER PRONOUNCED : 15.10.2026

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE PURUSHOTTAM KUMAR CHINTALAPUDI

1. Whether Reporters of Local Newspapers may be allowed to see the order? Yes/No

2. Whether the copy of order may be marked to Law Reporters/Journals? Yes/No

2. Whether His Lordship wishes to see The fair copy of the order? Yes/No

_____

PURUSHOTTAM KUMAR CHINTALAPUDI, J

*** HON'BLE SRI JUSTICE PURUSHOTTAM KUMAR CHINTALAPUDI**

+ C.R.P. No.3444 OF 2016

% 15.10.2026

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   Prakasam District. …. Respondent.

! Counsel for the Petitioners : Nimmagadda Revathi

^ Counsel for the Respondent : Naga Praveen Venkayalapati

> Head Note:

? Cases referred:

1. (2004) 1 SCC 287
2. AIR 2004 SC 4377
3. (2007) 2 SCC 551
4. AIR 1991 Calcutta 161
5. AIR 191 Punjab & Haryana
6. 1970 (1) SC 670
7. (2017) 5 SCC 371
8. C.A. No.10047/2025 (SLP© No.1842/2023, Dt.05.08.2025
9. AIR 1954 SC 340(1)
10. (2012) 4 SCC 751
11. (1962) 2 SCR 747
12. AIR 1987 Orissa 264

This Court made the following:

Date of reserved for orders : 24.07.2026
Date of pronouncement :15.10.2026
Date of uploading :15.10.2026

Neutral Citation: _____

APHC010697802016

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI **[3606]**

THURSDAY, THE 15TH DAY OF OCTOBER 2026

PRESENT

THE HON'BLE SRI JUSTICE PURUSHOTTAM KUMAR CHINTALAPUDI

CIVIL REVISION PETITION No.3444 OF 2016

Between:

1. Md. Showkath Ali, S/o. Ghouse Saheb, Occ: Business, R/o. Near Big Mosque, Ongole Town, Prakasam District.
2. Md.Hameed, S/o. Ghouse Saheb, Occ: Business, R/o. Near Big Mosque, Ongole Town, Prakasam District.

...Petitioners

AND

1. Chebrolu Saraswathamma, D/o. Late Ananthaiah, R/o.D.No.1-120A(3), 4th Lane, Gopalanagar, Ongole Town, Prakasam District.

...Respondent

Petition, under Section 115 of the CPC, is filed by the petitioners aggrieved by the order, dated 23-06-2016, passed in E.A. No.1185 of 2014 in E.P. No.49 of 2008 in O.S. No.56 of 2006, by the Principal Senior Civil Judge at Ongole.

IA No.1 OF 2016 (CRPMP 4420 OF 2016)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in E.P. No.49 of 2008 in O.S. No.56 of 2006 on the file of the Principal Senior Civil Judge, at Ongole, Pending disposal of main Revision Petition.

IA No.1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to extend the interim order dated 23.12.2016 in C.R.P M.P. No.4420 of 2016 in CRP No.3444 of 2016 until further orders.

IA No.1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the registry to enlist I.A.No. 1 of 2018 in CRPMP No.4420 of 2016 in CRP.No.3444 of 2016 under the caption for "extension of interim order" in tomorrow's cause list in view of the imminent urgency in the matter, in the interests of justice.

Counsel for the Petitioners : Nimmagadda Revathi

Counsel for the Respondent : Naga Praveen Vankayalapati

The Court made the following

ORDER:

This Revision is preferred under Section 115 of Code of Civil Procedure, 1908 (In short, referred as the 'Code') seeking the relief against the impugned order, dated 23.06.2016, passed in E.A. No.1185 of 2014 in E.P. No.49 of 2008 in O.S. No.56 of 2006 on the file of the Court of Principal Civil Judge (Senior Division), Ongole, Prakasam District, wherein the learned Judge dismissed the E.A. filed by the petitioners, seeking the relief under Section 47 Read with Section 151 of the Code to dismiss the E.P.

2. The Revision Petitioners are the Judgment Debtors (for short, 'JDRs') and the Respondent is the Decree Holder (for short, 'DHR') before the trial Court.

3. For better appreciation, petitioners are referred as JDRs and respondent is referred as DHR.

4. Heard Ms. Nimmagadda Revathi, learned counsel for the Petitioners/JDRs, and Mr. Naga Praveen Vankayalapati, learned counsel for Respondent/DHR.

Factual Matrix:

5. The DHR filed the suit for recovery of amount against the JDRs *vide* O.S. No.56 of 2006 on the file of the trial Court. The JDRs are shown as the defendant Nos.1 and 2.

6. The DHR alleges that, the JDRs 1 & 2 are the brothers. JDR 1 has borrowed an amount of ₹1,00,000/- for his business expenses

from the DHR on 10.06.2002 and he executed a promissory note in favour of the DHR at Ongole (for convenience referred promissory note A). Subsequently, he did not pay the amount, but made a part payment of ₹1,000/-. Again JDRs 1 and 2 borrowed an amount of ₹75,000/- on 10.11.2003 for their business expenses from the DHR and jointly executed a promissory note in favour of the DHR at Ongole (for convenience referred as promissory note B). Subsequently, the JDRs 1 and 2 did not pay the amount. Then the DHR, after issuing a legal notice, filed the suit for recovery of amount.

7. The JDRs 1 and 2 were served with summons, but did not appear and they remained *ex-parte*. The trial court proceeded further, and decided the suit, passing a decree *ex-parte* against the JDRs 1 and 2.

8. Having got the decree, the DHR moved the execution proceedings *i.e.,* E.P. No.49 of 2008 on the file of the trial Court against the JDRs 1 and 2 seeking the relief under Order XXI Rules 61 to 66 of the Code to attach the property of JDRs 1 and 2 and sale and realize the amount. In the said execution proceedings, notice was ordered to the JDRs 1 and 2. Upon receiving the notice, the JDRs made their appearance, and have filed an Application *vide* E.A. No.1185 of 2014 invoking the provision Section 47 R/w. 151 of the Code, raising the objection as to the decree that, the decree is un-executable, on the ground that, though Promissory Notes A & B are independent to each other, JDR 1 & 2 are jointly made liable. The DHR has filed counter, and contested. The learned Judge,

appreciating the facts, dismissed the E.A. No.1185 of 2014. Dissatisfied with the said dismissal of the JDRs Application, the JDRs have preferred the Revision.

Contentions of parties:

9. JDRs in E.A. No.1185 of 2014 raised the plea that, DHR instituted the suit basing on two promissory notes A & B; one is by JDR 1 for ₹1,00,000/-, and another promissory note for ₹75,000/-, by JDRs 1 and 2 jointly. Both the promissory notes are distinct to one another and they are based upon distinct cause of actions. The trial Court had passed a decree for total amount of ₹3,02,557/- with interest.

10. There is no joint and several liability for the JDRs to pay ₹3,02,557/-. The framing of the Suit itself is bad for joining distinct cause of actions. The decree therefore becomes un-executable. Therefore, JDRs under Section 47 of the Code have a right to question the executability, and thus, the EP has to be dismissed.

11. The DHR, refuted the said contentions with his counter, contending that JDRs 1 and 2 are the brothers. They borrowed amount for their business. The JDRs did not contest the matter in the Suit. After receiving the summons, they did not make their appearance in the suit and remained *exparte*. The trial Court has passed the decree directing the JDRs 1 and 2 to pay the sum of ₹3,02,557/- together with interest. Against the decree, the JDRs did not prefer any Appeal. After lapse of time, the JDRs are raising a point which is not relevant in the Execution Proceedings. As there is

no reference of Appeal, the decree is executable. Section 47 of the Code is not applicable to the present case. Hence, sought to dismiss the said Application.

Order of the trial Court:

12. The trial Court has elaborately discussed the contentions of both parties. The trial Court, in its impugned order, framed a point as follows:

> "Whether the decree dated 9.3.207 passed in O.S.No.56/206 is unexecutable and if so, the E.P. is liable to be dismissed?

13. The trial Court answered the point, that suit was filed for recovery of amount under two promissory notes; one executed by JDR 1 alone and another by JDRs 1 and 2. The JDRs 1 and 2 having remained *exparte* in the Suit, the Court erred in passing the decree making both the JDRs liable to pay the total amount on both promissory notes. As the defendants did not contest, the Court by mistake passed the decree in such way.

14. However, the learned Judge, held that, the Executing Court cannot go beyond the decree. He discussed section 47 of the Code, which says all the questions arising between the parties to the suit in which the decree was passed shall be determined by the Executing Court, but in this case the JDRs have a remedy under Order IX Rule 13 of Code, challenging the *exparte* decree, or they can prefer an Appeal under provisions of the Code challenging the decree. Without taking the recourse, questioning the validity of the

decree is not permissible. The decree is not *null and void,* the Court has proper jurisdiction. The error is that the JDR 2 is also made liable for the debt borrowed by the JDR 1 under promissory note A.

15. Learned Judge observed that, the Executing Court is bound to interpret the decree according to its plain meaning. The decree clearly shows that the JDRs 1 and 2 are liable to pay amount of the decree. As the JDRs have an option to challenge the decree before the appellate forum or under the provisions of the Code, the liability without challenging the same does sustain and the Court cannot go beyond the decree. With the said findings the learned Judge has dismissed the said Application E.A. No.1185 of 2014.

Arguments:

16. JDRs having aggrieved by the said dismissal, have reached this Court challenging the said impugned order, under Section 115 of the Code. The JDRs raised the grounds that the trial Court ought to have considered the cause of action against the JDRs as different and distinct. There cannot be any joint liability. Order II Rule 3 of the Code would apply that takes over the jurisdiction of the Court.

17. Ms. Nimagadda Revathi, learned counsel for JDRs, argued that, the trial Court has no jurisdiction to entertain the Suit and the decree passed without jurisdiction becomes void and nullity. There are some exceptions to go beyond the decree and one of such exceptions is the present case. The trial Court has exceeded its jurisdiction having no inherent jurisdiction. Section 47 of the Code is applicable at the execution proceedings. As the decree itself is

nullity, which goes to the root of the case of executability, the execution proceedings do not sustain.

18. She further submitted that, the suit itself is bad. The trial court without jurisdiction has entertained a suit with two different causes of actions, bringing different suits under common suit and relief. The liability to JDR 2 does not arise under promissory note A as JDR 2 did not execute. Therefore, adding two promissory notes as one cause of action though having different cause of actions and passing the decree against the JDRs is not correct.

19. Learned counsel relied on Section 47 of the Code, and argued that, though they remained *exparte*, in the Execution proceedings, they have a right to oppose the execution, in view of the legal impediment, that the decree fixed the liability to the JDR 2 for promissory note A.

20. In refuting the said contentions, Sri Naga Praveen Vankayalapati, learned counsel for the DHR, supported the impugned order stating that the Court has jurisdiction both territorial and pecuniary. The JDRs have executed the promissory notes and they have not contested before the trial Court. Had they contested, if the Court has considered their defence and passed a decree, then they can have strength. Any grievance against the decree and its liability, the JDRs have to challenge the decree in Appeal. Without challenging the said decree in Appeal, denying the relief to the DHR on the pretext of lack of jurisdiction or nullity is not correct. The learned counsel's argument is that when the liability of JDRs exists, the decree cannot be said nullity. The lack of jurisdiction is not the

ground taken before the trial Court. The cause of actions is correct. The trial Court has passed a proper decree and it shall be executed. The decree holder is suffering for realization of his decretal amount for the past several years. There are no merits and sought to dismiss the Revision.

21. The learned counsel for the DHR has relied on the decisions in ***Rafique Bibi (dead) by LRs v. Sayed Waliudin (dead) by LRs and others***[1], ***Balavant N. Viswamitra and others v. Yadav Sadashiv Mule (deceased by LRs) and others***[2], ***Prem Lala Nahata and another v. Chandi Prasad Sikaria***[3], ***Sk. Firoj and another v. Sakhya Singha Mulick and others***[4] and ***Taria alias Tara Chard v. Amar Singh and another***[5].

Analysis and Discussion:

22. I have heard the learned counsels for JDRs and DHR. The suit is filed for recovery of amount, on the basis of two separate promissory notes. The copy of the plaint shows that, the DHR has pleaded a cause of action, referring the causes for the Promissory Notes A and B, respectively. He calculated the court fee on each promissory note. Promissory note A, an amount of Rs.4,326/- and for Promissory note B, an amount of Rs.3,626/-, a total court of fee of Rs.7,952/- is paid.

23. The relief sought for in the plaint is as follows:

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[1] (2004) 1 SCC 287
[2] AIR 2004 SC 4377
[3] (2007) 2 SCC 551
[4] AIR 1991 Calcutta 161
[5] AIR 1991 Punjab & Haryana

> "The Plaintiff therefore prays that the Hon'ble court may be pleased to pass a decree and Judgment in favour of the Plaintiff and against the Defendants 1 & 2:-
>
> a) for recovery of Rs.1,87,057/- (Rupees one lakh eighty seven thousand and fifty seven only) from the 1st defendant;
>
> b) for recovery of Rs.1,15,500/- (Rupees one lakh fifteen thousand five hundred only) from the defendants 1 and 2;
>
> c) for subsequent interest from the filing of the suit till the date of realization;
>
> d) for costs of the suit and…."

24. This framing of suit is clear that, the DHR has sought independent relief(s) on two different promissory notes, against the JDRs. He did not seek the relief for joint decree, making the JDRs, liable jointly severally. However, the trial court, upon JDRs becoming *exparte*, has passed the decree, which is extracted herein below:

> "i) that the defendants 1 and 2 do pay to the Plaintiff a sum of Rs.3,02,557=00 together with subsequent interest at 12% p.a. on the principal amount of Rs.1,75,000=00 from the date of suit i.e., 16.02.2006 till the date of decre, and with subsequent interest at 6% p.a., from the date of decre, till the realization of the amount; and
>
> ii) that the defendants do also pay to the Plaintiff a sum of Rs.12,179=00 towards costs of the suit."

25. The decree, thus reflects that, the Promissory notes A & B are added together, for Rs.1,75,000/- taken as principal amount, then granted the decree for Rs.3,02,557/- for both the promissory notes claim amount. Decree does not say, joint and several liability. It says, the JDRs 1 & 2 are liable for total amount (two promissory

note amounts). It is apparent from the pleas of the parties that, JDR 1 & JDR 1 & 2, have independent liability for each promissory note. Joint liability is for Promissory note B, for principal amount of Rs.75,000/-, and sole liability for Promissory note A for the principle amount of Rs.1,00,000/-. The trial court added both the promissory notes and made total principal liability to Rs.1,75,000/- and decretal amount is for Rs.3,02,557/-.

26. The JDRs, claim is, the joinder of cause of actions is not correct. It is barred under Order II Rule 3 of the Code. Thus, it lacked the jurisdiction. It is relevant to refer here Order II Rule 3 of the Code:

> **"3. Joinder of causes of action -**
>
> (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.
> (2)Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit."

27. The argument of the JDRs is, the cause of actions can be joined, against the same defendant or defendants. In the present case, the JDRs 1 and 2 are not the same defendants, there are two promissory notes, executed by two different JDRs (Defendants). Therefore, according to the suit relief does not sustain, then the Court lacks jurisdiction, thus the decree passed becomes a decree

without jurisdiction, a nullity. A null and void decree, becomes un-executable. Therefore, the JDRs though remained *exparte*, they can challenge the decree under Section 47 of the Code.

28. I have gone through the contentions. Before answering this, the status of the JDRs in the suit is, they remained *exparte*; they did not raise their defence under Order II Rule 3 of the Code. This is relevant, that, the JDRs have not raised this defence of cause of actions or joinder of parties in the suit. The reason is the Code prescribes a scope, in case any such anomaly under Order II Rule 3 of the Code, the aggrieved party can invoke Order II Rule 7. It reads as follows:

> **"7. Objections as to misjoinder -**
>
> All objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement unless the ground of objection has subsequently arisen, and any such objection to so taken shall be deemed to have been waived."

29. This provision gave the protection to the opposite party to raise its objection at the earliest point of time in case of any such mis-joinder of parties or cause of actions, that too, before settlement of issues. If it is not taken, then it is deemed that, it is waived.

30. In the present case, the JDRs did not make their appearance before the trial court in the suit. They did not avail the opportunity to raise the defence of mis-joinder of parties or cause of action at the earliest point of time, they allowed the Court to pass the decree without their defence. The earliest point of time, means, in the suit,

before settlement of issues, but not after the decree, when they make their appearance first. Earliest point of time of appearance is referred to the proceedings in the suit, but not in execution proceedings. Thus, by provision, since the JDRs have not raised their earliest defence of misjoinder of causes of action, before settlement of issues, they have waived their right, and consequently, they cannot raise this defence in subsequent ancillary proceedings.

31. Thus, the contention of the JDRs, that, it effects Order II Rule 3 of the Code, thereby, the Court has no jurisdiction, consequently decree passed without jurisdiction is nullity, do not sustain. The JDRs are precluded to make such defence, that, decree is nullity under Order II Rule 3 of the Code in view of the non compliance under Order II Rule 7 of the Code. Consequently, the decree cannot be termed as void, or nullity or without jurisdiction.

32. The JDRs, have taken the stand of Order II Rule 3 of the Code in execution proceedings, invoking Section 47 of the Code. Section 47 of the Code reads as follows:

> **"47. Questions to be determined by the Court executing decree -**
>
> (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.
>
> [* * *]

> (3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.
> [Explanation I - For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.
> Explanation II -
> (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and
> (b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.] Limit of time for execution"

33. The provision *per se*, contemplates that the executing court can determine the questions placed before it, during the execution proceedings, relating to **execution**, **discharge** or **satisfaction** of the decree only but not for any other reasons.

34. The provision, as extracted above, would show that only on specific grounds, the executing court can consider the questions that are to be determined such as questions relating to their execution, discharge or satisfaction of the decree. In this case, the execution is questioned on the ground that the decree is nullity.

35. The legal position in this regard as to which amounts to nullity is laid on ***Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and others***[6], wherein the Hon'ble Apex Court held as follows:

[6] 1970 (1) SCC 670

> "6. A Court executing a decree cannot go behind the decree : between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.
>
> 7. When a decree which is a nullity, for instance, where it is passed without bringing the legal representatives on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record : where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction. In *Jnanendra Mohan Bhaduri & Anr. v. Rabindra Nath Chakravarti* (2) the Judicial Committee held that where a decree was passed upon an award made under the provisions of the Indian Arbitration Act, 1899, an objection in the course of the execution proceeding that the decree was made without jurisdiction, since under the Indian Arbitration Act, 1899, there is no provision for making a decree upon an award, was competent. That was a case in which the decree was on the face of the record without jurisdiction.

36. The principle laid is a decree becomes nullity only when legal representatives are not brought on record, and a decree is passed by a Court which has no inherent jurisdiction. Then only the decree validity can be challenged.

37. In ***Brakewel Automotive Components (India) Private Limited v. P.R. Selvam Alagappan***[7], the Hon'ble Apex Court has reiterated the above principles with Section 47 of the Code mandates, determination by an executing Court, questions arising to the parties or their representatives relating to the execution, discharge or satisfaction of the decree and does not contemplate any adjudication beyond the same and decree of Court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability thereof.

38. Further held that, the exercise of power under Section 47 of Code is microscopic and lies in a very narrow inspection hole and an executing court can allow objection to the executabilty of the decree if it is found that the same is *void ab initio* and is a nullity, apart from the ground that it is not capable of execution under the law, either because the same was passed in ignorance of such provision of law or the law was promulgated making a decree in-executable after its passing. None of the above eventualities as recognized in law for rendering a decree in-executable exists in the case in hand. For obvious reasons, we do not wish to burden this adjudication by multiplying the decisions favouring the same view. Executing Court can neither travel behind the decree nor sit in Appeal over the same or pass any order jeopardizing the rights of the parties therein. It is only in the limited cases where the decree is by a Court lacking inherent jurisdiction or is a nullity with the same is rendered nonest and thus is un-executable.

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[7] (2017) 5 SCC 371

39. In ***Odisha State Financial Corporation v. Vigyan Chemical Industries and others***[8], the Hon'ble Apex Court held as follows:

> "15. ..... The scope of interference at the stage of execution is limited to certain exceptions. As per Section 47, the Executing Court is empowered to examine the questions relating to execution, discharge, or satisfaction of the decree. It cannot go beyond the decree; but at the same time, when a plea is raised that the decree is a nullity and hence, unenforceable, the executing court is bound to examine and decide such an application on its merits.
>
> 16. It is a settled position of law that a court executing a decree cannot go behind the decree passed between the parties or their representatives, unless the decree is a nullity. The court must execute the decree according to its tenor, and cannot entertain objections on the ground that the decree is erroneous in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree, even if erroneous, remains binding on the parties. A decree may, however, be challenged in execution proceedings, if it is a nullity – for instance, if it is passed without bringing on record the legal representative of a person who was dead at the time the decree was passed, or where the cause of action was not maintainable, or if it was passed against a ruling prince without a certificate. An objection in that behalf may be raised in the execution proceedings. Similarly, when the decree is made by a court that has no inherent jurisdiction to pass it, an objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record."

40. The laid down consideration under Section 47 of the Code are thus a decree, is passed without inherent jurisdiction, obtained by fraud and against the wrong person, it becomes a nullity.

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[8] Civil Appeal No.10047/2025 (SLP (C) No.1842/2023), Dt.05.08.2025

41. Thus, the law laid down by the Hon'ble Apex Court is clear that an objection regarding maintainability, at the stage of execution, any objections can be raised as to the maintainability of the Suit. If those objections goes to the root of the jurisdiction of the Court, the Court exercising the jurisdiction without lacking jurisdiction and from the face of the record do not require adjudication for trial. The principle laid down, would show that the objections that goes into merits of the case which are triable, and the decided case by the Court is without competency of jurisdiction, then nullity of the decree would arise and this can be questioned under Section 47 of the Code.

42. DHR further relied on the following decisions in ***Kiran Singh and others v. Chaman Paswan and others***[9] and ***Pushpa Sahakari Avas Samiti Limited v. Gangotri Sahakari Avas Samiti Limited and others***[10].

43. Argument of learned counsel with support of ruling in ***Kiran Singh and others*** (9th *supra*) is that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up wherever and whenever it is sought to be enforced, even at the stage of execution, and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial or whether it is in respect to the subject matter of the action, strikes apart from the authority of the Court to pass any decree and such a defect cannot be cured even by consent. Learned counsel submits that evaluation

[9] AIR 1954 SC 340(1)
[10] (2012) 4 SC 751

of the suit, overvaluation of the suit or under violation of the Suit needs to be treated as it would be evading the jurisdiction.

44. In principle, the above ruling deals with the provisions of jurisdiction of the Court; Sections 9 and 21 without jurisdiction, Section 11 and Suits Valuation Act. The nullity of the decree is discussed above. The above ruling for the facts and circumstances do not apply.

45. DHR relied on a decision of the Hon'ble Apex Court in ***Pushpa Sahakari Avas Samiti Limited*** (10th *supra*). The above ruling deals with the objections filed under Section 47 of the Code but the facts do show the objection was the DHR moved the executing Court for execution of the decree prior to the expiry of 6 months period *i.e.,* premature execution. In those circumstances, Hon'ble Apex Court applied Order XXI of the Code stating that there is no such provision relating to execution of premature execution and the Court can reject it. The above ruling is distinguishable to the present facts of the case.

46. DHR further relied on a decision of the Hon'ble Apex Court in ***Balavant N. Viswamitra and others*** (2nd *supra*). His reliance in the above case is that the defendants were aware of the proceedings; they engaged a counsel; thereafter, they withdrew their appearance. The decree having been passed by the competent Court having jurisdiction thereby does not become nullity. Para Nos.9 and 10 therein are extracted hereunder:

> "9. The main question which arises for our consideration is whether the decree passed by the trial court can be said to

> be 'null and 'void'. In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction non est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings.
>
> 10. Before five decades, in Kiran Singh & Ors. v. Chaman Paswan & Ors., [1955] l SCR 117] this Court declared;
>
> > "It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up wherever and whenever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction.....strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties."

47. The Hon'ble Apex Court, in the above ruling, relied on ***Vasudev Dhanjibhai Modi*** (6th *supra*), ***Seth Hiralal Patni v. Sri Kali Nath*** [(1962) 2 SCR 747]. In the above ruling, the Hon'ble Apex Court held that a distinction exists between a decree passed by a Court having no jurisdiction and consequently being a nullity and not executable and a decree of the Court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of the procedure cannot be termed as in-executable by the Executing Court. The remedy of

a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior Court failing which he must obey the command of the decree. A decree passed by a Court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings.

48. From the above decision, it is ample clear that all irregular or wrong decrees or orders are not necessarily null and void. An erroneous or illegal decision which is not void cannot be objected in execution or collateral proceedings.

49. The above ruling applies to the present facts of the case. It is not the case that the Court has no competent jurisdiction, the objection of the JDR is joinder of cause of actions which is not laid under Order II Rule 3 of the Code. The answer is that Order II Rule 3 is a procedural aspect and such defect is curable, when on first instance taken by the opposite party the Code has given an opportunity to the opposite party to raise their objection at the earliest point of time to correct the defect or irregularity under Order II Rule 7 of the Code. That was not done by JDRs. Their right was waived. Therefore, Order II Rule 3 of the Code does not become a void defect, in making the decree a nullity. Therefore, the contention that the Court has no jurisdiction, without jurisdiction has passed the decree is not correct. It does not become null and void.

50. Learned counsel for the DHR relied on ***Prem Lala Nahata*** (3rd *supra*). The above ruling deals with misjoinder of parties or causes of action. It was held in that case that the objection of misjoinder of parties or causes of action is only a procedural objection. It is open

to the Court to proceed with Suit notwithstanding such defects and if the Suit results in a decision, the same cannot be set-aside in Appeal merely on that ground, in view of Section 99 of the Code, unless the conditions of Section 99 are satisfied.

51. The CPC considers objections regarding the framing of the Suit or joinder of parties only as procedural objection. This is on the same principle as of Section 21 of the Code which shows that even an objection to the territorial jurisdiction of the Court in which the Suit is instituted could not be raised successfully for the first time in an Appeal against decree unless the appellant is also able to show consequent failure of justice.

52. The above ruling is supportive to the present facts of the case. As the objection of the JDR or misjoinder of causes of action is procedural irregularity which can be cured but it cannot be questioned under execution as a nullity. The process left is to challenge it in appellate forum in irregularity or illegality in the decree.

53. The DHR relied on ***Rafique Bibi*** (1st *supra*), wherein the Hon'ble Apex Court dealt with void, null and void decree and held as follows:

> What is "void" has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely

> illegal or not passed in accordance with the procedure laid down by law."

54. The above rule also refers the nullity or voidability of the decree arises, if the Court passed a decree without jurisdiction. Factual aspects of this case do not refer that the Court has no jurisdiction.

55. The JDRs relied on the decision in ***Kiran Singh and others*** (9th *supra*), wherein the Hon'ble Apex Court held that a decree becomes a nullity if the decree passed by a court has no jurisdiction.

56. There is no dispute that, the trial court has territorial and pecuniary jurisdiction, even though the causes of actions are joined. The trial court with the jurisdiction has passed the decree. The error of adding cause of actions, is a curable one under the provision Order II Rule 7 of the Code. If that, curability is not invoked by the contesting party at the earliest point of time, they waives their right. The reason, is, it's an error, but not without jurisdiction, much less inherent lack of jurisdiction. Therefore, with the above factual aspects, legal position, the JDRs claim of decree as nullity is not tenable.

57. In ***Union of India v. Ashok Kumar Rasiklal and Company***[11], a Division Bench of the Orissa High Court held as follows:

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[11] AIR 1987 Orissa 264

> "There is no merit in this part of the argument as well. No objection as to the misjoinder of the causes of action was taken in the written statement. Rule 7 of Order 2 of the Code of Civil Procedure specifically provides that all objections on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues at settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived."

58. It applies to the present case. The JDRs have not taken this stand at the earliest point, now they cannot invoke.

59. It is now relevant to refer other aspects of the JDRs defences. It is not the case of the JDRs that they are not liable to pay the amount. It is their contention that the decree passed giving joint liability is not correct. They are not challenging the liability, but they are challenging the decree that joint liability is given. Any such challenge going to the root of liability is not the scope under Section 47 of the Code. Any question as to liability, shall be determined in the suit. Once, liability is fixed under decree, unless it is challenged or varied, it has to be executed. The suit reliefs are distinct for JDR 1, and JDRs 1 and 2 for the respective amounts. The total amount is not in dispute. Even otherwise, assuming for a moment, that a joint decree is passed, the individual liability of JDR 1 against the promissory note A and the liability of JDRs 1 and 2 against the promissory note B, independently, as prayed for does exist. Even under execution, the court upon attachment of the property, can restrict the attachment of sale to the extent of liability independently, by invoking the provisions under Order XXI of the Code, such as Rules 17, 64 & 66 of Order XXI. When the decree can be executed

independently limiting the liability, then, it cannot be said, *per se* as un-executable.

60. The passing of decree making liability may be an error, but not an illegality. The learned counsel for JDRs, has relied on the statement of the learned Judge, in his impugned order that, *"passing the joint decree is a mistake of the Court"*. The learned counsel has highlighted this, that, the court itself admitted.

61. The learned Judge did not go into the provisions of Order II Rules 3 and 7 of the Code. The learned Judge has gone on the premise that, a mistake has happened. The learned judge ought not to have noted so, in view of the existing legal position. By that, the law does not change. Even otherwise, though learned Judge stated so, his reasoning is, court cannot go beyond decree and dismissed the petition. His conclusion is right, though the reasons to the conclusion are not relevant. Thus, the trial court has rightly dismissed the application.

62. The statement of the learned judge, itself does not become a ground for the JDRs to avoid their liability, when the finding of liability is not challenged. The suit is framed for two distinct relief(s). The decree is for the total amount, liability of JDR 1 and JDRs 1 and 2. That liability under the decree is not null and void. When the JDRs did not raise their defence, at the earliest point of time, they now cannot claim after the decree.

63. The JDRs stand is not that, illegality arose without legal liability, but the court has made them liable, which in turn has led to

serious prejudice to the JDRs, without having a jurisdiction. If these serious issues are not there, the waiving of right to challenge Order II Rule 3 of the Code, now the JDRs under Section 47 of the Code are permitted to cover their legal impedement. Attempts to take advantage from their error of taking earliest defence, under the garb of Section 47 of the Code, they cannot be permitted to agitate it. JDrs which they failed to do directly cannot be permitted to do indirectly.

64. Thus, the law laid down, is a decree becomes un-executable on becoming nullity, only when a court has passed a decree without jurisdiction, or having not placed the legal representatives or obtained by fraud or passed against wrong person. In this case, D-2 is not a wrong person to promissory note B. His liability is there for it. His identity for Promissory note A is an error, but not liability. It does not laid that Order II Rule 3 defect makes the decree nullity, especially when that defence is waived and the opposite party allowed the court to proceed with passing of decree.

65. The decree has to be honored unless it is reversed by appellate forum. The JDRs are liable under the decree. Without questioning the liability of the JDRs before the Court, which has territorial and pecuniary jurisdiction, especially when the suit is filed for distinct reliefs, that the JDR 1 and JDRs 1 and 2 are separately liable for each promissory note and the JDRs have waived the defence cannot question the decree under Section 47 of the Code. The decree sustains, cannot be said as illegal.

Conclusion:

66. With the foregoing reasons, with the established legal position under the decisions, since Order II Rule 7 of the Code is applicable, and that there is no illegality of lack of jurisdiction to the trial court, the impugned order though not proper on reasons for dismissal, but the conclusion of dismissal is right, the impugned order does not require any consideration to interfere. Consequently, the Revision deserves to be dismissed.

67. It is made clear that, the observations in this order are concerned only to the purpose of this Revision and in the present circumstances, but not expressing the merits of the case, which shall be dealt, independently by the respective Courts.

Result:

68. In the result, the Civil Revision Petition is hereby dismissed. No order as to costs.

As a sequel, miscellaneous applications, if any, shall stand closed. *Interim* order, granted earlier, if any, shall stand vacated.

JUSTICE PURUSHOTTAM KUMAR CHINTALAPUDI

Date:15.10.2026
DSH

Whether the order is:

Speaking		Reasoned	√
Reportable	√	Non-Reportable	