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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**BEFORE**

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

+ **EX.P. 65/2021 and EX.APPL.(OS) 1341/2025**

**SH. PRITPAL SINGH**

S/O LATE SH. SUJAN SINGH

R/O 44 CANONS DRIVE, EDGEWARE,

MIDDLESEX HA 8704,

UNITED KINGDOM

TRUSTEE, SUJAN MOHINDER CHARITABLE TRUST

1 COMMUNITY CENTRE,

NEW FRIENDS COLONY, NEW DELHI- 110065 ....DECREE HOLDER

*(Through: Mr. Rajat Aneja, Mr. Kunal Gosain, Mr. Aditya Sharma, Ms. Anamika Bag and Mr. Kartikey Sikka, Advocates.)*

Versus

**1. MRS. JUPINDER KAUR MAKER**

W/O AJIT SINGH MAKER

R/O 2, KEWFERRY DRIVE NORTH WOOD

LONDON HA6 2NT

**2. AJIT SINGH MAKER**

S/O LATE SHRI S. SUJAN SINGH

R/O 2, KEWFERRY DRIVE NORTH WOOD

LONDON HA6 2NT

TRUSTEE, SUJAN MOHINDER CHARITABLE TRUST

1, COMMUNITY CENTRE,

NEW FRIENDS COLONY,

NEW DELHI-110065

....JUDGMENT DEBTORS



(Through: Mr. Gaurav Gupta and Mr. Rupal Gupta, Advocates for JD No.1. Mr. Desh Raj and Mr. Gaurav Gupta, Advocates for JD No.2.)

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Reserved on: 17.09.2025

Pronounced on: 06.10.2025  
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### **JUDGMENT**

#### **EX.APPL.(OS) 1247/2025 (APPLICATION ON BEHALF OF JUDGMENT DEBTOR NO. 2 - MR. AJIT SINGH MAKER UNDER SECTION 151 OF CODE OF CIVIL PROCEDURE, 1908 FOR DISMISSAL OF THE EXECUTION PETITION)**

The instant application is filed on behalf of Judgment Debtor No. 2 under Section 151 of Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) seeking dismissal of the present execution petition on the ground that the same is an abuse of process of law and is not maintainable.

#### **Relevant Facts**

2. The present execution petition has been filed by the Decree Holder, *inter alia*, seeking enforcement of the order dated 07.02.2020 passed by this Court in CS(OS) 3121/2011 titled "*Sujan Mohinder Charitable Trust & Anr. vs. Mohinder Kaur & Ors.*" and CS(OS) 558/2014 titled "*Maninder Singh Maker & Ors. vs. Ajit Singh Maker & Ors.*". The said suits were dismissed as withdrawn on account of the settlement arrived at between the parties.

3. As per the case set up by the Decree Holder, it was agreed under the settlement that Judgment Debtor No. 1 would transfer her entire right, title, ownership, possession and interest in the property bearing No. 1,



Community Centre, New Friends Colony, New Delhi-110065 to the three trustees of Sujan Mohinder Charitable Trust, namely, the Decree Holder, Judgment Debtor No.2 and Mr. Satpal Singh Maker, who were to hold the property jointly in an undivided manner for the purpose of operating a hospital in the name of Sujan Mohinder Charitable Trust.

4. The grievance of the Decree Holder is that, despite the consent order, the Judgment Debtors have failed to comply with the terms of settlement. The Judgment Debtor No. 1 has not executed transfer of her rights in the concerned property in favour of the trustees, nor have the Judgment Debtors permitted the Decree Holder to operate the hospital. Instead, it is alleged that the Judgment Debtors have resorted to false and illegal means by setting up a concocted oral family settlement with the object of evading their obligations arising out of the consent order.

5. The record discloses that following non-compliance, the Decree Holder served a legal notice dated 24.05.2021 on Judgment Debtor No. 1, and had sent reminders by e-mails dated 27.05.2021 and 31.05.2021. An e-mail was also addressed to Judgment Debtor No. 2 on 09.08.2021. Judgment Debtor No. 1 sent a reply dated 02.06.2021 to the legal notice, to which the Decree Holder responded by way of a rejoinder dated 21.07.2021. In the meantime, Judgment Debtor No. 2 also addressed an e-mail to the Decree Holder on 01.06.2021.

6. Under these circumstances, the Decree Holder has approached this Court by way of the present execution petition seeking directions to enforce the order dated 07.02.2020, including transfer of the property in question to the trustees of Sujan Mohinder Charitable Trust, ensuring commencement of hospital operations from the said property, and, if necessary, appointment of



a Receiver to execute the title documents on behalf of Judgment Debtor No.

1. The Decree Holder has also prayed for detention of the Judgment Debtors in civil prison as a mode of execution and for award of costs of these proceedings.

### **Submissions**

7. At the outset, Mr Gaurav Gupta, learned counsel appearing for the Judgement Debtors, submits that the present Execution Petition is a clear abuse of the process of law and is wholly misconceived, as the order dated 07.02.2020, sought to be enforced by the Decree Holder, is not executable in law. Accordingly, he seeks for dismissal of the Execution Petition.

8. He submits that it is an admitted position that the original suits, being CS(OS) No. 3121/2011 and CS(OS) No. 558/2014, were dismissed as withdrawn in terms of Order XXIII Rule 1 of CPC. He also submits that no decree was passed in terms of Order XXIII Rule 3 of CPC, nor did the suits contain any executable directions. In fact, he contends that it was the Decree Holder himself who sought withdrawal of the suits. Consequently, it is stated that no formal decree could have been drawn as defined under Section 2(2) of CPC to enable execution under Order XXI of CPC.

9. It is submitted that the order dated 07.02.2020 merely recorded an agreement between the parties and did not constitute a direction enforceable in execution. He points out that the said order was not a compromise decree under Order XXIII Rule 3 of the CPC. Had it been so, this Court would have specifically directed the drawing of a decree, which was consciously not done. Therefore, the present Execution Petition is *ex facie* not maintainable.



10. Mr. Gupta, learned counsel has taken this Court through various applications, orders and the proceedings, so as to indicate that repeated unsuccessful attempts were made by the Decree Holder; firstly, to seek for modification of the order dated 07.02.2020 and secondly, filing of an application and later on, its withdrawal. The Court, however, shall deal with those proceedings in the latter part of this order.

11. Mr. Gupta, thus, submitted that the present Execution Petition is not only legally untenable, but also an attempt to misuse judicial process to grab property from its lawful owner without sale consideration.

12. *Per contra*, Mr. Rajat Aneja, learned counsel appearing for the Decree Holder submits that the Decree Holder has been relentlessly pursuing his rightful share, namely 1/3<sup>rd</sup>, in the suit property which is a Trust Hospital left by his late father, Late Shri Sujan Singh, for over 14 years. Despite repeated strictures passed by this Court against the Judgment Debtors for their persistent disobedience, according to him, they have continued to act in defiance of judicial orders.

13. It is pointed out by Mr. Aneja that this Court, *vide* order dated 19.09.2017 in CS(OS) 3121/2011 and CS(OS) 558/2014, imposed travel restrictions on Judgment Debtor No. 2, a British citizen, to secure his compliance. However, he states that when the Judgment Debtors still remained non-cooperative and non-compliant, this Court, *vide* order dated 01.02.2019, was constrained to appoint interim trustees to safeguard the trust property.

14. Learned counsel further submits that faced with these coercive orders, the Judgment Debtors consented to settle the disputes *vide* consent order dated 07.02.2020 passed in CS(OS) 3121/2011 and CS(OS) 558/2014. The



settlement was duly recorded through a joint application under Order XXIII Rules 1 and 3 of CPC supported by a Memorandum of Understanding.

15. Mr. Aneja further submits that both parties were present in Court and their undertakings were expressly recorded in paragraph no. 12 of the said order. He, therefore, submits that the order dated 07.02.2020 constitutes a compromise decree within the meaning of Section 2(2) of CPC and is fully enforceable in execution.

16. He further urges that the present application filed by the Judgment Debtor No.2 under Section 151 of CPC is wholly frivolous, not maintainable, and an abuse of process. More importantly, he avers that it is settled law that inherent powers under Section 151 of the CPC cannot be invoked where the Code provides specific remedies, as is the case in execution proceedings.

17. Mr. Aneja further submits that the Judgment Debtors' attempt to portray the order dated 07.02.2020 as a simpliciter withdrawal of the suits is deliberately misleading. He states that the record clearly demonstrates that the suits were withdrawn in terms of settlement and the decree was drawn accordingly. It is also stated that the order dated 07.02.2020 has attained finality, remains unchallenged, and is binding upon the parties and any attempt to wriggle out of solemn undertakings given before this Court must be sternly dealt with, failing which the sanctity of judicial orders would be irreparably eroded.

18. Learned counsel emphasizes that this dispute is not merely a commercial disagreement but a matter of honouring the last wish of Late Shri Sujan Singh, who intended the hospital property to continue serving public welfare. He stated that the Decree Holder has been unjustly deprived



of his legitimate entitlement due to the Judgment Debtors' calculated and fraudulent conduct. Despite their undertaking to transfer their rights in the trust property ensuring its use as a hospital, Mr Aneja avers that the Judgment Debtors have wilfully disobeyed the order, resulting in the hospital lying closed for over five years.

19. In conclusion, Mr. Aneja, learned counsel for the Decree Holder, submits that the present application deserves outright dismissal with exemplary costs. He urges that the Court must protect the sanctity of its orders and undertakings, secure the rights of the Decree Holder under the binding consent decree dated 07.02.2020, and prevent the Judgment Debtors from abusing the process of law any further.

### **Analysis**

20. I have heard learned counsel appearing for the parties and have perused the record.

21. The central controversy in the present proceeding revolves around the order dated 07.02.2020, passed in CS(OS) 3121/2011 and CS(OS) 558/2014, and calls for a determination as to whether it constitutes an executable decree under the CPC.

22. The Judgment Debtors contend that since the suits were dismissed as withdrawn under Order XXIII Rule 1 of CPC without a decree being drawn under Order XXIII Rule 3 of CPC, no executable decree exists, and hence the execution petition is not maintainable. On the other hand, the Decree Holder asserts that the said order recorded a binding settlement and undertakings of the parties, thereby amounting to a compromise decree within the meaning of Section 2(2) of the CPC, enforceable in execution.



23. Thus, the issue germane from the instant application is whether the consent order dated 07.02.2020 is merely a record of settlement without executable force, or a binding compromise decree capable of execution under Section 2 (2) of CPC.

24. Section 2(2) of CPC defines a decree as a "*formal expression of an adjudication*" that "*conclusively determines the rights of the parties*" in the suit. For an adjudication to be classified as a decree, it must involve a formal and conclusive determination of the rights of the parties. The effect of a compromise and consequent withdrawal of a suit on the basis of such compromise, are questions that often arise before the Courts. The judicial discourse on these aspects requires a careful consideration.

25. In *Sanjay Goel v. Lions Club International*<sup>1</sup>, this Court emphasized that when a suit is disposed of as withdrawn on the basis of statements made by the parties, without a formal decree being drawn, such an order is not executable. The Court relied on the precedent in *Mohd. Amin v. Mohd. Iqbal*<sup>2</sup>, wherein it was held that the withdrawal of a suit, even if based on a compromise, does not automatically result in an executable decree unless the Court has formally passed a decree in terms of the settlement. The Court in *Sanjay Goel* rejected the petitioner's contention that the withdrawal of the suit amounted to an executable decree, stating that unless the Court has formally recorded the compromise and drawn a decree under Order XXIII Rule 3 of the CPC, the withdrawal of the suit does not create an executable decree.

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<sup>1</sup> 2012 SCC Online Del 4153

<sup>2</sup> 2009 SCC OnLine Del 861





26. In *Kandapazha Nadar v. Chitraganiammal*<sup>3</sup>, the Supreme Court further clarified that when a suit is withdrawn without adjudication on the merits and without liberty to file a fresh suit, such an order does not constitute a decree under Section 2(2) of the CPC. The Court held that a withdrawal order does not preclude the parties from taking a defence in subsequent litigation concerning the same subject matter. It was emphasized that the withdrawal order is procedural in nature and does not result in a conclusive adjudication of the parties' rights. Thus, a withdrawal order, unless accompanied by formal adjudication and the drawing of a decree, cannot be treated as a decree.

27. In *Mohd. Amin*, this Court considered whether a compromise agreement filed during suit proceedings could be enforced through execution when the suit had been dismissed as withdrawn at the parties' request. The Court held that since the suit was consciously withdrawn based on the settlement, no executable decree survived, and therefore, the agreement could not be enforced in execution proceedings. While acknowledging that the compromise agreement remained valid and binding, the Court clarified that its enforcement had to be sought through independent legal remedies, as a dismissed suit could not give rise to execution.

28. Thus, the legal position emerging from the precedents discussed above is that under Section 2(2) of CPC, a decree must embody a formal and conclusive adjudication of rights, and mere withdrawal of a suit, even pursuant to a compromise, does not *ipso facto* culminate into an executable decree unless the compromise is expressly recorded by way of an order and

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<sup>3</sup> 2007 INSC 426



a decree is drawn under Order XXIII Rule 3 of CPC. Thus, there are pre-conditions to the execution of a compromise decree. While the compromise or MoU remains binding *inter se* the parties, its enforcement in execution is precluded unless crystallised into a decree; otherwise, independent alternative legal remedies must be pursued.

29. Having observed so, the decision in ***Sir Sobha Singh and Sons Pvt. Ltd. v. Shashi Mohan Kapur***<sup>4</sup> requires a careful scrutiny so as to understand the position of law in its correct perspective. In the said decision, the Supreme Court was faced with a situation wherein the Trial Court had passed an order recording the compromise between the parties, but did not pass any formal consent decree. The Executing Court disregarded this objection and went on to pass an order of execution, without a formal decree. The same was challenged before the High Court and the High Court reversed the view of the Executing Court. Eventually, the matter went to the Supreme Court and the Supreme Court upheld and restored the order of the Executing Court. The Supreme Court rendered findings on various legal aspects, including the pre-conditions of Order XXIII Rule 3 of CPC, consequence of absence of any direction by the Trial Court to draw a formal decree, maintainability of execution without a formal decree, etc. The Court, firstly, held that Order XXIII Rule 3 of CPC prescribes two steps for the Trial Court, i.e., an order recording the compromise and simultaneous passing of a decree to that effect. The relevant part of the decision in ***Sir Sobha Singh*** reads thus:

*“36. In other words, the expression "and shall pass a decree in accordance therewith" is a clear indication that after the compromise is*

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<sup>4</sup> (2020) 20 SCC 798



*recorded by the Court, it shall proceed to "pass a decree". So, the rule contemplates, first an order recording of the compromise and then simultaneously pass a decree in accordance with the order."*

Importantly, implicit in the first step is the “*satisfaction*” of the Court that the parties have arrived at a “*lawful*” compromise i.e. a compromise which is consistent with the law of contract. The duty of the Court to record the settlement or compromise is contingent upon its satisfaction that the parties have arrived at a lawful settlement or compromise. Moving on, in holding as aforesaid, the Supreme Court explicitly rejected the argument that the order of the Court recording a compromise in itself amounts to a decree which could be executed. The Court observed thus:

*“37. In the light of the clear language of Order 23 Rule 3 of the Code, it is not possible to accept the submission of learned senior counsel for the appellant that the order dated 01.06.2012 itself amounts to a decree and, therefore, it is not necessary for the Court to pass a decree. Had this been the intention, the legislature would not have used the expression "and shall pass a decree in accordance therewith" in Order 23 Rule 3 of the Code.”*

30. Thus, the requirement of drawing up of a formal consent decree is mandatory for the Trial Court in case of compromise of a suit. *What if it is not done?* In ***Sir Sobha Singh***, the Supreme Court also addressed this contingency when an execution petition is filed without a copy of the decree, owing to the reason that no decree was drawn up by the Trial Court. The Court analysed Order XX Rule 6A(2) of CPC, which otherwise caters only to appeals, and purposively constructed it to mean that the order recording the compromise shall be treated as a decree only in the interregnum, till the decree is formally drawn up by the concerned Court,



and held the execution filed without the decree to be maintainable. The relevant extract reads thus:

*“42. This takes us to examine the next question, namely, what is the effect of not filing the copy of the decree along with the execution application filed by the appellant. In our view, even though the appellant did not file the certified copy of the decree along with the execution application for the reason that the same was not passed by the Court, yet the execution application filed by the appellant, in our view, was maintainable. Indeed, so long as the formal decree was not passed, the order dated 01.06.2012 was to be treated as a decree during the interregnum period by virtue of Order 20 Rule 6A (2) of the Code. In other words, notwithstanding the fact that the decree had not been passed, yet by virtue of principle underlined in Order 20 Rule 6A(2) of the Code, the order dated 01.06.2012 had the effect of a decree till the date of actual passing of the decree by the Court for the purposes of execution or for any other purpose. This empowered the Executing Court to entertain the execution application and decide the objections raised by the respondent on merits.”*

31. Understandably, this position of law operates in the interim, meant to enable the Decree Holder to proceed for execution and to obviate any loss of right due to delay on the part of the Court in drawing up a decree. However, the question as to whether the Decree Holder is entitled to proceed for execution without the formal decree shall arise only after the order sought to be executed actually fulfils the first condition underlying Order XXIII Rule 3 of CPC i.e. the order sought to be executed must be an order recording the compromise of the parties. The order must reflect the satisfaction of the Court *qua* the lawfulness of the compromise and the order must formally reflect a direction binding the parties to the compromise. Thus, the order sought to be executed, if it is not followed by a decree and to seek the benefit of **Sir Sobha Singh**, must be an order in the manner contemplated by Order XXIII Rule 3 of CPC. If the order itself does not fulfil the foundational criteria of Order XXIII Rule 3 CPC, the execution is bound to fail.



32. In view of the aforesaid legal position, the facts of the instant case are examined as under.

33. In the present matter, the plaintiffs had moved I.A. No. 18067/2018 in CS(OS) 558/2014 and CS(OS) 3121/2011, praying for the recording of the terms of settlement and for the passing of a consent decree in terms thereof. The application further sought directions for dissolving the interim Board of Trustees and for releasing the original title documents of the property to the trustees. For the sake of clarity prayer made in I.A. 18067/2018 is extracted as under:

*“a) Record the terms of the compromise/ agreement and pass a consent decree in terms of the compromise as stated above in respect of the disputes which are the subject matter of the captioned proceedings and allow the captioned suit and all incidental proceedings therefrom to be withdrawn.*

*b) Pass directions to dissolve the Interim Board of Trustees appointed by this Hon’ble Court vide order dated 01.02.2019 and handover the Trust and all documents in respect of the Trust to the three aforementioned trustees;*

*c) Release the original documents of the Property in terms of the agreement/ compromise deposited before this Hon’ble Court to the Three aforementioned trustees;*

*d) Pass any such other further order(s) as this Hon’ble Court may deem fit. ”*

34. What, however, transpired during the course of hearing on 07.02.2020 is that the civil suits were dismissed as withdrawn and the two remaining prayers, *qua* the discharge of the interim Board of Trustees and handing over of the original title deeds of the property, were allowed. Quite evidently, the prayer seeking a consent decree was simply not adverted to. An extract of the aforesaid order is reproduced as under :-

*“8. It is evident from the aforesaid terms that the issue of transfer of the property back to the Trust has now been addressed, and Smt.Jupinder Kaur Maker has also undertaken not to claim any refund from the Trust in*



*respect of the monies paid by her for the property in question. Further, the proposed trustees have undertaken not to sell the property in question, and to use the same for running the hospital.*

*9. Although a formal application for withdrawal of the suit has not been made in CS(OS) 3121/2011, it is clear from the modified terms taken on record in CS(OS) 558/2014 that the terms of settlement cover both these suits. Smt. Mohinder Singh, who is the plaintiff in CS(OS) 3121/2011, is also a signatory [though her constituted attorney] to the terms of the settlement taken on record in CS(OS) 558/2014. Learned counsel for the plaintiffs in CS(OS) 3121/2011 states that he has instructions to withdraw that suit as well.*

*10. Learned counsel state that Smt. Mohinder Kaur, wife of late Sardar Sujan Singh, passed away on 05.08.2014, during the pendency of the suits. With consent of learned counsel for the parties, Smt. Mohinder Kaur stands deleted from the array of parties in the two suits. In CS(OS) 558/2014, Mr. Sashikant (plaintiff no.4) has filed I.A. 18066/2019 for deletion of his name from the array of parties. With the consent of counsel for all the parties, the application is allowed and Mr. Sashikant (plaintiff no.4) is deleted from the array of parties. Learned counsel for the plaintiffs also states that defendant nos. 5 and 6 [in CS(OS) 558/2014] were erstwhile trustees of the Trust, and are not concerned with this settlement. Similarly, the Sub-Registrar, Tehsil – Mehrauli, was impleaded as defendant no.7 in CS(OS) 558/2014. However, the plaintiff does not seek any relief against defendant nos. 5, 6 and 7. On the oral request of learned counsel for the plaintiffs, defendant nos. 5, 6 and 7 are also deleted from the array of the parties.*

*11. The plaintiff will file an amended memo of parties incorporating the deletion of Smt. Mohinder Kaur, Mr.Sashikant, and defendant nos. 5, 6 and 7 [in CS(OS) 558/2014], from the array of parties within one week.*

*12. In view of the fact that the Trust's funds have been derived from the contributions of the settlor and his family alone, and in view of the modified terms of settlement presented today, the application for withdrawal of the suit [I.A. 18067/2019 in CS(OS) 558/2014] is allowed and the suit is dismissed as withdrawn. Learned counsel for the parties, on instructions from their clients, undertake that all parties to the terms of settlement will act in strict compliance with the terms contained therein.*

*13. The interim board of trustees is discharged. The accounts and records of the Trust, which are lying in their possession shall be handed over to the new trustees through the Registrar General. List before the learned Registrar General on 25.02.2020 for this purpose.*

*14. The original title deed of the property was deposited with the Registrar General, pursuant to the order dated 03.10.2018. The same shall also be*



*released to learned counsel for the plaintiffs, who will hand over the title deed to the newly appointed trustees.*

*15. In the facts and circumstances aforesaid, the suits are dismissed as withdrawn, alongwith the pending applications.”*

35. The above order unequivocally reveals that although, the submissions of the parties *qua* their compromise were recorded by the Court, however, there was no formal consideration of the terms of the compromise, lawfulness of the settlement and no order recording the satisfaction of the Court *qua* the compromise or directing the drawing up of any decree was passed. Paragraph no. 12 of the order categorically indicates that the suit was permitted to be withdrawn on the basis of the submissions made by the parties and no direction was made to the parties to abide by the terms of compromise. Thus, there was no formal direction by the Court binding the parties to the settlement. The present execution petition does not relate to the limited directions passed in the aforesaid order, and therefore, no executable decree exists.

36. It is also noted that the Decree Holder himself was not oblivious of such an anomaly and has, therefore, consciously made an attempt to incorporate the direction for decreeing the suit in terms of the settlement. Such an attempt was made by way of the I.A. 8698/2022, which found favour by the Court *vide* order dated 30.05.2022. By the said order, the Court modified the earlier order dated 07.02.2020 and decreed the suit in terms of the compromise arrived at between the parties.

37. The relief granted on 30.05.2022 was, however, short-lived. On 19.12.2022, the Court recalled the order, holding that once the suit had been dismissed as withdrawn on 07.02.2020, the Court had become *functus officio* under Order XX Rule 3 of CPC. It could not, thereafter, modify its



judgment except by way of review under Section 114 read with Order XLVII of CPC, or correction of clerical errors under Section 152 of CPC. Since I.A. 8698/2022 did not invoke either provision, the modification was deemed to be without jurisdiction.

38. Reliance was placed on the Division Bench judgment in ***P.U.R. Polyurethane Products (P) Ltd. v. Geeta Bhargava & Ors.***<sup>5</sup>, which clarified that after passing a final judgment, a Court cannot revisit the merits except under the limited avenues of review or clerical correction. Consequently, the order dated 30.05.2022 was recalled, extinguishing any rights that may have arisen in favour of the Decree Holder and restoring the original position, operative in terms of the order dated 07.02.2020, whereby the suits were merely dismissed as withdrawn on the basis of the ‘undertakings’ made by the parties and without any order recording the compromise or directing any issuance of a formal decree.

39. Thereafter, further interlocutory applications seeking similar reliefs were filed but were ultimately withdrawn on 08.08.2024. Thus, despite repeated attempts, the Decree Holder was unable to secure a subsisting decree embodying the settlement terms.

40. Meanwhile, the execution petition remained pending. The Executing Court called upon the Decree Holder to establish the existence of a binding decree, but none was forthcoming. The fundamental difficulty remained that the only operative order on record was that of 07.02.2020, which dismissed the suit as withdrawn, save for two ancillary directions not relevant to the present execution.

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<sup>5</sup> (2006) 92 DRJ 83 (DB)





41. To overcome this legal impasse, learned counsel for the Decree Holder sought to rely on *Salahuddin Mirza v. Mohd Qamar*,<sup>6</sup> wherein the Court held that a compromise was binding and had directed the Trial Court to draw up a decree. However, a careful examination of the factual matrix in *Salahuddin Mirza* reveals that the suit therein came to be ‘disposed of as withdrawn as settled’, specifically on the basis of a settlement arrived at between the parties in terms of the compromise deed. The very expression employed in the operative portion of the order clearly demonstrates a material departure from the phraseology adopted in the present order under execution. In the instant case, the Court has merely dismissed the suit as withdrawn, rather than disposing of the same as settled between the parties. Furthermore, in *Salahuddin Mirza*, this Court had explicitly directed the Trial Court to draw up a formal decree so as to obviate the objection raised by the Judgment Debtor therein.

42. Pertinently, the question is not only of the form of language deployed by the Court, but it is one of substance. The satisfaction of the Court regarding the settlement between the parties was evident in *Salahuddin Mirza*, and is conspicuously absent in the instant case wherein the suit has been dismissed as withdrawn. Nothing more, nothing less. Moreover, in light of the specific prayer made in the joint application, the choice of language used by the Court in the order dated 07.02.2020 ought to be understood as a conscious one. Equally, in *Sir Sobha Singh*, the judgment relied upon by the Court in *Salahuddin Mirza*, although the Supreme Court ruled that the execution petition filed by the appellant was maintainable without the decree, however, in the said case as well, the order passed by the

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<sup>6</sup> 2021 SCC OnLine Del 5019



Court was distinctly worded and could not be compared with the order dated 07.02.2020 in the instant case. Thus, the Court in *Sir Sobha Singh* intended to pass an order in terms of Order XXIII Rule 3 of CPC but only fell short of directing the drawing up of a formal consent decree. Such is not the case in the instant matter wherein the order dated 07.02.2020 is a simpliciter order of dismissal on the basis of withdrawal by the parties. There is no executable direction in the order dated 07.02.2020, except the ones regarding return of documents etc., which as noted above, are not a part of the present subject matter.

43. Therefore, in contrast to *Salahuddin Mirza* and *Sir Sobha Singh*, where the Courts recognised and enforced compromises by directing the drawing of formal decrees and held execution petitions maintainable even without formal decrees, the instant case is distinguishable.

44. Here, the suit was merely dismissed as withdrawn, without any express recording of a binding settlement or formal decree. Despite efforts to convert the withdrawal order into a decree through modification applications and reliance on precedent, no formal decree embodying the settlement was ever drawn or survives. Consequently, the Executing Court in the present matter cannot lawfully expand the scope of the original order, rendering the execution petition inherently defective and non-maintainable.

45. The Executing Court is bound by the settled principle that it cannot extend its jurisdiction beyond the decree sought to be executed. This position, firmly entrenched through a catena of decisions of the Supreme Court, has consistently been reaffirmed. Reference may, however, be made to the decision of the Supreme Court in the case of *Pradeep Mehra v.*



***Harijivan J. Jethwa (Since Deceased Thr. Lrs.) and Ors***<sup>7</sup> wherein it was held that “*the exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole*”.

46. It is equally incumbent upon the Executing Court to bear in mind that its mandate is confined to executing the decree as it stands, and not to give effect to any private settlement or arrangement between the parties unless such a settlement has been formally recorded by the Court and expressly directed to be acted upon. Without the sanction of the Court, that too in the manner required by the CPC, a simpliciter order directing dismissal on the basis of withdrawal, for whatever reason, cannot be construed to be of an executable nature so as to enable an execution petition. Thus, under Section 47 and Order XXI of the CPC, the jurisdiction of the executing Court is strictly confined to the four corners of the decree sought to be executed, and it is precluded from traversing beyond its terms. Absent a formal adjudication whereby the court unequivocally records the compromise and decrees the suit in terms thereof, the executing court cannot, by implication or otherwise, interpolate additional terms into the decree or enlarge its scope, as such an exercise would be impermissible within the statutory framework of Section 47 and Order XXI of CPC. The Executing Court is expected to execute the decree not the statement made by the parties.

47. In light of the legal precedents and the facts of the instant case, it is evident that the order dated 07.02.2020 does not constitute a decree within the meaning of Section 2(2) of CPC. The order permitting the withdrawal of the suits did not result in a formal decree being passed and even by implication, it cannot have the effect of a decree. The absence of a formal

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<sup>7</sup> 2023 SCC OnLine 1395



adjudication by the Court and the failure to comply with the procedural requirements of Order XXIII Rule 3 of CPC would consequently mean that the order cannot be executed under Order XXI of CPC.

48. Accordingly, the present petition is held to be not maintainable, and the instant application for dismissal of the execution petition holds merit.

49. Therefore, the instant application stands allowed.

**EX.P. 65/2021and EX.APPL.(OS) 1341/2025**

50. In view of the order passed hereinabove, the instant petition stands dismissed as not maintainable. All pending applications also stand dismissed.

51. Needless to state, liberty is reserved in favour of the Decree Holder to take any other appropriate remedy if available in law.

52. No order as to costs.

**(PURUSHAINDRA KUMAR KAURAV)**  
**JUDGE**

**OCTOBER 06, 2025/aks/nc**