

**HIGH COURT OF JUDICATURE AT ALLAHABAD****CIVIL REVISION No. - 124 of 2026**

Ravi Srivastava

.....Revisionist(s)

Versus

Ajay Sharma

.....Opposite
Party(s)

Counsel for Revisionist(s)	:	Shesh Kumar Srivastava
Counsel for Opposite Party(s)	:	

Court No. - 54**HON'BLE ANIL KUMAR-X, J.**

1. Shri Shesh Kumar Srivastava, learned counsel for the revisionist is present.
2. This civil revision is directed against the judgment and order dated 07.05.2026 passed by the Ist Additional District and Sessions Judge, Gautam Buddh Naga in Misc. Case No. 156 of 2025, rejecting the revisionist's objection under Section 47 of C.P.C. in Execution Case No. 50 of 2020 instituted by the respondent-plaintiff for execution of judgment and decree dated 02.11.2013 passed by Ist Additional District Judge, Gautam Buddh Nagar in SCC Suit No. 6 of 2010.
3. For the sake of convenience, the parties in this judgement shall be referred to their nomenclature as mentioned in the plaint. Revisionist at present is defendant/judgment debtor and the respondent is the plaintiff/decreed holder in the aforesaid execution proceedings.
4. Briefly stated facts are that SCC Suit No.6 of 2010 was instituted by the plaintiff with a prayer for arrears of rents and eviction of the tenant from the rented premises. It was stated that plaintiff is the sole proprietor of Akshya Apparels and he had rented a factory premises bearing No. C-47, Sector 2, Noida in favour of the defendant. He stated that defendant defaulted in payment of rents and hence the court may pass a decree in his favour directing the defendant to vacate the premises and pay the arrears of rent. The said suit was decreed in favour of the plaintiff on 2.11.2013.

5. Subsequently, execution proceeding was initiated and Execution Case No.50 of 2020 was filed by the plaintiff. An objection under Section 47 CPC was filed against the execution case, which was registered as Miscellaneous Civil Case No.156 of 2025 (Ravi Srivastava vs. Ajay Sharma). Objection under Section 47 CPC was moved primarily on the ground that the decree passed in favour of the plaintiff is a void decree and not capable for execution. The said objection under Section 47 CPC was dismissed by the trial court against which the present civil revision has been preferred by the defendant.

6. Learned counsel for the revisionist submitted that the suit instituted by the plaintiff was defective due to non-joinder of necessary parties. Plaintiff had mentioned that the rent agreement was executed between Akshya Apparels and M/s Roto Power Engineer Private Limited, but Roto Power Engineer Private Limited has not been impleaded as a party to the suit. If a decree passed in a suit where there is non-joinder of a necessary party, the same would be a void decree and cannot be executed. Non-impleadment of a juristic person results into a void decree. It was further submitted that an agreement between the plaintiff and the defendant was executed way back in the year 2004, wherein it was stipulated that the rented premises would be sold in favour of the defendant. The sale price was fixed at Rs. 30 lakhs. Therefore, the legal status of the defendant in pursuance of the agreement dated 12.02.2004 was that of a proposed purchaser rather than a tenant. In the foregoing circumstances, the suit instituted by the plaintiff claiming himself as landlord of the disputed premises was not maintainable before the court established under the Small Cause Courts Act. Therefore, in the absence of any relationship of landlord and tenant between the plaintiff and the defendant, the decree passed by a court lacking subject matter jurisdiction is a void decree and the same could not be executed. It was submitted that the scope of Section 47 CPC was not properly considered by the trial court while deciding his objection filed under the aforesaid provision. It is manifest that a judgment debtor is entitled to raise before the executing court that the decree placed before it for execution is a void decree. However, his objections were wrongly dismissed without considering the true scope of the decree as well as the scope of Section 47 CPC.

7. Heard learned counsel for the revisionist and perused the impugned order passed by the trial court.

8. The trial court has specifically held that an executing court cannot go beyond the decree and the objections raised by the judgment debtor are of such nature which could only be decided on merits. It further held that those objections were either decided by the trial court at the time of passing of the decree or they were not raised before it. It further held that the executing court cannot go into those disputed facts which have been raised by the judgment debtor. It has no jurisdiction to go into the details of the rent agreement executed between the parties, the status of the parties who executed the rent agreement, as well as the merits of the case. It further observed that there is difference between a void and erroneous decree, and if a decree is erroneous it had to be executed by the executing court.

9. This Court is of the view that the findings recorded by the trial court were based not only upon the available facts on the record but also taking note of the judgment passed by the Hon'ble Supreme Court on this issue. Hon'ble Supreme Court in **Dhurandhra Prasad Singh versus Jai Prakash University & Others, AIR 2001 SC 2552** had discussed the scope of Section 47 CPC in detail. It held that whenever an objection as to executability of a decree is raised before the court, the court is then bound to look into the said objection and to find out whether the decree is executable or it is an erroneous decree. It further held that the executing court at the time of execution is bound to take the decree according to its tenor and cannot entertain any objection that the decree was incorrect in law or on facts. Certain instances of void decrees were also cited by the Hon'ble Supreme Court in the judgment. It was mentioned that a decree is nullity where it is passed without impleading the legal heirs on record of a person who was dead at the date of decree, or against a ruling prince without a certificate. The Supreme Court also held that if objections appear on the face of the record that the decree is inexecutable, being void, then only the objections under Section 47 CPC can be allowed. However, if the objections require examination of questions, then those objections which could only be decided by a trial cannot be entertained as an objection as to the validity of the decree, even on the ground of

absence of jurisdiction.

10. Coming to the facts of this case, it was conceded by the revisionist that he had contested the suit and had remained present during the proceedings. Therefore, it is expected that he had ample opportunity to raise the objection regarding the non-joinder of necessary party, and if he had not raised it during the pendency of the suit, then such objections, by virtue of Section 47 CPC, cannot be entertained during the execution proceedings. Execution proceedings are not a forum for deciding those issues for which a party has a remedy to prefer an appeal, revision or review. It is also important to note that in case of a partnership firm, the decree of eviction does not become void or inexecutable merely because of non-impleadment of the landlord partnership firm as the name and style of the firm is essentially a collective description of its partners.

11. Similarly, the objection regarding the status between the plaintiff and defendant, that is, their relation was not that of landlord and tenant, rather proposed seller and buyer, is a question of fact which ought to have been raised by the revisionist during the proceeding of the trial. Therefore, the contention of the revisionist that the aforesaid issues raised by him lead to the conclusion that the decree is void or not tenable. All those issues which could have only been decided at the time of trial cannot be re-agitated or reopened in an execution proceeding unless the judgment debtor is able to establish that the decree passed appears to be void and inexecutable on the face of it. This Court is of the considered view that none of the issues raised by the revisionist make the decree void or inexecutable by considering the facts on their face.

12. In view of the aforesaid discussions, this civil revision is **dismissed** and the impugned order passed by the trial Court is affirmed.

(Anil Kumar-X,J.)

August 10, 2026
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