

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 28<sup>TH</sup> DAY OF APRIL, 2026**

**R**

**BEFORE**

**THE HON'BLE DR. JUSTICE K.MANMADHA RAO**

**WRIT PETITION NO. 33030 OF 2025 (GM-FC)**

**BETWEEN:**

MRS. DEBOLINA  
W/O NILOY GHOSH  
AGED 38 YEARS  
RESIDING AT NO.113,  
2<sup>ND</sup> FLOOR, 1<sup>ST</sup> MAIN,  
1<sup>ST</sup> 'A' CROSS, MALLESHPALYA,  
NEW THIPPASANDRA POST  
BANGALORE-560 075.

...PETITIONER

(BY SRI. R A DEVANAND.,ADVOCATE)

**AND:**

SRI NILOY GHOSH  
S/O LATE DEBENDRANATH GHOSH  
AGED 42 YEARS  
RESIDING AT HD PAL STREET,  
SHANKHARIPARA PO ICHAPUR,  
NAWABGANJ POLICE STATION  
NOAPARA PIN 743 144  
DISTRICT NORTH 24 PARAGANAS,  
STATE WEST BENGAL

ALSO AT OFFICE ADDRESS

C/O PRINCIPAL, ADCADEMY OF TECHNOLOGY  
GRANT TRUNK ROAD, ADISAPTAGRAM,  
KRISHNAPUR,CHANDANPURA, HOOGHLY,  
WEST BENGAL  
PIN 712502.

...RESPONDENT

(BY SRI. SUKANTO ROY, ADVOCATE FOR  
SRI. RAJU H Y.,ADVOCATE (VC))



THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE ORDER OF THE 6TH ADDL.FAMILY COURT IN EX CASE 59/2024 PASSED ON 08.09.2025 WHICH IS PRODUCED AS ANNEX-E HOLDING IT UNCONSTITUTIONAL AND BY ALLOWING THE WP IN ENTIRETY.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25.03.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE DR. JUSTICE K.MANMADHA RAO

**CAV ORDER**

The present petition is filed seeking issuance of a writ of certiorari or direction to quash the order dated 08.09.2025 passed in Execution Case No.59/2024 by the VI Addl. Principal Judge, Family Court, Bengaluru ('the Executing Court' for short) produced as Annexure-E, as being unconstitutional and to allow the writ petition in its entirety.

2. The petitioner herein/wife is the decree holder and the respondent herein/husband is the judgment debtor before the Executing Court.

3. For convenience of reference, the parties herein are referred to as per their rankings before this Court.

4. The brief facts of the case are that:-

The petitioner has instituted Execution Case No.59/2024 before the Executing Court seeking enforcement of the judgment and decree dated 10.11.2023 passed in M.C.No.745/2013, wherein, under the second limb of the decree and by virtue of the order on I.A.No.2/2023 forming part thereof, the respondent was directed to hand over custody of 466 grams of gold jewellery and other valuables detailed therein. It is averred that the judgment and decree passed by the VI Addl. Prl. Judge, Family Court, ('the Family Court' for short) specifically directed return of the said gold ornaments, furniture and other valuable articles belonging to the petitioner-wife, which the respondent failed to comply with, necessitating initiation of execution proceedings.

5. It is further submitted that in M.F.A.No.1295/2024, the Co-ordinate bench of this Court, by order dated 24.07.2024 on I.A.No.1/2024, directed the respondent to comply with the decree in respect of return

of gold jewellery as per the list appended to I.A.No.2/2023 in M.C.No.745/2013, even prior to the execution proceedings. Notwithstanding the same, upon service of notice in Execution Case No.59/2024, the respondent entered appearance and filed his statement of objections (Annexure-D) opposing enforcement. It is also placed on record that during cross-examination dated 26.11.2013 in M.C.No.745/2013 and in text communications addressed to the petitioner, the respondent had admitted custody of the said gold ornaments and valuables.

6. It is further the case of the petitioner that the respondent, though having preferred an appeal, has confined the same only to the dismissal of his petition for divorce and has not challenged the order passed on I.A.No.2/2023, thereby rendering the said direction final and binding. It is the grievance of the petitioner that the Executing Court, instead of enforcing the decree and the order of Co-ordinate bench of this Court, erroneously proceeded to adjudicate upon its own jurisdiction.

7. The Executing Court, by the impugned order, dismissed the application filed by the decree holder under Order XXI Rule 31 of the Code of Civil Procedure, 1908 ('the CPC' for short) seeking enforcement of the decree by detention of the judgment debtor. The Court held that since the respondent resides outside its territorial jurisdiction and no property within its jurisdiction was identified, it lacked jurisdiction to proceed with execution. Liberty was reserved to the decree holder to furnish details of properties within jurisdiction or to seek transfer of the decree to a Competent Court.

8. The learned counsel appearing for the petitioner would contend that the decree in question relates to return of specific movable properties and not to immovable property or a money decree, and therefore the provisions of Section 39 of the CPC have no application in the manner assumed by the Executing Court. Further, the Executing Court has failed to take note of the binding direction issued by this Court in the appellate proceedings requiring compliance with the decree and permitting coercive steps

in execution. According to the petitioner, the Executing Court has erroneously declined to exercise jurisdiction vested in it and has defeated the very object of the decree.

9. *Per contra*, the learned counsel appearing for the respondent would contend that the Executing Court has rightly exercised its jurisdiction in holding that it cannot proceed with execution in view of the statutory bar contained under Section 39(4) of the CPC. The said provision mandates that a Court which passed a decree cannot execute it against a person or property situated outside its territorial jurisdiction. In the present case, it is not in dispute that the respondent resides outside the territorial limits of the Executing Court and that no property belonging to him within such jurisdiction has been identified by the petitioner. In such circumstances, it is contended that the only course open to the petitioner was to seek transfer of the decree to the Competent Court.

10. The respondent further contends that the Executing Court had granted sufficient opportunity to the petitioner by reserving liberty to furnish particulars of properties within jurisdiction or to seek transfer of the decree. Despite such liberty, the petitioner failed to take necessary steps and has instead chosen to invoke supervisory jurisdiction, thereby demonstrating lack of bona fides. Further, the execution petition is not maintainable in its present form, as the petitioner has not complied with the requirements of execution law by furnishing necessary particulars to enable enforcement. According to the respondent, the burden lies on the decree holder to assist the Court in execution.

11. The respondent further disputes the alleged custody and entrustment of the gold ornaments and contends that the materials relied upon by the petitioner, including electronic communications, are not admissible in evidence in the absence of proof in accordance with law. It is also contended that the direction for return of gold ornaments is under challenge in pending appellate

proceedings and therefore cannot be enforced through coercive measures at this stage. It is also contended that parallel proceedings between the parties are pending, and the present execution is being pursued with an oblique motive to exert pressure on the respondent. According to the respondent, the petitioner has been called upon to collect her belongings and the present proceedings are unnecessary.

12. In support of his contentions, learned counsel appearing for the respondent has placed reliance on the following judgments:-

- ***Mohit Bhargava v. Bharat Bhushan Bhargava and others*** reported in **(2007) 4 SCC 795;**
- ***Mechano Paper Machines Ltd., v. NEPC Papers & Boards Ltd., and Ors.*** reported in **2011 (3) CLJ (Cal) 541;** and
- ***Salem Advocate Bar Association, T.N. v. Union of India*** reported in **(2005) 6 SCC 344.**

13. Heard learned counsel appearing for the parties and perused the material on record.

14. In the light of the rival submissions, the central issue is the scope and application of Section 39(4) of the CPC in the context of a decree directing return of specific movable property. The decree in the present case is not a money decree nor one relating to immovable property, but one directing return of identified movables. Such a decree inherently requires compliance by the judgment debtor and is capable of enforcement through modes provided under Order XXI of the CPC. The Executing Court has proceeded on the footing that the residence of the respondent outside its jurisdiction completely denudes it of power to execute the decree. This approach overlooks the distinction between execution against property and enforcement of personal obligations under a decree.

15. The reliance placed by the learned counsel for the respondent on ***Mohit Bhargava's*** case *supra* is misplaced in the facts of the present case. The said decision deals with execution against property situated outside jurisdiction and reiterates the limitation under Section 39(4) of the CPC. However, it does not lay down

that every decree involving a person residing outside jurisdiction becomes incapable of execution by the Court which passed it, nor that the said provision operates as an absolute bar irrespective of the nature of the decree.

16. On the other hand, the decision in ***Salem Advocate Bar Association's*** case *supra*, clarifies that Section 39(4) of the CPC does not override or nullify other enabling provisions of the CPC. It emphasizes that procedural provisions are intended to facilitate justice and not to obstruct enforcement of lawful decrees. A harmonious reading of the statutory scheme would indicate that while execution against property situated outside jurisdiction may require recourse to transfer, decrees requiring personal compliance or delivery of specific movables cannot be rendered unenforceable merely on account of the residence of the judgment debtor.

17. The Executing Court committed a manifest jurisdictional error by closing the petition on technical territorial grounds. It failed to acknowledge the

respondent's prior admission of custody and ignored the specific mandate of this Court in M.F.A.No.1295/2024. When a superior Court directs enforcement of a decree through permissible modes, the Executing Court is duty-bound to give effect to such direction. The impugned approach, therefore, amounts to a failure to exercise jurisdiction vested in the Court.

18. The Executing Court has failed to undertake this necessary analysis and has instead treated Section 39(4) of the CPC as an absolute bar. Such an interpretation results in a refusal to exercise jurisdiction vested in the Court. The distinction between an erroneous exercise of jurisdiction and a refusal to exercise jurisdiction is well recognized. In the present case, the Executing Court has declined to proceed on a misconception of law, thereby committing a jurisdictional error.

19. Further, it is of significance that the Co-ordinate bench of this Court, in M.F.A.No.1295/2024, had directed compliance with the decree and permitted recourse to execution. The Executing Court, being subordinate Court,

was bound to give effect to such direction. The contention of the respondent that the impugned order is merely procedural cannot be accepted, as its effect is to terminate the execution proceedings and stall enforcement of the decree. The contention regarding disputed questions of fact also does not justify closure of execution proceedings, as such issues are required to be examined within the framework of execution.

20. The contention regarding availability of alternative remedy does not bar interference, as the impugned order reflects a jurisdictional error. The other objections raised by the respondent, including disputes regarding custody of gold and admissibility of evidence, are matters to be considered within execution proceedings and do not justify closure of the petition.

21. In the result, this Court proceeds to pass the following:-

**ORDER**

*(i) The Writ Petition is **allowed**.*

*(ii) The impugned order dated 08.09.2025 passed in Execution Case No.59/2024 by the VI Addl. Principal Judge, Family Court, Bengaluru is set aside.*

*(iii) The matter is remanded to the Executing Court for fresh consideration. The Executing Court shall restore the execution proceedings to file and proceed in accordance with law, keeping in view the nature of the decree, the provisions of Order XXI of the CPC, and the binding directions in MFA No.1295/2024 issued by the co-ordinate bench of this Court.*

*(iv) The Executing Court shall reconsider the matter in accordance with law, without being influenced by the observations made in the impugned order, and shall not decline to exercise jurisdiction on an erroneous understanding of Section 39(4) of the CPC.*

*(v) The Executing Court shall dispose of the execution proceedings as expeditiously as possible.*

**SD/-  
(DR.K.MANMADHA RAO)  
JUDGE**