

(2014) 07 DEL CK 0300

In the Delhi High Court

Case No : EFA OS 3/2014

Goyal Mg Gases Private Ltd.

APPELLANT

Vs

Messer Griesheim Gmbh

RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 10, 112, 13, 2, 2(4)
Delhi High Court Act, 1966 — Section 16, 5, 5(2)
General Clauses Act, 1897 — Section 3(17)
Succession Act, 1925 — Section 2(bb), 276, 370, 371, 372

Citation : (2014) 211 DLT 481

Hon'ble Judges : Pradeep Nandrajog, J; Jayant Nath, J

Bench : Division Bench

Advocate : Harish Malhotra, Sr. Advocate instructed by Tarun and Siran Mehta, Advocate for the Appellant; Amit Sibal, Sr. Advocate instructed by Mohna M. Lal, Geetali Talukdar and Tahir Ashraf Siddiqui, Advocate for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Vide impugned order dated November 29, 2013 the learned Single Judge has dismissed EA No. 32/2007, EA No. 152/2008 and EA No. 470/2009 filed by the appellant. The learned Single Judge has held:

(a) That since the decree sought to be executed is in sum of more than Rs. 20,00,000/- (Rupees Twenty Lacs only) the High Court of Delhi has jurisdiction to execute the decree.

(b) On merits challenge to the foreign decree on the plea that it violates the law in India was not sustainable i.e. that the decree was not in breach of Indian laws.

(c) That the objection of the foreign decree being obtained by fraud was not sustainable.

(d) That the objection that the foreign decree was not executable being not on merits was not sustainable.

(e) That the objection that the Courts in England has no jurisdiction to pass the decree was not sustainable.

2. As recorded in the order dated May 01, 2014 passed in the appeal the parties had consented that we should first decide the issue whether the Delhi High Court could entertain the execution petition filed by the respondent to execute a foreign decree. The reason was that if the Delhi High Court did not have the jurisdiction to entertain the execution petition filed, it would lack the jurisdiction to decide on the validity of the decree, keeping in view the objections filed and in said eventuality the only course available would be to set aside the impugned order as being without jurisdiction with the observation that the decision by the learned Single Judge on merits would be treated as a view without jurisdiction, leaving it open for the executing court to decide the objections uninfluenced by any observations made by the learned Single Judge.

3. Thus, the singular issue arising for our consideration in the present appeal is:

„Whether the decree passed by a superior court of a reciprocating territory can be executed by the High Court of Delhi in exercise of its original jurisdiction in terms of Section 44A(1) of the Code of Civil Procedure, 1908.

4. Our journey must commence therefore by noting the statute which requires a consideration. Section 44A(1). It reads as under:-

44A. Execution of decrees passed by Courts in reciprocating territory.-

(1) Where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been filed in a District Court , the decree may be executed in India as if it had been passed by the District Court.

(Emphasis Supplied)

5. A bare perusal of the above highlighted provision evinces that Section 44A envisages presentation of a petition seeking execution of a decree of a superior Court of any reciprocating territory before a `District Court".

6. The vexing question which therefore begs an answer is-

Whether the High Court of Delhi can be treated as a „District Court for the purpose of Section 44A of the Code of Civil Procedure, 1908.

7. Before venturing to answer the said question, which goes to the root of the matter, it would be incumbent to notice the antecedent history and attending circumstances leading to the insertion of the said provision in the Code of Civil Procedure, 1908.

8. The judgment of a foreign Court, being the command of a judicial agency of a foreign sovereign, cannot be enforced beyond the limits of its own territory. A sovereign cannot command obedience outside his own realm. Under the common law, a foreign judgment or a decree does not operate *proprio vigore* and is therefore not capable of automatic execution. Ordinarily, therefore, there can be

no direct execution of a foreign judgment or decree.

9. It is for this reason that a party is entitled either to sue upon the foreign judgment/ decree or to bring a suit upon the original cause of action as held in the decisions reported as 1809-11 East 118 *Hali v. Odber*, and 1887-37 OD 244 *In Re, Henderson; Nouvion v. Freeman*.

10. But over the years legal luminaries and Courts have attempted to provide a juristic basis for the recognition of foreign judgments. Attempts have been made to reconcile the two seemingly rival considerations, namely, the necessity of giving effect to foreign adjudications and the assertion of the uncompromised sovereignty of national Courts. Several doctrines enunciated in this regard have their faithful adherents, but it has been felt that a rational basis in each case is not always easily discernible.

11. Amongst the earliest doctrines propounded in England was the one based on the principle of 'comity of Nations'. This principle, according to Cheshire, means that 'in order to obtain reciprocal treatment from the Courts of other countries, we are compelled to take foreign judgments as they stand and to give them full faith and credit.' It is not necessary to trace the reasons here, but this doctrine came to be recognized as inadequate and soon fell to the challenge of its critics.

12. According to Professor Gutteridge, the doctrine of an 'acquired right' explains the reasons for the enforcement of a foreign judgment, and this is the doctrine to which Dean H.E. Read probably refers when he explains:

The true basis upon which the Anglo-Dominion authorities place the recognition of a foreign judgment is that it proves the fact that a vested right has been created through the judicial process by the law of a foreign law district.

13. Several decisions by the Courts in England have now accepted the view that the recognition of a foreign judgment is based on the assumption that it creates a new legal obligation. It proceeds from the concept that a foreign judgment, creates by fiction, a contract between the parties. 1870-8 QB 155 *Schibsby v. Westenholz* (at p. 159; per Blackburn, J)

14. Finally, the school led by Von Bar attempts to harmonize the recognition of foreign judgments with the application of foreign laws, by drawing attention to the relationship between law and judgment. A judgment, in his view, is a *lex specialis*, a law regulating one single case.

15. These are among the more prominent doctrines upon which the recognition and enforcement of foreign judgments has been sought to be justified.

16. Although legal jurisprudence appears to have abandoned the 'doctrine of comity' based upon the rule of reciprocity, the requirement of reciprocal treatment has been made by statute in several countries, a practical pre-requisite to the enforcement of foreign judgments. From the Judgments Extension Act, 1868 in England to the Administration of Justice Act, 1920 the

principle of reciprocal treatment was consistently followed and later on attained full expression in the Foreign Judgments (Reciprocal Enforcement) Act, 1933 when the scheme was extended to the countries completely foreign in the political sense to the United Kingdom.

17. The Judgments Extension Act, 1868 was the first in point of time to be enacted by the British Parliament, which made certain judgments of the Superior Courts of Scotland and Ireland effective in the United Kingdom. Before that Act, the only way to enforce such judgments in the United Kingdom was by institution of a suit on them. After the Act, the executability of such judgments in the United Kingdom was permitted, on a system of registration with the British Courts by means of a certificate that the particular judgment had been obtained in a Superior Court in Scotland or Ireland. The foreign judgment, when so registered, was regarded as extended judgment for purposes of execution but was made subject to certain restrictions.

18. Next came the Administration of Justice Act, 1920 which extended the facility of execution in the United Kingdom of foreign judgments obtained in a Superior Court in any of the British dominions. The judgment-creditor within twelve years of the judgment could apply to the High Court in England or Ireland for registration and the British Court in its discretion could allow or refuse the application. The registration was, therefore, not as of right unlike under the earlier Act of 1868. Further the 1920 Act provided for certain conditions or restrictions for registration some of which were analogous to those mentioned in Section 13 of the Code of Civil Procedure, 1908 in India. Once a foreign judgment of a Dominion was registered at a British Court, it was regarded to have the same force as if it had been initially obtained in the registering Court. The Act of 1920 allowed registration only if its provisions had been extended by an Order-in-Council to the Dominion in which a Superior Court passed the judgment. Registration was thus based on reciprocity.

19. In 1933 the Foreign Judgments (Reciprocal Enforcement) Act came into force, the effect of which was to extend the provision for registration to foreign judgments of Superior Courts in foreign countries even outside the Dominions. But the extension was to be by Orders-in- Council and on a reciprocal basis. Provisions are found in the Act, which enable a person, who holds a final and conclusive foreign judgment in his favour of a Superior Court in a reciprocating territory, to apply to the British Court in England for registration within six years of such judgment. The British Court was no longer left with the discretion to decline the registration. The provision for registration was confined to foreign judgments for recovery of money. On certain grounds, specified in the Act, liberty was given to the person against whom the judgment was given to have the registration set aside. The effect of registration under the Act would appear to be that the foreign judgment registered would, for the purpose of execution, be of the same force and be subject to the same control as if it had been originally given in the registering Court and that no further substantive action in

England would be necessary on a foreign judgment, which was entitled to registration; meaning thereby there was no need to file a fresh suit.

20. In British India there was originally no statutory or other provision, conferring jurisdiction on Indian Courts, to enforce foreign judgments in execution. On February 27, 1924, a Bill was introduced in the Central Legislature to provide for enforcement, in British India, of judgments obtained in the United Kingdom or other notified parts of His Majesty's Dominions, as part of a reciprocal arrangement by which the provisions of Part II of the Administration of Justice Act, 1920 were to be extended to the British India. But the Bill was dropped in 1925 on the ground that full reciprocity could not be ensured since most of the British Indian Courts of unlimited civil jurisdiction would not possibly be viewed as Superior Courts as contemplated by the Administration of Justice Act, 1920. But the position became different with the passing of the Foreign Judgments (Reciprocal Enforcement) Act, 1933 which provided for the extension of Part I of the Act to His Majesty's Dominions outside the United Kingdom by the Order-in-Council and also left it to the Order-in-Council to specify the Courts which should be deemed as "superior" within the meaning of the Act. The Lord Chancellor, having expressed his no objection to the British Act being applied to all Indian Courts possessing unlimited original civil jurisdiction, Section 44A was inserted in the Code of Civil Procedure, 1908 by Section 2 of the Code of the Civil Procedure (Amendment) Act, 1937.

21. The section as it stood then, read as under:-

44A. Where a certified copy of a decree of any of the superior Courts of the United Kingdom or any reciprocating territory has been filed in a District Court, the decree may be executed in British India as if it had been passed by the District Court.

Explanation 1--"Superior Courts", with reference to the United Kingdom, means the High Court in England, the Court of Sessions in Scotland, the High Court in Northern Ireland, the Court of Chancery of the County Palatine of Durham.

Explanation 2.--"Reciprocating territory" means any country or territory, situated in any part of His Majesty's Dominions or in India which the Governor-General-in-Council may, from time to time, by notification in the Gazette of India, declare to be reciprocating territory for the purposes of this section; and "superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification.

22. To the section was added a further 'Explanation' setting out the meaning and scope of a decree with reference to a superior Court.

23. In view of the constitutional changes in 1937, certain consequential amendments were made to the section by the Government of India (Adaptation of Indian Laws) Order, 1937.

24. Later upon attaining of Independence and the adoption of the Constitution of

India, India being proclaimed a sovereign democratic republic on and from January 26, 1950, it became necessary to amend Section 44A, and by the CPC (Amendment) Act, 1952 the provision was recast and the definition of 'reciprocating territory' in Section 44A was enlarged to cover any country or territory outside India which the Central Government, may by notification in the official gazette, declare to be a reciprocating country, so that now the Code puts all countries or territories outside India on an equal footing.

25. In light of this legislative backdrop, we now proceed to answer the issue of maintainability of the present lis before the High Court of Delhi.

26. It would be relevant to note that the term 'District Court' employed in Section 44A of the Code of Civil Procedure, 1908 is not distinctively defined under the definition clause viz. Section 2. However, pertinently it finds reference in definition of the term 'District' comprised in Section 2(4) of the Code of Civil Procedure, 1908 which reads:-

„district means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court .

(Emphasis Supplied)

27. Two things are discernible from a perusal of Section 2(4) of the Code of Civil Procedure, 1908 as extracted hereinabove. Firstly, Section 2(4) defines 'District' in relation to a geographical area or territory. Secondly, the expression 'District Court' connotes the 'principal Civil Court of original jurisdiction'.

28. It may also be noticed that the legislature, in its wisdom, has included the reference to the local limits of the ordinary original civil jurisdiction of a High Court after defining the 'District Court' in Section 2(4) of the Code of Civil Procedure, 1908.

29. The significance and effect of the said manner of legislative drafting shall be discussed a little further in our judgment, in conjunction with other relevant circumstances.

30. Therefore, it emerges beyond pale of doubt that the Code of Civil Procedure, 1908 prescribes 'District Court' as a connotation of a 'principal Civil Court of original jurisdiction'.

31. When so replaced, Section 44A of the Code of Civil Procedure, 1908 would read as follows:

Where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been filed in a principal Civil Court of original jurisdiction, the decree may be executed in India as if it had been passed by the principal Civil Court of original jurisdiction.

32. Meaning thereby, it would be the principal Civil Court of original jurisdiction

which would be competent to execute the decree passed by a Foreign Court in terms of the provisions of Section 44A of the Code of Civil Procedure, 1908.

33. What is meant by the expression 'principal Civil Court of original jurisdiction'?

34. The expression 'principal Civil Court of original jurisdiction' has not been defined in the Code of Civil Procedure, 1908.

35. Such being the position, we travel beyond the realm of the Code of Civil Procedure, 1908 and look at other Statutes to ascertain the meaning of the expression 'principal Civil Court of original jurisdiction'.

36. We first have a glance at the Punjab Courts Act, 1918, which is applicable to Delhi. Section 24 of the Punjab Courts Act, 1918 reads as under-

24. District Court to be principal Civil Court of original jurisdiction -

The Court of the District Judge shall be deemed to be the District Court or principal Civil Court of original jurisdiction in the district.

(Emphasis Supplied)

37. At the outset we may note that two things are discernible from a reading of Section 24 of the Punjab Courts Act. Firstly, the term 'Court of District Judge', has by fiction of law, deemed to be the 'District Court' and secondly, the term 'principal Civil Court of original jurisdiction' has been employed as an alternative expression for the term 'District Court'.

38. It therefore emerges that the expression 'principal Civil Court of original jurisdiction/District Court' can be substituted by the expression 'Court of the District Judge'.

39. We now endow our consideration upon the General Clauses Act, 1897. Section 3(17) of the said Act reads as under:-

"District Judge " shall mean the judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction.

(Emphasis Supplied)

40. In consonance with the mandate of Section 24 of the Punjab Courts Act, 1918. Section 3(17) of the General Clauses Act, 1887 also envisages that the expression 'principal Civil Court of original jurisdiction' can be alternatively substituted by the expression 'Court of the District Judge'.

41. Furthermore, significantly Section 3(17) of the General Clauses Act, 1897 prescribes that the expression 'District Judge' shall not include a High Court in exercise of its ordinary or extraordinary original civil jurisdiction.

42. The cumulative effect of the conjoint reading of Section 24 of the Punjab

Courts Act, 1918 and Section 3(17) of the General Clauses Act, 1897 is that the expression 'principal Civil Court of original jurisdiction/District Court' can be substituted by the expression 'Court of the District Judge'. Further, it follows that the expressions 'principal Civil Court of original jurisdiction/,,District Court/ ,,Court of District Judge' shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction.

43. As noticed by us earlier, in the context of Section 2(4) of the Code of Civil Procedure, 1908, the legislature in its wisdom has included the reference to the local limits of the ordinary original civil jurisdiction of a High Court only after defining the 'District Court' as the 'principal Civil Court of original jurisdiction'. Therefore, it is evident that the legislative intent was not to treat a High Court as falling within the ambit of its preceding expression 'District Court'.

44. In this regard we may draw support from the observations of the Calcutta High Court in its decision reported as Hyat Mahomed and Others Vs. Shaikh Mannu and Others, ., wherein it was held by Rankin, C.J that it is quite true that the word 'District' in the Code of Civil Procedure, 1908, includes not merely the local limits of what is ordinarily called a District Court, but includes the local limits of a High Court in its ordinary original civil jurisdiction, however, that is a very different thing indeed from saying that the words 'District Court' wherever they appear in the Code of Civil Procedure, 1908 mean and include a High Court in the exercise of its ordinary original civil jurisdiction.

45. Reading of Section 24 of the Punjab Courts Act, 1918 applicable to Delhi and Section 3(17) of the General Clauses Act, 1897 also reinforces and lends credence to this conclusion.

46. At this juncture it would be apposite to take note of Section 5 of Delhi High Court Act, 1966 which deals with the jurisdiction of the High Court of Delhi. The said provision had been heavily pressed into service by the learned Senior Counsel appearing on behalf of the respondent/decreed holder in support of the submission that the High Court of Delhi would qualify as the 'District Court' in terms of Section 44A of the Code of Civil Procedure, 1908 since the Delhi High Court has been conferred 'original civil jurisdiction' for suits, the value of which exceeds rupees twenty lakhs. It was submitted that the jurisdiction vested with the High Court in terms of this provision is to the complete exclusion (ouster) of the jurisdiction of all other Courts established in the territory of Delhi, and for the execution of a decree exceeding the sum of rupees twenty lakhs, as in the present case, only the High Court of Delhi would be a 'court of competent jurisdiction' in accordance with the mandate of law. Thus we note Section 5 of the Delhi High Court Act, 1966. It reads as under:-

"5 Jurisdiction of High Court of Delhi -

(1) The High Court of Delhi shall have, in respect of the territories for the time being included in the Union territory of Delhi, all such original, appellate and other jurisdiction as, under the law in force immediately before the appointed

day, is exercisable in respect of the territories by the High Court of Punjab .

(2) Notwithstanding anything contained in any law for the time being in force, the High Court of Delhi shall also have in respect of the said territories ordinary original civil jurisdiction in every suit the value of which exceeds rupees twenty lakhs .

(Emphasis Supplied)

47. A careful analysis of the contours and content of the preceding provision unequivocally evinces that the non-obstante clause contained in sub-section (2) confers "ordinary original civil jurisdiction" upon the High Court of Delhi, to the exclusion of all Courts constituted in the territory of Delhi, with respect to every suit, the value of which exceeds rupees twenty lakhs.

48. Furthermore, the legislature has employed the expression "ordinary original civil jurisdiction" in relation to the jurisdiction vested by it in the High Court of Delhi and has in its wisdom not termed the High Court of Delhi as the "principal Civil Court of original jurisdiction" (a connotation which we find is used interchangeably with "District Court" or the "Court of the District Judge"), for suits valued more than rupees twenty lakhs.

49. We may at the outset express our agreement to the contention of the respondent/decreed holder that the High Court of Delhi enjoys original civil jurisdiction, to the complete exclusion of all the Courts established in the territory of Delhi, for entertaining suits the value of which exceeds rupees twenty lakhs. The said proposition is unexceptionable and cannot be assailed.

50. It is also true that the mechanism contemplated under the Code of Civil Procedure, 1908 for execution of decrees passed by the Courts governed by provisions of the Code, (hereinafter referred as "domestic decrees") requires that the decree be executed by a court which either passed the said decree (Section 38) or upon transfer by a "transferee court", which must be a "court of competent jurisdiction" in terms of territorial as well as pecuniary jurisdiction (Section 39). The test of competence of a "transferee court" to execute a decree, as provided u/s 39 of the Code, is whether the said court would have jurisdiction to try the suit in which such decree was passed.

51. However, we find a complete hiatus in the propositions sought to be projected by the respondent/decreed holder to establish maintainability of the present action, inasmuch as there is no tenable jurisprudential foundation to construe the High Court of Delhi as the "District Court" in terms of Section 44A of the Code of Civil Procedure, 1908 and neither any legal justification to telescope the requirements contemplated u/s 39 of the Code into Section 44A thereof.

52. We have already held, for the reasons extensively discussed in the preceding paragraphs, that under the prevailing scheme of law the High Court of Delhi cannot be construed as the "District Court" as envisaged u/s 44A of the Code of

Civil Procedure, 1908 and rather the 'Court of the District Judge' would be the 'District Court' for the said purpose.

53. It may be true that concerning suits the ordinary original civil jurisdiction is exercised based on pecuniary limits, but based thereon it would be impossible to read into Section 44A of the Code of Civil Procedure, 1908, for the purpose of execution of a foreign decree, the said concept of ordinary original civil jurisdiction based on pecuniary limits.

54. In all fairness to the learned senior counsel appearing on behalf of the respondent/decreed holder, it would be the bounden duty of this Court to consider the judgments cited by him in support of the submission.

55. The first judgment relied in this regard is a decision rendered by a Full Bench of this Court reported as ILR 1973 (2) Delhi 933 (FB) Arjan Singh v Union of India.

56. The facts of the said case were that on April 14, 1960, the Sub- Judge, 1st Class, Delhi passed an ex-parte decree, in favour of the respondent and against the appellant for recovery of Rs. 47,521/-. The Delhi High Court Act, 1966 came into effect from October 31, 1966. On April 17, 1967 the respondent moved an application in the Delhi High Court on its Original Side to execute the decree passed by the Court of the Sub- Judge. Following two questions were referred to the Full Bench for its consideration:-

(a) In which Court all future applications whether seeking execution or any other relief should be moved where a decree for more than rupees twenty five thousand has been passed by a Subordinate Judge prior to 31-10- 1966; and

(b) Whether Section 16 read with Section 5 of the Delhi High Court Act contemplates execution proceedings pending on 31-10-1966 as falling within the ambit of proceedings which stand transferred to the High Court by virtue of Section 16 of the Delhi High Courts Act, if the same were pending before a Subordinate Judge on 31-10- 1966.

57. After noting the decisions of the Supreme Court and the Full Bench of the Punjab High Court reported as Merla Ramanna Vs. Nallaparaju and Others, and Mehar Singh and Another Vs. Kasturi Ram and Others, and the provisions of Section 37 of the Code of Civil Procedure, 1908, defining the expression 'court which passed a decree', the Full Bench held that both, the subordinate Court which passed a decree prior to the enactment of the Delhi High Court Act, 1966, and the High Court of Delhi, would have concurrent jurisdiction to execute the decree passed in a suit value whereof was more than rupees twenty five thousand.

58. A microscopic analysis of the said decision would evince that the Full Bench had proceeded on the premise that after the enactment of Delhi High Court Act, the High Court would be competent to execute a decree passed in a suit of valuation of more than rupees twenty five thousand. In this backdrop, the Full

Bench delved upon the fact that whether a subordinate Court which had passed the decree of valuation of more than twenty five thousand rupees prior to the enactment of Delhi High Court Act would have jurisdiction (along with the High Court) to execute the said decree even after the enactment of Delhi High Court Act. In the said case, the Full Bench had no occasion whatsoever to examine the provisions of Section 44A of the Code of Civil Procedure, 1908 dealing with execution of decree passed by a foreign Court and thus the ratio laid down in said case cannot be applied in the present case, more particularly when Full Bench had proceeded on the premise that after the enactment of Delhi High Court Act, the High Court would be competent to execute a decree of valuation of more than rupees twenty five thousand.

59. The second judgment relied upon by the respondent-decree holder is a decision of the Division Bench of this Court reported as Harbans Singh Vs. Union of India, .

60. The facts of the said case were that the respondent had filed a suit u/s 92 of the Code of Civil Procedure, 1908 against the appellants in the original side of this Court. Section 92 of the Code of Civil Procedure, 1908 requires the suit to be filed in the "principal Civil Court of original jurisdiction". The valuation of suit was fixed in the plaint at rupees two lakh fifty thousand. One of the contentions advanced before the Division bench was that this court had no jurisdiction to try the said suit in view of the fact that the "Court of District Judge" is the "principal Civil Court of original jurisdiction" in Delhi. After noting the provisions of Section 24 of Punjab Courts Act and Section 5(2) of Delhi High Court Act it was held by the Division Bench that for the purposes of Section 92 of the Code of Civil Procedure, 1908, the High Court of Delhi shall be the "principal Civil Court of original jurisdiction" qua suits, the value of which exceed fifty thousand rupees (the valuation of suits prescribed in Section 5(2) was rupees fifty thousand at the time of passing of the said judgment) and that the "Court of District Judge" would be the "principal Civil Court" in the other suits.

61. With deepest respect to the views expressed by the Division- Bench, we find no reasoning in the judgment to indicate as to how the jurisdiction of the High Court as contemplated u/s 5(2) of the Delhi High Court Act, 1966 could lead to the conclusion that the High Court of Delhi is the "principal Civil Court of original jurisdiction" for suits valued above the prescribed amount. As observed by us earlier, Section 5(2) of the Delhi High Court Act employs the expression "ordinary original civil jurisdiction" in relation to the jurisdiction conferred by it upon the High Court of Delhi and there is nothing to equate the same as "principal Civil Court of original jurisdiction". In our understanding, the *raison d'être* of the said decision is that in view of the mandate of the non-obstante clause contained in the Section 5(2) of the Delhi High Court Act, 1966, the High Court of Delhi enjoys exclusive competence to try suits, the value of which exceed rupees fifty thousand, as contemplated then. As highlighted earlier the said case pertained to institution of a suit u/s 92 of the Code of Civil Procedure, 1908 and

since the plaint in the said suit was valued at rupees two lakh fifty thousand the High Court was rightly held to be competent to try the said suit. This Court while rendering its decision was not concerned with the interpretation of Section 44A of the Code of Civil Procedure, 1908 which deals with execution of foreign decrees and not trial of suits, to which the mandate of Section 5(2) of the Delhi High Court Act, 1966 applies. It is a settled proposition that "execution" is distinct from the expression "suit" and the same is not subsumed therein. Reliance may be placed upon the decision of the Division Bench of this Court reported as *Morepen Laboratories Ltd. and Others Vs. Morgan Securities and Credits Pvt. Ltd.*, . Therefore, the dictum of this Court in *Bakshi Lochan Singh's* (supra) is of no assistance in determination of the controversy at hand.

62. Reliance was also placed upon the decision of a Single Judge of this Court reported as *Mary Assumption Trinidad etc. Vs. Vincent Manuel Trinidad and Others*, .

63. In the said case, one of the questions which was considered by this Court was whether the "District Court" was competent to entertain the "petition" u/s 276 of the Indian Successions Act, 1925 for grant of Letters of Administration. After noting that Section 2(bb) of the Indian Successions Act defines the "District Judge" to mean Judge of a "principal Civil Court of original jurisdiction" and provisions of Section 5(2) of Delhi High Court Act, 1976 it was held that the "ordinary original civil jurisdiction" envisaged in Section 5(2) of the Delhi High Court Act, 1966 has relation to "every suit" and the non-obstante clause contained in sub-section (2) of Section 5 of the Delhi High Court Act operates only in relation to provisions contained in any law with regard to jurisdiction of Courts vis-à-vis suits and leaves other jurisdictions including testamentary and intestate jurisdictions untouched.

64. We may note that the said decision is in fact in consonance with our view that the non-obstante clause comprised u/s 5(2) of the Delhi High Court Act, 1966 applies only to suits and not any other proceedings such as execution of foreign decrees in terms of Section 44A of the Code of Civil Procedure, 1908.

65. Similarly reliance was also placed upon another decision of a Single Judge of this Court reported as *Haryana Ice Factory Vs. Municipal Corporation of Delhi and Another*, .

66. In the said case, one of the questions arising for the consideration of this Court was whether the "District Judge" was competent to entertain the petition u/s 370 and 372 of Indian Succession Act, 1925 for grant of succession certificate. Section 371 of Indian Succession Act prescribes that a petition for grant of succession certificate can be filed in the "Court of the District Judge" within whose jurisdiction the deceased ordinarily resided. Section 2(bb) of Indian Succession Act defines "District Judge" to mean the Judge of a "principal Civil Court of original jurisdiction". After take into consideration the provisions of Section 24 of Punjab Courts Act and Section 5(2) of Delhi High Court Act it was

held by the learned Single Judge that the jurisdiction of High Court of Delhi envisaged in Section 5(2) of the Delhi High Court Act is only in respect of suits, the value of which exceeds rupees one lakh and the same would not make the High Court of Delhi a 'principal Civil Court of original jurisdiction' in Delhi. It was thus held that the High Court of Delhi is not competent to entertain petitions seeking grant of succession certificate. Yet again, this decision is in consonance of the view taken by us in the present case.

67. We may now advert our attention to a decision of a learned Single Judge of this Court reported as *Oakwell Engineering Ltd. Vs. Enernorth Industries Inc.* upon which much emphasis was laid by the learned Senior Counsel appearing on behalf of the respondent-decree holder.

68. In the said case, one of the questions which had arisen for adjudication before the learned Single Judge of this Court was whether the High Court of Delhi is competent to execute a decree passed by a 'foreign Court' in terms of Section 44A of the Code of Civil Procedure, 1908. After noting the decisions of this Court in *Bakshi Lochan Singh* and *R.P.Sachdevas* cases (*Supra*), the learned Single Judge was of the view that the High Court was competent to execute the decree passed by the foreign Court for the reason the decree which was sought to be executed was a money decree which can be obtained in a suit. It was held that for the purposes of Section 44A of the Code of Civil Procedure, 1908 the High Court of Delhi is a 'District Court' and thus competent to entertain petition u/s 44A of the Code of Civil Procedure, 1908.

69. In our considered view, the learned Single Judge failed to properly analyze the ratio laid down by this Court in *Bakshi Lochan Singh* and *R.P Sachdeva's* case (*supra*) that the jurisdiction of the High Court of Delhi envisaged in Section 5(2) of the Delhi High Court Act is only in respect of suits, the value of which exceeds a prescribed amount and the same would not make the High Court of Delhi a 'principal Civil Court of original jurisdiction' in Delhi. Furthermore, it would be pertinent to notice that though the Single Judge correctly observed that Section 44A of the Code of Civil Procedure, 1908 makes no mention of jurisdiction to try and that there is no requirement u/s 44A of the Code that the 'District Court' in which the foreign decree is presented for execution should be also a Court which could have entertained the suit, yet erroneously arrived at the conclusion that High Court of Delhi is a 'District Court' as envisaged u/s 44A of the Code of Civil Procedure, 1908.

70. It would also be necessary for us to take note of a judgment rendered by the Supreme Court of India in the decision reported as *M.V. Al Quamar Vs. Tsavlis Salvage (International) Ltd. and Others*, . The decision has been relied upon by learned Senior Counsel appearing on behalf of the respondent-decree holder to demonstrate that a petition for execution of a foreign decree preferred before the Andhra Pradesh High Court was held maintainable.

71. At the outset we may proceed to notice the factual conspectus of the case

and the issues which fell for consideration of their Lordships, in order to appreciate the observations contained in the said judgment.

72. The matter before the Supreme Court arose from the Andhra Pradesh High Court wherein an Execution Petition was filed before a learned Single Judge in terms of Section 15 of the Admiralty Courts Act and Section 44A read with Order XXI Rule 10 of the Code of Civil Procedure, 1908 for executing the decree issued by the High Court of Justice Queens Bench Division Admiralty Court in an action by the salvaging company (decree-holder) against the owner of the vessel - M.V.AL Quamar ex AL Tabith at the relevant time of contract (judgment-debtor), claiming damages for repudiation of an L.O.F. salvage contract. It may be highlighted that at the time of preferring the Execution Petition the vessel of the judgment-debtor was located in the territorial waters of Andhra Pradesh.

73. Pending the Execution Petition, the decree-holder (respondent No. 1 before the Supreme Court) prayed for an interlocutory order for the issuance of a warrant of arrest against the vessel together with Hull, tackle Engines, Machinery equipment's, stores etc. The learned Single Judge of the Andhra Pradesh High Court granted an interim order as prayed for on a prima facie view of the matter that the Execution Petition can be filed in the High Court which is otherwise having original admiralty jurisdiction. Aggrieved thereof, the subsequent owner of the vessel (Appellant before the Supreme Court) filed a petition before the Andhra Pradesh High Court to vacate the interim order principally on the ground that the ownership of the ship having been transferred bona fide and for valuable consideration to Quamar Shipping Ltd., the ship as attached in terms of the order of the Court cannot possibly be kept under attachment in execution of the decree against the original owner (Respondent No. 2 before the Supreme Court).

74. The learned Single Judge of the Andhra Pradesh High Court was pleased to record that the matter in issue involved eminently an arguable case as regards the maintainability of the Execution Petition. The issue of maintainability of the Execution Petition was decided by the Bench of the Chief Justice of the Andhra Pradesh High Court against the subsequent owner; who preferred SLP before the Supreme Court of India laying challenge to the maintainability of the Execution Petition before the Andhra Pradesh High Court.

75. The judgment was pronounced by a Division Bench of the Supreme Court of India, comprising Mr. Justice S.B.Majumdar and Mr. Justice U.C.Banerjee. The main judgment in the matter was delivered by Mr. Justice U.C.Banerjee, and a separate concurring opinion was authored by Mr. Justice S.B.Majumdar, J.

76. For gaining better understanding of the context in which the judgment was delivered, we feel apposite to concatenate the contentions canvassed by the learned Senior Counsel appearing on behalf of the Appellant before the Supreme Court. They were:-

(i) The invocation of Section 44A of the Code of Civil Procedure, 1908 at the instance of decree holder to execute a decree passed by the Admiralty Court is

misconceived, as the Code of Civil Procedure, 1908 is not applicable to Admiralty jurisdiction in view of Section 112 of the Code;

(ii) The judgment of the English Court cannot be termed to be judgment in personam and therefore the Execution Petition for the arrest of the vessel is not maintainable;

(iii) Section 44A is not a self contained code for the execution of a decree, the same being not exhaustive and has to be read along with well settled principles of common law in matters relating to execution of decree for a sum of money; and

(iv) The fundamental principles of execution of domestic decrees comprised in Section 39 of the Code of Civil Procedure, 1908 also apply to Section 44A and in view thereof the Andhra Pradesh High Court is not a competent court which can entertain execution proceedings u/s 44A of the Code of Civil Procedure, 1908.

77. Therefore, it was in light of the above highlighted submissions that the Supreme Court proceeded adjudication.

78. It would be pertinent for us to highlight that Mr. Justice U.C.Banerjee, at the very outset in his lead judgment delineated the issue arising for consideration. The relevant observations are reproduced herein below:-

Assumption of Admiralty jurisdiction by Andhra Pradesh High Court and passing of an order of arrest in execution of a judgment and decree of the High Court of Justice Queens Bench Division, Admiralty Court in London in case No. 1994 Folio No. 1693 dated 9.11.1988, is the key issue for discussion in these appeals by the grant of special leave .

(Emphasis supplied)

79. Similarly Mr. Justice S.B.Majumdar, in his separate concurring opinion also significantly observed:-

I have gone through the erudite and exhaustive judgment prepared by learned Brother, U.C.Banerjee, J., in these appeals. I respectfully agree with the conclusion reached by him. However, as the matter at issue has wide repercussions regarding the scope and ambit or admiralty jurisdiction vested in the Chartered High Courts or their successor High Courts, like the High Court of Andhra Pradesh, I deem it fit to record my reasons for concurring with the decision arrived at by learned brother.

(Emphasis supplied)

Therefore, we find that at the heart of the controversy before the Honble Supreme Court, lay the Admiralty jurisdiction of the Andhra Pradesh High Court which had been invoked by the decree holder and thus the maintainability of the Execution Petition before the Andhra Pradesh High Court in its Admiralty jurisdiction fell for Lordships precise consideration which was tested solely on the

anvils of the contentions summarized by us in paragraph _____.

80. In this regard it may be noticed that Mr. Justice U.C.Banerjee, in paragraph 21-25 of his judgment traced the origins of the Admiralty jurisdiction vested with the Chartered High Courts and observed that after re-organisation of states, Andhra Pradesh High Court was conferred with similar Admiralty jurisdiction as was previously enjoyed by the Madras High Court for the said territory.

81. It assumes significance that no submissions were advanced at the bar and therefore there is no finding with regard to the issue whether a 'High Court' can be construed as a 'District Court' in terms of Section 44A of the Code of Civil Procedure, 1908. Furthermore, it is palpably evident that the Supreme Court was not seized with a case pertaining to the jurisdiction of the High Court of Delhi, which is governed by peculiar provisions contained in the Delhi High Court Act, 1966 and the Punjab Courts Act, 1918. Thus, the Supreme Court had no occasion to interpret the expression 'District Court' occurring in Section 44A of the Code of Civil Procedure, 1908 in light of Section 2(4) of the Code, Section 24 of the Punjab Courts Act, 1918 and Section 3(17) of the General Clauses Act, 1897. We have no hesitation in concluding that no benefit can be availed by the respondent-decree holder by placing reliance on the said judgment as the issues arising for our consideration were neither agitated before the Supreme Court and were therefore, not decided by the Court.

82. Apropos the submission that the High Court of Delhi would be the only 'court of competent jurisdiction' in Delhi to execute the present decree in view of the mandate of Section 39 of the Code of Civil Procedure, 1908 read with Section 5(2) of the Delhi High Court Act, 1966 and therefore it ought to be understood as the 'District Court' in terms of Section 44A of the Code, it may be stated that the luminous observations of the Supreme Court of India in M.V. Al. Quamar's case (Supra) clearly negate the said submission as it has been observed that the requirement that the 'transferee Court must be a competent court and should be shown to have jurisdiction to pass such a decree even originally is conspicuously absent in Section 44A. It was further held that Section 44A indicates an independent right conferred on a foreign decree-holder for enforcement of its decree in India. It is a fresh cause of action and has no co-relation with jurisdictional issues. The scheme of Section 44A of the Code of Civil Procedure, 1908 is alien to the scheme of domestic execution as provided u/s 39(3) of the Code wherein the 'transferee Court' must be otherwise competent to assume jurisdiction. It was further observed that Section 44A is endowed with an in-built scheme of execution, which is all together distinct, and not comparable with the scheme envisaged u/s 39(3).

83. The said observations of the Supreme Court are a complete answer to the contention urged by the respondent/decreed holder. It is clear that the legislature has consciously in its wisdom chosen not to infuse the conception of 'competent jurisdiction' in Section 44A of the Code of Civil Procedure, 1908 in contra-distinction to Section 39 which provides the mechanism for execution of

`domestic decrees". The requirements saddled on the executing court under the scheme of Section 39 are alien to the `District Court; the jurisdiction of which may be invoked by the holder of a foreign decree in terms of Section 44A. Rather it may be pertinently observed that the legislature has vested such `District Court" the power to execute the `foreign decree" as if it had been passed by itself. The conception of `competence of jurisdiction" of executing court contained in Section 39 being wholly absent in the language employed by the legislature in Section 44A of the Code, the same cannot be circuitously injected by this Court as the same would tantamount to legislative re-writing, which is impermissible.

84. The authoritative observations of the Supreme Court referred above unequivocally evince that the jurisdiction of the `District Court" in terms of Section 44A of the Code of Civil Procedure, 1908 can be invoked by a holder of a decree of a Superior Court of reciprocating territory, unhindered by the lack of jurisdictional competence of the said Court while dealing with the execution of `domestic decrees".

85. For the reasons extensively highlighted by us we are of the considered view that the High Court of Delhi not being a `District Court" in terms of Section 44A of the Code of Civil Procedure, 1908 is not vested with the jurisdiction to entertain the present Execution Petition. In view thereof, the same is liable to be transferred to the `Court of District Judge within whose jurisdiction the property sought to be attached is situated for being dealt with in accordance with law.

86. The appeal is allowed. The impugned order dated November 29, 2013 is set aside in so far it is held that the Delhi High Court would be the `District Court" to execute the foreign decree. Needless to state decision on the objections on merits is also set aside being without jurisdiction. The executing Court shall decide the objections uninfluenced by any observation made by the learned Single Judge on merits. The Execution Applications filed by the appellants are restored save and except the application which challenged the jurisdiction of this Court, which application is allowed.

87. The Registry shall transmit the Execution Petition and the applications which are revived to the Court of concerned District Judge and for which an application would be submitted in the Registry by the decree holder intimating the Court to which the Execution Petition has to be transmitted.

88. Parties shall bear their own costs all throughout.