

(2009) 08 KAR CK 0096

In the Karnataka High Court

Case No : Civil Revision Petition No. 103 of 2009

India Builders Corporation

APPELLANT

Vs

Mr. Masood Asif

RESPONDENT

Date of Decision : 12-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 22, 13 (b), 13 (f), 44 A

Citation : (2009) ILR (Kar) 4028 : (2009) 4 KCCR 3083

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : Kamal and Bhanu, for the Appellant; Arvind Kamath, ALMT Legal and S.T. Prashanth Kumar, for the Respondent

Final Decision : Dismissed

Judgement

N. Ananda, J.—The petitioner (India Builders Corporation) is arrayed as judgment debtor in Ex.P.No.896/2003, pending on the file of XIX Addl. City Civil & Sessions Judge at Bangalore. Ex. P. No. 896/2003 is filed to execute the decree in claim No. HC 02C00728 dated 08.10.2002, made by the High Court of Justice, Chancery Division, London. The decree holder is one Mr. Masood Asif.

2. The execution proceedings were initiated u/s 44A of C.P.C. In response to the cause notice issued under Order XXI Rule 22 CPC, judgment-debtor filed objections. The executing Court on hearing learned Counsel for parties and consideration of objections statement, overruled the objections. Therefore, judgment-debtor is before this Court.

3. The relevant facts and proceedings necessary for disposal of this petition are as follows:

By a written agreement dated 29.01.1999, India Builders Corporation and U.K. Partners agreed to purchase and Mr. Masood Asif agreed to sell property bearing No. 39-47, Bethnal Green Road, London, E1, for sale consideration of ? 3,500,000/-. A deposit of ?350,000/- was payable on exchange of contract,

immediately. The last date for exchange of contract was on or before the end of February 1999. The date for completion of contract was 25.08.1999. M/s. India Builders Corporation (judgment-debtor) defaulted in completion of contract. On 11.08.1999, the decree-holder issued notice for completion of contract to the solicitor of judgment-debtor namely M/s. Kidd Rapinet

After receipt of the notice, M/s. India Builders Corporation (judgment-debtor) asserted that it was entitled to rescind the contract and terminate the agreement. On 25.08.1999, judgment-debtor instituted legal proceedings against decree-holder in the Central London County Court, claiming that notice to complete the agreement dated 29.01.1999 was invalid and sought for a declaration that it was entitled to rescind the contract, following service of notice on 25.08.1999, claiming return of deposit amount and also for an order of injunction to restrain the decree-holder's solicitors from disposing of the deposit.

4. The decree-holder filed statement of defence and a counter claim. The notice to complete the contract was served on 26.08.1999 and 10.09.1999. On 26.08.1999, as instructed by the judgment-debtor a witness statement was prepared by solicitors of M/s Kidd Rapinet in support of an interlocutory injunction to restrain M/s. Halsey Lightly, the solicitors that acted for the decree-holder in relation to the sale from disposing of a sum of ?175.000/- held by them as stake holders. On 18.03.2000, India Builders Corporation (judgment-debtor) filed a defence and counter claim. On 08.06.2000 an order was made for removal of M/s. Kidd Rapinet (solicitors of judgment-debtor) from Court records.

5. On 27.01.2000, the decree-holder filed a separate claim in the Central London County Court, for a declaration that agreement dated 29.01.1999 was not properly terminated by the judgment-debtor for damages against the judgment-debtor for its failure to complete the contract and/or for breach of contract.

By letter dated 18.07.2000, the judgment-debtor expressed its intention to instruct new solicitors, but in fact, did not do so. By an order dated 27.02.2002, the proceedings were consolidated and transferred from Central London County Court to the High Court of Justice, Chancery Division, London, for trial. On 14.06.2002, notice of trial was served by the decree-holder's solicitors on the judgment-debtor. The judgment debtor was aware of date of trial. The judgment-debtor did not appear before the High Court of Justice, Chancery Division, London.

On consideration of documents, evidence on record and after hearing the solicitors of the decree-holder, the High Court of Justice, Chancery Division, London, made the decree, sought to be executed in Ex. P. No. 896/2003. The initiation of Ex.P. No. 896/2003 was necessary, as the judgment-debtor had no business or assets in U.K.

6. Before the executing Court, the judgment-debtor filed objection statement and additional objection statement and raised the following; contentions:

The judgment dated 08.10.2002 of the High Court of Justice, Chancery Division, London, purported to have been made against India Builders Corporation (judgment-debtor). The judgment-debtor is not the defendant named in the above judgment. The judgment-debtor is not aware of any such company by name India Builders Corporation Plc. The judgment is not conclusive. The judgment-debtor had not entered into an agreement with decree-holder or his Official Liquidator. The judgment-debtor had not entered into an agreement for consideration of ₹3,500,000/-. The judgment-debtor is not aware of any entity by name "India Builders Corporation Plc and U.K. Partners, who are stated to have entered into an agreement with Mr. Masood Asif (decree holder). The judgment-debtor had not authorised Mr. Hamid (signatory to agreement) to act on its behalf. In the circumstances, the judgment-debtor had no obligation in favour of decree-holder and decree-holder had not acquired any enforceable right against the judgment-debtor. The entire proceedings before the High Court of Justice, Chancery Division, are vitiated by fraud played on the High Court of Justice, Chancery Division, London. The judgment-debtor had no transactions whatsoever with the decree-holder. The judgment-debtor had neither initiated any proceedings before the High Court of Justice, Chancery Division, London nor had appointed any solicitor to enter appearance in the proceedings. The judgment made by the High Court of Justice, Chancery Division, London is a product of fraud played on the judgment-debtor and it is not enforceable before the executing Court. The judgment-debtor had no notice of any counter claim stated to have been filed by the decree-holder. The judgment-debtor had no occasion to challenge the same before the High Court of Justice, Chancery Division, London. The judgment sought to be enforced is not a judgment on merits, it is obtained by fraud. The judgment is opposed to principles of natural justice, as the judgment-debtor had no opportunity to defend. The judgment-debtor had not received any notice of proceedings or consolidation of proceedings. The initiation of proceedings without production of Certificate of Satisfaction is contrary to the provisions of Section 44A of C.P.C. Therefore, the executing Court did not have jurisdiction to entertain the execution petition. The judgment debtor had not made a witness statement dated 26.08.1999. This is a false and concocted document. The said witness statement was not made in U.S.A. or Los Angeles on the said date. The foreign judgment is not conclusive and it falls within the purview of Sections 13(b) to (f) of C.P.C. The decretal amount is in the nature of penalty. As such decree cannot be executed u/s 44A of C.P.C. The Indian Law of Contracts, in particular Section 74 of the Indian Contract Act does not recognise levy of penalty for breach of contract Therefore, the decree is contrary to the law in India.

7. I have heard Sri S. Sreevatsa, learned senior Counsel for judgment-debtor and Sri Udaya Holla, learned senior Counsel for decree-holder.

8. Sri S. Sreevatsa, learned senior Counsel appearing for judgment-debtor, reiterating the objections filed by the judgment-debtor before Court below has made following submissions:

I. The Court below should not have entertained execution petition for non-production of Certificate of Satisfaction from the High Court of Justice, Chancery Division, London, which is mandatory u/s 44A of C.P.C.

II. The alleged sum of money payable under the decree, purported to be passed against judgment-debtor for recovery of penalty is not enforceable u/s 44A of C.P.C.

III. M/s. India Builders Corporation had not participated in any of the proceedings referred to above- The judgment is made against India Builders Corporation Plc, which is altogether & different entity. Therefore, decree cannot be enforced against judgment-debtor. The judgment of the High Court of Justice, Chancery Division, London is a product of fraud played on the said Court

IV. The impugned judgment is not conclusive and it is not given on merits.

V. The proceedings in which judgment is obtained are opposed to principles of natural justice. The judgment sustains a claim founded on breach of Section 74 of the Indian Contract Act.

VI. The witness statement stated to have been made by Mr. Ziaulla Sheriff is a concocted document.

9. Sri Udaya Holla, learned senior Counsel appearing for decree-holder has made following submissions:

I. The production of Certificate of Satisfaction u/s 44A of C.P.C. is a procedural aspect. The non-production of the same would not oust jurisdiction of execution Court. The judgment-debtor has no case that it had made any part payment towards decretal amount. The judgment-debtor had deposited part of the decretal amount, with the High Court of Justice, Chancery Division, London or through its solicitors, which was forfeited in terms of the decree under execution.

II. M/s. India Builders Corporation is the defendant in the proceedings, which ultimately ended in the impugned decree. Therefore, judgment-debtor cannot be permitted to contend that it was not a party to the proceedings and the judgment obtained is a product of fraud.

III. The authorisation issued to one Mr. Hamid to enter into contract, enforcement of contract and initiation of claim by the decree-holder were never opposed in the impugned proceedings. Before the executing Court, the judgment-debtor cannot re-agitate the same.

IV. The contention of judgment-debtor (Ziaulla Sheriff) at the relevant time, he was not in London is false and baseless.

V. The mere mention of words "Los Angeles" in witness statement made by (sic) Sheriff would not lead to irresistible conclusion that it was prepared at Los Angeles. In any event the judgment-debtor has failed to establish that Mr. Ziaulla Sheriff was elsewhere at the relevant time. The executing Court cannot go into

merits of the case u/s 44A of C.P.C.

VI. The decree was made against India Builders Corporation, which in fact had initiated claim at first instance. Even if there is any discrepancy relating to description of parties in the judgment and decree, the description of party in the decree should prevail over the description of party in the judgment. The judgment-debtor has not produced any material to establish that India Builders Corporation Plc and India Builders Corporation are two different entities.

VII. After transfer of proceedings to the High Court of Justice, Chancery Division, London, the learned Judge of the High Court of Justice, Chancery Division, London, having considered the documents and witness statement had made the decree in favour of decree-holder. Therefore, proceedings that culminated in the decree are not opposed to principles of natural justice.

VIII. There was no denial of opportunity to judgment-debtor. On the contrary, there was abstention of judgment-debtor from the impugned proceedings. The judgment-debtor has raised frivolous and untenable objections to avoid liability under the decree.

10. In view of rival contentions raised by parties and submissions of learned Counsel for parties, following points would arise for determination:

1. Whether production of non-satisfaction certificate in terms of Sub-section (2) of Section 44A CPC is a condition precedent to initiate execution proceedings u/s 44A CPC?
2. Whether the sum payable in the decree is a penalty and decree is not enforceable in view of provisions contained u/s 44A of CPC?
3. Whether decree sustains a claim founded on any law not enforceable in India?
4. Whether India Builders Corporation was not a party to the proceedings, which culminated in decree in favour of Mr. Masood Asif (decree-holder)?
5. Whether the decree in execution is a product of fraud?
6. Whether judgment made by the High Court of Justice, Chancery Division, London was not given on merits of the case?
7. Whether proceedings in which judgment is obtained are opposed to principles of natural justice?
8. Whether the impugned order calls for interference?

Reg: Point No. 1:

11. Sri S. Sreevatsa, learned senior Counsel appearing for judgment-debtor has submitted that decree-holder has failed to produce along with decree, the certificate of non-satisfaction issued from the High Court of Justice, Chancery Division, London. Therefore, the Court below did not have jurisdiction to

entertain execution petition u/s 44A of C.P.C.

12. On careful consideration of provisions of Sub-section (2) of Section 44A C.P.C., I find this is a procedural aspect and it does not pertain to jurisdiction.

13. In a decision reported in Sheik Ali Vs. Sheik Mohamed, , a Full Bench of Madras High Court has held:

20....

...We are unable to accept this contention on two grounds. The first is what we just now referred to, that before the filing u/s 44A, the Indian Courts will have no jurisdiction to execute the foreign judgments and before that event, therefore, there is no possibility of the application of the Limitation Act to foreign judgments. The second is that Sub-section (1) of Section 44A does not require the filing of a non-satisfaction certificate as a condition for the District Court to assume jurisdiction. Sub-section (2) of that Section does not pertain to jurisdiction but is in our view procedural; it contains besides a rule of evidence as to the conclusiveness of the certificate in the specified respect. We are, with respect, unable to agree with Uthamram Vs. K.M. Abdul Kasim Co., which held that unless a non-satisfaction certificate is filed together with a certified copy of the foreign decree, the mere filing of a certified copy of the foreign judgment or decree alone will not vest the District Court with jurisdiction to execute.

14. From what has been held by the Full Bench of Madras High Court in the decision cited supra, it is manifest that production of certification of non-satisfaction is a procedural aspect Above all the judgment-debtor has no case that it had partly satisfied the decree made by the High Court of Justice, Chancery Division, London or that the execution of decree is barred by period of limitation. Therefore, I answer point No. 1 in the negative.

Reg: Point Nos. 2 & 3:

15. Sri S. Sreevatsa, learned senior Counsel appearing for judgment-debtor referring to Explanation II to Section 44A of C.P.C., would submit that decree sought to be executed is for recovery of penalty. The High Court of Justice, Chancery Division, London, has accepted forfeiture of ₹175,000/-, stated to have been deposited by the judgment-debtor, in addition has levied damages by way of penalty of ₹175,000/-, which is now sought to be recovered before the Court below.

16. The learned senior Counsel placing reliance on the judgment of Supreme Court reported in Fateh Chand Vs. Balkishan Das, would submit that u/s 74 of the Indian Contract Act, if there is a covenant for forfeiture of earnest money for breach of contract, that would be by way of penalty. The learned senior Counsel would further submit that the Supreme Court in the aforesaid judgment has made distinction between the provisions of Section 74 of the Indian Contract Act and English Law regarding stipulation of terms of contract and stipulation in the nature of penalty. Thus, decree under execution sustains a claim, contrary to

Section 74 of the Indian Contract Act and it is not enforceable in India.

17. Sri Udaya Holla, learned senior Counsel appearing for decree-holder would submit that what has been awarded under the impugned decree is damages and not penalty.

18. The learned senior Counsel for decree-holder, relying on the judgment reported in C.V. Kunhiman Vs. P.M.K. Idrosekutty, would submit that subject matter of contract is situate at London; contract between parties was entered into at London. Therefore, proper law of contract applicable for decision of the case is the law prevalent in U.K.

19. The learned senior Counsel for decree-holder would further submit Section 74 of the Indian Contract Act does not debar forfeiture of earnest money as damages and levy of damages for breach of contract

20. In a decision reported in C.V. Kunhiman Vs. P.M.K. Idrosekutty, , it is held:

the term "proper law of a contract" means the law or laws by which the parties intended or may fairly be presumed to have intended or may fairly be presumed to have intended the contract to be governed, or (in other words) the law or laws to which the parties intended or may fairly be presumed to have intended, to submit themselves" ...the proper law of the contract is presumed to be the law of the country where the contract is made (*lex loci contractus*) and as a second presumption: "when the contract is made in one country, and is to be performed either wholly or partly in another, then the proper law of the contract may be presumed to be the law of the country where the performance is to take place (*lex loci solutionis*).

In the case on hand, as it appears from agreement and records relating to legal proceedings, parties had entered into agreement of sale in respect of property No. 39-47, Bethnal Green Road, London E1, for total consideration of ₹ 3,500,000/-. The property was mortgaged to the City (Europe) plc and legal charge was held by the City (Europe) plc. The decree-holder (Mr. Masood Asif) was paying interest to the said bank. The learned Judge of the High Court of Justice, Chancery Division, London, dealing with claim for damages has held:

16. The breach of contract being in my judgment crystal clear, what are the consequences? Those are clear, following the provisions of conditions 7.5.1 and 7.5.2. If the buyer fails to complete in accordance with the notice to complete, the following terms apply: "The seller may rescind the contract and if he does so he may forfeit and keep any deposit and accrued interest; he may resell the property; and three, he may claim damages.

17. Mr. Asif's right to forfeit the deposit, to keep it and accrued interest is clear and therefore it seems to me light that he should have an order to pay out of Court that sum and accrued interest. I am not concerned with the resale of the property, which has taken place, but the other relief that is sought is a claim for damages relating to the ₹175,000 never paid. That claim for damages is

advanced by Mr. Griffiths on the basis of the decision of Warner J. in *Millichamp v. Jones* [1982] 1 WLR 1422, in particular at 1430 and upon that of the majority of the Court of Appeal in the case of *Damon Cie Naviera SA v. Hapag Lloyd International SA* [1985] ICLR 435, and in particular the passages which Mr. Griffiths relied on at pages 450, 451, 452 and 457. Those decisions and condition 7.5.1 provide Mr. Griffiths with support, but the explicit provisions of 7.5.2 are probably of themselves sufficient to justify the claim of damages put forward. The Court will therefore award damages of ₹175,000 and interest on ₹175,000 at the contractual rate contained in the contract from 26th February 1999.

21. Therefore, it cannot be said that award of damages, according to terms and conditions agreed between parties is & penalty awarded by the High Court of Justice, Chancery Division, London. The judgment awarding damages as aforesaid does not contravene provisions of Section 74 of the Indian Contract Act. The parties had entered into contract in U.K., in respect of property situated at U.K. Therefore, adjudication of damages by applying English Law cannot be termed as breach of any law in force in India. In the circumstances, it cannot be held that decree in execution is being enforced to recover penalty as stated under Explanation II to Section 44A C.P.C. It is also not possible to hold that decree sustains a claim founded on breach of Section 74 of the Indian Contract Act. For these reasons, points 2 & 3 are answered in the negative.

Reg: Point Nos. 4 & 5:

22. It is the contention of judgment-debtor (India Builders Corporation) that it was not a party to the proceedings. The decree under execution is a product of fraud.

23. The learned senior Counsel appearing for judgment-debtor, referring to contents of agreement dated 29.01.1999 would submit that India Builders Corporation had not authorised Mr Hamid to sign the agreement. In the agreement dated 29.01.1999, the buyer has been described as "India Builders Corporation of Sheriff Centre, 73/1, 1, St Marks Road, Bangalore-560001 India and U.K. Partners of 161/163, Commercial Road, London, E1 LDA".

24. The learned senior Counsel appearing for judgment-debtor, referring to various documents would submit that in the Claim Form stated to have been initiated by judgment-debtor (Claim No. CL953063), before the Central London County Court, the claimant has been described as "India Builders Corporation Plc". The claim is stated to have been instituted by solicitors of M/s. Kidd Rapinet.

25. The learned senior Counsel for judgment-debtor would further submit that in the judgment made by the High Court of Justice, Chancery Division, London, the claimant has been described as "India Builders Corporation Plc", (presumably "PLC" stands for Private Limited Company). In the judgment also, the claimant has been described as India Builders Corporation plc. Therefore, judgment-debtor has nothing to do with the India Builders Corporation PLC. Therefore, learned senior Counsel appearing for judgment-debtor would submit that

judgment-debtor was not a party to the aforesaid proceedings.

26. The learned senior Counsel appearing for decree-holder would submit that at the first instance, Claim No. CL953063 was initiated by the judgment-debtor before the Central London County Court. In the claim form the claimant has been described as "India Builders Corporation Plc". The address of the claimant is shown as "Sheriff Centre, 73/1, St. Mark's Road, Bangalore-560001". In the particulars of claim, the claimant has been described as "India Builders Corporation".

27. The learned senior Counsel appearing for decree-holder would further submit even, if there were to be any discrepancy in the judgment, description of the party in the decree shall prevail over description of party in the judgment. In the decree made by the High Court of Justice, Chancery Division, London, the claimant has been described as "India Builders Corporation". In the circumstances, contention of judgment-debtor that India Builders Corporation was not a party to the proceedings cannot be accepted.

28. In order to appreciate above contentions, it is necessary to state that judgment-debtor has not given particulars of fraud, which ultimately led to execution of agreement dated 29.01.1999. It looks improbable that the said Mr. Hamid, without being any authorisation had signed the agreement dated 29.01.1999, which was executed between India Builders Corporation, Sheriff Centre and Mr. Masood Asif, more particularly, when it is not shown that he had any benefit to derive from the said transaction.

29. It is seen from the agreement dated 29.01.1999, the buyer has been described as "India Builders Corporation of Sheriff Centre, 73/1, 1, St. Marks Road, Bangalore-560001 India and U.K. Partners of 161/163, Commercial Road, London, E1 LDA". These are two different entities.

30. At the first instance, the claim was initiated by India Builders Corporation before the Central London County Court for following reliefs:

1. A declaration that the purported notice to complete referred to in paragraph 10 was invalid.
2. A declaration that the claimant was entitled to rescind the contract and has so rescinded.
3. Alternatively to 2 rescission of the contract.
4. The return of the deposit referred to in paragraph 3.
5. An injunction restraining the Second Defendant from disposing of the deposit.
6. Interest as aforesaid pursuant to statute.
7. Further or other relief.

31. The claim petition was instituted on 26.08.1999 by one Mr. David Lonsdale of

M/s. Kidd Rapinet Solicitors, 14 & 15, Craven St, London WC2 5AD.

In the defence statement and counter claim made by the decree-holder, the claimant is shown as "India Builders Corporation plc", presumably going by the description in the claim form made in Claim No.CL953063 by the judgment-debtor. In the witness statement made by Mr. Ziaulla Sheriff, he has described himself as the Managing Partner of India Builders Corporation. The general form of judgment made by the High Court of Justice, Chancery Division, London, the claimant has been described as India Builders Corporation PLC, "Sheriff Centre", 73/1, St. Mark's Road, Bangalore-560001. The judgment-debtor has not produced any documents to show constitution of India Builders Corporation and India Builders Corporation plc and to establish that they are two different entities. In any event, from the inception of proceedings, India Builders Corporation is a party to the proceedings. The decree made by the High Court of Justice, Chancery Division, London is against India Builders Corporation. Therefore, contention of judgment-debtor that India Builders Corporation was not a party to the proceedings cannot be accepted.

In the objection statement filed by judgment-debtor, it is stated that judgment sought to be executed is clearly a product of fraud played on the High Court of Justice, Chancery Division, London and also on the judgment-debtor. It is also stated that Mr. Ziaulla Sheriff had not given witness statement Mr. Ziaulla Sheriff had not entered into agreement with Mr. Masood Asif or his Official Liquidator to purchase properly bearing No. 39-47, Bethnal Green Road, London E1, for consideration of ₹3,500,000/-.

In the additional objection statement filed by judgment-debtor, reiterating averments of objection statement, the judgment-debtor would say that larger fraud has been purportedly played on the foreign Court by the decree-holder, the judgment-debtor is not involved in the transaction. This submission is made on the premise that Mr. Ziaulla Sheriff (Managing Partner of judgment-debtor) was not in Los Angeles on 26.08.1999, to execute his witness statement filed in Claim No. CL953063 before the Central London County Court.

32. The judgment-debtor has filed a xerox copy of his passport to establish that he was not in London on 26.08.1999. On careful scrutiny of xerox copy of passport, the assertion of judgment-debtor that on 26.08.1999, Mr. Ziaulla Sheriff was not in Los Angeles cannot be discerned. In fact, this Court had called upon the learned Counsel appearing for judgment-debtor to point out relevant entry in the xerox copy of passport, but the learned Counsel appearing for judgment-debtor was not able to point, out any entry in xerox copy of passport of Mr. Ziaulla Sheriff to support the assertion of the judgment-debtor. Even otherwise the mention of words, Los Angeles after the signature of Mr. Ziaulla Sheriff would not lead to an inference the witness statement of Mr. Ziaulla Sheriff dated 26.08.1999 was prepared at Los Angeles. The witness statement was not notarised at Los Angeles; it does not bear any official stamp to contend that it was prepared at Los Angeles.

33. In a decision reported in Sankaran Govindan Vs. Lakshmi Bharathi and Others, the Supreme Court while dealing with provisions of Section 13 C.P.C. has held:

The fraud which vitiates a judgment must generally be fraud of the party in whose favour the judgment is obtained.

In the case on hand, judgment-debtor has not given particulars of fraud. The judgment-debtor has not pleaded that decree-holder had played fraud by initiating counter claim No. CL953063 before the Central London County Court in the name of judgment-debtor, by availing the services of Solicitors namely M/s. Kidd Rapinet Solicitors. The judgment-debtor has not pleaded that decree-holder had any motives to practice fraud on judgment-debtor. The claim instituted before the Central London County Court on the strength of agreement dated 29.01.1999 and subsequent defence statement and counter claim made by decree-holder and independent claim made by decree-holder would establish that judgment-debtor entered into agreement dated 29.01.1999 with the decree-holder to purchase property bearing No. 39-47, Bethnal Green Road, London E1, for consideration of ₹3,500,000/- and a sum of ₹175,000/- was deposited by judgment-debtor. In the absence of particulars of fraud, the contention of judgment-debtor that decree-holder had played fraud cannot be accepted. The decree-holder did not stand to gain by initiating Claim No. CL953063 in the name of judgment-debtor before the Central London County Court.

34. In the discussion made supra, I have made reference to the claim made by judgment-debtor, which was the action of first instance in the litigation between parties. As could be seen from the judgment of High Court of Justice, Chancery Division, London, after claims were consolidated and referred to the High Court of Justice, Chancery Division, London, the judgment-debtor had abstained from proceedings. Thus, allegations made by judgment-debtor that the impugned judgment is a product of fraud played by decree-holder on the High Court of Justice, Chancery Division, London and the judgment-debtor cannot be accepted.

35. It is seen from records, judgment-debtor had filed objections statement on 23.07.2005, inter alia contending that entire proceeding is a product of fraud played on the High Court of Justice, Chancery Division, London. It is contended that the judgment sought to be enforced is clearly a product of fraud played on the High Court of Justice, Chancery Division, London.

On 27.02.2006, the decree-holder has filed the list of following documents:

Sl.	No.	Date	Description
1	29.01.1099	Copy of the agreement entered into between Decree Holder (seller) and the Judgment Debtor (Buyer)	
2	26.08.1999	Copy of the witness statement of Ziaulla Sheriff	

3 October Copy of the reply to defence and 1999 defence to counter claim

4 27.02.2002 Copy of the judgment passed by the High Court of Justice,
Chancery Division

5 13.03.2001 Copy of the letter addressed to the Judgment Debtor

6 11.06.2001 Copy of the letter addressed to the Judgment Debtor

7 19.09.2001 Copy of the witness statement of Robert Ivor William Wilson

Thereafter, on 04.08.2006, the judgment-debtor filed additional objection statement, inter alia contending that witness statement allegedly made by Mr. Ziaulla Sheriff on 26.08.1999 is a concocted document and it was not executed by Mr. Ziaulla Sheriff. The copy of passport would clearly show that Mr. Ziaulla Sheriff was not in U.S.A. or Los Angeles on 26.08.1999. Thus, it can clearly be seen that larger fraud is played by decree-holder and others in the proceedings.

36. Thus, we find that fraud attributed to decree-holder in the objection statement filed by judgment-debtor is an after thought. The judgment-debtor to overcome the effect of documents filed by decree-holder on 27.02.2006, has attributed fraud to decree-holder. If the decree-holder had played fraud on judgment-debtor, it was well within the knowledge of judgment-debtor when the objection statement was filed by judgment-debtor on 23.07.2005. Thus, we find that judgment-debtor has taken up all tenable and untenable contentions to defeat the decree.

The plea of fraud pleaded by judgment-debtor in the objection statement filed on 23.07.2005 is not attributed to decree-holder or any other person. In the additional objection statement filed on 04.08.2006 (after a lapse of one year), the judgment-debtor has contended that fraud has been played on High Court of Justice, Chancery Division, London by the decree-holder and other persons involved in the alleged transaction.

37. In the objection statement filed on 23.07.2005, the judgment-debtor has denied that it had instituted proceedings before the High Court of Justice, Chancery Division, London. However, there is no denial of institution of Claim No. CL953063 in the Central London County Court. In the additional statement of objection filed on 04.08.2006, the judgment-debtor has not denied Claim No. CL953063 instituted by judgment-debtor through its Solicitors namely M/s. Kidd Rapinet. Therefore, the judgment-debtor has raised frivolous plea of fraud to avoid liability of decree under execution. For these reasons, points 4 & 5 are answered in the negative.

Reg. Point Nos. 6 & 7:

38. The judgment-debtor has contended that judgment of the High Court of Justice, Chancery Division, London was not given on merits of the case and proceedings in which judgment was obtained axe opposed to the principles of natural justice.

39. Before advertng to these contentions, it is necessary to state that judgment-debtor has taken pervercating and inconsistent stands. The judgment-debtor had denied that it was a party to the impugned proceedings. The judgment-debtor had contended that defendant in the above proceedings was India Builders Corporation plc and not the judgment-debtor. In order to plead denial of opportunity, judgment-debtor has not admitted that it had right of audience in the impugned proceedings. The judgment-debtor has blown hot and cold.

40. In the judgment made by High Court of Justice, Chancery Division, London, the learned Judge has held:

2. The first point with which I am concerned is that although this is the trial of the action, India Builders Corporation Plc is not present or represented. It is the case that India Builders took an active part in the litigation at the outset, indeed, they brought one of the actions in the Central London County Court and obtained interim injunctions in the course of that In the course of time, however, they have ceased to be represented in these proceedings, as appears from the evidence J have heard this morning and also from letters from their former solicitors, Kip(?) Rapinet(?), to be found in the court file. It would appear that Kip Rapinet successfully applied to the court to be discharged from representing India Builders further.

3. Even though India Builders are not present or represented at this hearing, it seems clear to me beyond doubt that they have been given notice of it i refer in particular to the two witness statements of Mr. Robert Wilson in which he gives details of various applications and events in the litigation and exhibits faxes received from India Builders on a couple of occasions earlier this year. So it seems to me clear beyond doubt that India Builders, despite their absence, are aware of these proceedings and, as is their right, have elected not to attend.

4. I should next emphasise that this is the trial of the action. This is not a hearing relating to a default judgment because those acting for Mr. Asif have sought a full trial because they may wish to enforce any judgment, which they obtain abroad, and in particular in India. In that regard I have heard evidence today from Mr. Mitta, an Indian advocate, in the form of a witness statement, and from his colleague, Mr. Fatia, who has, in Mr. Mitta's absence from England today, confirmed the accuracy of what is said by Mr. Mitta in his witness statement This being a trial, I have been concerned not only with the papers but with evidence from witnesses, the Indian advocate I have just referred to, and also Mr. Reed, Mr. Miller, Mr. Bowker, Mr. McMichael and Mr. Wilson.

41. it is apparent that judgment-debtor after initiating Claim No. CL953063 before the Central London County Court Claim confronted with counter claim

made by the decree-holder. Thereafter, the Central London County Court consolidated the claim of judgment-debtor, counter claim and independent claim of decree-holder and transferred the same to the High Court of Justice, Chancery Division, London. The judgment-debtor being fully aware of the proceedings did not participate in the proceedings before the High Court of Justice, Chancery Division, London. The learned Judge of High Court of Justice, Chancery Division, London has held that it is not hearing the case to render a default judgment. The decree-holder had sought for full trial because he had to enforce judgment in abroad, in particular in India.

The decree-holder has made available copy of order passed by the Central London County Court to establish that notice of the proceedings after consolidation of the reference to High Court of Justice, Chancery Division, London was served on the judgment-debtor. Thus, the judgment-debtor had not elected to participate in the proceedings before High Court of Justice, Chancery Division, London. The learned Judge of the High Court of Justice, Chancery Division, London, on consideration of averments of claim made by judgment-debtor, counter claim and independent claim made by the decree-holder and statements of witnesses, rendered the judgment on 08.10.2002. The learned Judge has referred to contents and conditions of agreement dated 29.01.1999. The learned Judge referring to the agreement dated 29.01.1999 has held that one Mr. Hamid had signed the agreement as duly authorised by the buyer. The learned Judge has also held that no point of authority arises because of witness statement made by Mr. Ziaulla Sheriff (judgment-debtor) in the Central London County Court when Mr. Ziaulla Sheriff had sought an injunction. The learned Judge has referred to the facts, which ultimately resulted in breach of contract by the judgment-debtor and also subsequent sale of property (subject matter of contract). The learned Judge of High Court of Justice, Chancery Division, London, referring to conditions of contract and witness statements, relying on certain decisions has held that decree-holder has right to forfeit deposit and also entitled to recover from judgment-debtor, a sum of ₹175,000/- as damages. Therefore, contention of judgment-debtor that judgment made by High Court of Justice, Chancery Division, London was not given on merits of the case cannot be accepted. The contention of judgment-debtor that impugned judgment is opposed to principles of natural justice cannot be accepted.

In a decision reported in *R. Viswanathan Vs. Rukn-ul-Mulk Syed Abdul Wajid*, , the Supreme Court has held:

The plea that a foreign judgment is contrary to natural justice has to be considered in the light of the statute law of India and there is nothing in Section 13 which warrants the interpretation that a plea that a foreign judgment is contrary to natural justice is admissible only if the party setting up the plea is not duly served, or has not been given an opportunity of being heard.

For these reasons, I answer points 6 & 7 in the negative.

Regarding Point No. 8:

42. The learned senior Counsel appearing, for judgment-debtor has submitted that the executing Court has not considered the pleas raised in the objection statement and additional objection statement filed by the judgment debtor.

43. The learned senior Counsel appearing for judgment-debtor relying on the judgment of Supreme Court, reported in *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, would submit there is no consideration of all the aspects, the pros and cons of the matter by the Court below. Therefore, the learned senior Counsel submits that matter requires remand to the Court below for reconsideration.

44. In order to appreciate the above contention, I have gone through the impugned order. The learned Judge of the Court below had not raised points for determination with reference to each and every objection raised by judgment-debtor. The learned Judge of the Court below has dealt with objection filed by judgment-debtor with reference to Section 13(a) to 13(f) C.P.C. The learned Judge of the Court below has also dealt with contention raised by judgment-debtor that India Builders Corporation was not a party to the proceedings before High Court of Justice, Chancery Division, London. The learned Judge has referred to claim initiated by judgment-debtor, counter claim raised by decree-holder and independent claim instituted by decree-holder.

45. The learned Judge of the Court below referring to proceedings before High Court of Justice, Chancery Division, London has held that judgment-debtor had been notified of the proceedings and judgment debtor had knowledge of the proceedings. The learned Judge of the Court below has dealt with all the contentions, with reference to Sections 13(a) to (f) & 44A C.P.C.

As already stated, the judgment-debtor has raised all tenable and untenable objections to avoid liability of decree under execution. Therefore, the submission of learned senior Counsel for judgment-debtor that executing Court has failed to consider all the aspects, pros and cons of objection statement filed by judgment-debtor cannot be accepted. For these reasons, I answer point No. 8 against judgment-debtor.

46. In view of my findings to points 1 to 8, I hold that the impugned order does not call for interference. In the result, I pass the following:

ORDER

The revision petition is dismissed with costs.