

(2013) 08 BOM CK 0186

In the Bombay High Court

Case No : Chamber Summons No. 888 of 2010 in Execution Application No. 204 of 1997 in Notice No. 1774 of 1997, Execution Application No. 206 of 1997, Chamber Summons No. 922 of 2010 in Execution Application No. 205 of 1997 in Court Of Appeal No. 2065 of 1995 and Ch

Janardhan Mohandas Rajan Pillai

APPELLANT

Vs

Madhubhai Z. Patel and Others

RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, Order 21 Rule 11(2)(g), Order 21 Rule 22, Order 21 Rule 41, 13

Citation : (2014) 2 ABR 162 : (2014) 3 ALLMR 153 : (2013) 5 BomCR 714

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : J.P. Sen, assisted with Mr. Gaurang Mehta, for the Appellant; Sanjay Kothari, a/w. Dr. V.V. Tulzapurkar , Mr. H.N. Vakil and Mr. Sunil Chawan, instructed by . Mulla and Mulla, for the Respondent

Final Decision : Disposed Off

Judgement

R.D. Dhanuka, J.—By consent of parties, all the three chamber summons were heard together and are being disposed of by this common order. Chamber Summons No. 888 of 2010 is taken out by Anand Bazar Patrika Limited (hereinafter referred to as judgment creditor no. 3) and Aveek Sarkar (hereinafter referred to as the judgment creditor no. 4.) inter-alia praying for arrest and detention of Gopika Nina Pillai (hereinafter referred to as judgment debtor no. 2) in civil prison. Chamber Summons No. 922 of 2010 has been filed by judgment debtor no. 2 inter alia praying that this court shall determine/ascertain the decretal amount in Indian rupees payable by judgment debtor no. 2 to the judgment creditor no. 4 under two costs certificates both dated 28th June, 1996 issued by the Taxing Master/Officer of the English Court, which costs certificates were the subject matter of Notice Nos. 1772 of 1997 and 1775/97 alleged to be allowed by this court in Execution Application No. 205 of 1997 and

also seeks stay of the said execution application. Chamber Summons No. 923 of 2010 is taken out by judgment debtor no. 2 inter alia praying that this court be pleased to determine/ascertain the decretal amount in Indian Rupees payable to the judgment creditor no. 3 under the two costs certificates both dated 28th June, 1996 issued by the Taxing Master/Officer of the English Court which were the subject matter of Notice Nos. 1773 of 1997 and 1774 of 1997 allowed by this court in Execution Application No. 204 of 1997. Judgment debtor no. 2 also seeks recall of the order dated 26th February, 2009 passed by this court in Chamber Summons No. 892 of 2008.

2. Judgment debtor no. 2 alongwith her husband, now deceased Janardhan Mohandas Rajan Pillai were the original plaintiffs in proceedings filed before English Court. Judgment creditor nos. 3 and 4 were original defendant nos. 3 and 4 in the said proceedings.

3. Some of the relevant facts for the purpose of deciding these chamber summons are as under:

4. The Judgment Debtor No. 2 along with her husband Mr. Janardan Pillai filed a suit for damages in English Court in the year 1993 alleging that the article published in the magazine by the defendants therein was defamatory. Defendant no. 3 (Judgment Creditor No. 3) was the publisher and defendant no. 4 (Judgment Creditor No. 4) was distributor of the magazine. On 13th August, 1993, Judgment Creditor No. 4 made an application before the Master, Queens Bench Division for stay of the said suit on the ground that the English Court had no jurisdiction to try the suit as the magazine was published from India. The said application of Judgment Creditor no. 4 was dismissed by the Master. An appeal was preferred against the said order before the learned Chamber Judge. By order dated 9th/10th June, 1994 the said appeal was allowed and it was held that the English Court was not the proper forum for trial of the suit and the suit was ordered to be stayed. An appeal was filed against the said order of the Chamber Judge. Judgment Creditor no. 4 applied for security of the cost to be furnished by the Judgment Debtors before the Registrar of the Court of Appeal. Judgment Creditor no. 3 made an application for stay of the proceedings before the Master. In view of the order passed in appeal filed by Judgment Creditor no. 4, the suit against Judgment Creditor no. 3 was also stayed. The cost was reserved to the Court of Appeal. Against that order, an appeal was preferred by the Judgment Debtors. In the said appeal proceedings, an application for security of cost was made. The court of appeal dismissed both the appeals and directed that the cost of appeal be paid to Judgment Creditor no. 3 and 4. Judgment Creditor no. 3 and 4 thereafter filed proceedings for computation of the cost. The certificates were issued in favour of Judgment Creditor nos. 3 and 4 computing the cost. Judgment Creditor Nos. 3 and 4 were awarded Pounds 26835 and 64175.05 respectively in the proceedings before the Master. Judgment Creditor Nos. 3 and 4 thereafter filed Notice No. 1774 of 1997 and 1773 of 1997 in this court. Judgment Creditor no. 3 was awarded pounds 32594.67 as cost in the

proceedings before the appeal court. Out of the said amount, sum of Pounds 20850 was recovered from the security furnished by the plaintiffs and Notice No. 1772 of 1997 was filed to recover the balance Pound 11744.67. The said notices were served on the Judgment Debtors. Notice (1772 of 1997) was issued in Execution Application No. 205 of 1997 filed by defendant no. 4 (Judgment Creditor No. 4). Notice No. 1773 of 1997 was issued in respect of pound 64175.05 in Execution Application No. 206 of 1997 filed by defendant No. 4 (Judgment Creditor No. 4). Notice No. 1774 of 1997 was issued in respect of pound 26835.38 in Execution Application No. 204 of 1997 filed by defendant No. 4 (Judgment Creditor No. 4). Notice No. 1775 of 1997 was issued in respect of pound 7583.33 in Execution Application No. 204 of 1997 filed by defendant No. 3 (Judgment Creditor No. 3).

5. By a common order dated 8th August, 2003 passed by this court, all the four notices in Execution Applications filed by Judgment Creditor nos. 3 and 4 were allowed.

6. The Judgment Debtors filed four separate appeals against the said common order dated 8th August, 2003 passed by this court being Appeal Nos. 1121 to 1124 of 2003 before the Division Bench of this Court. By an order dated 13th April, 2004, the Division Bench granted unconditional stay of the order dated 8th August, 2003 passed by the learned Single Judge of this court. Judgment Creditor nos. 3 and 4 filed Special Leave Petition. By an order dated 21st April, 2008, Supreme Court directed the appeal court to modify the order dated 13th April, 2004 by requiring the judgment debtors to furnish security as a condition for stay. By an order dated 29th April, 2008, the Division Bench of this court modified the earlier order of stay dated 13th April, 2004 and directed the Judgment Debtors to furnish the Bank guarantee within the period of six weeks. The said period of six weeks expired on 10th June, 2008. The Judgment Debtors however, did not furnish the bank guarantee as directed by the order dated 29th April, 2008 passed by the Division Bench of this court. The Supreme Court dismissed the SLP filed by the Judgment Debtors against the order dated 29th April, 2008 passed by the Division Bench of this court.

7. By an order dated 26th February, 2009 in Chamber summons No. 892 of 2008 filed by the Judgment Creditors under Order 21 rule 41 of Code of Civil Procedure, 1908 relief was granted in terms of prayer clause (a) directing the Judgment Debtors to disclose their assets and properties within twelve weeks. It was further provided in the said order that if the Judgment Debtors did not file the said affidavit within twelve weeks, the Judgment Creditors shall be at liberty to apply for reliefs in terms of prayer clause (c) which was for arrest and detention of the Judgment Debtors. The Judgment Debtors thereafter filed an Appeal (L) No. 362 of 2009 impugning the order dated 26th February, 2009. An oral application was made before the Vacation Court by the Judgment Debtors on 22nd May, 2009 for interim reliefs. The Vacation Court however refused to grant interim reliefs.

8. The Judgment Debtors thereafter filed Notice of Motion No. 3586 and 3587 of 2009 on 24th September, 2009 inter alia praying for modification of the order of the appeal court dated 29th April, 2008. The appeal was ultimately dismissed on 27th January, 2010 challenging the order dated 26th February, 2009 passed by the learned Single Judge of this court after dismissing the notice of motion for condonation of delay which was filed by the Judgment debtors after seven months from the date of lodging of the appeal. By an order dated 30th March, 2010, the Division Bench of this court dismissed all four appeals bearing No. 1121 to 1124 of 2003 which were filed by the Judgment Debtors challenging the order passed by this court making notice under Order 21 Rule 22 absolute. The Division Bench of this court rejected the application of the Judgment Debtors for stay of the said order. The Division Bench however, clarified that the decree can be executed only against Mrs. Gopika Pillai in her individual capacity as well as her capacity as heir of Rajan Pillai and not against children of Mr. Rajan Pillai. The Division Bench also disposed of Notice of Motion No. 3586 and 3587 of 2009 which were filed by the Judgment debtors for stay.

9. Being aggrieved by the said order dated 30th March, 2010 passed by the Division Bench of this court dismissing the appeals filed by the Judgment debtors, the Judgment Debtors filed four Special Leave Petitions. By an order dated 13th May, 2010, Supreme Court dismissed the Special Leave to Appeal (Civil) No. 14343 to 14345 of 2010. The Supreme Court however, directed the Executing Court to decide the matter as expeditiously as possible and directed the Judgment Debtors to pay the amount within two months after determination of the amount by the Executing Court.

10. On 30th June, 2010, the Judgment Creditors filed Chamber Summons 888 of 2010 inter alia praying for arrest and detention of Judgment Debtor no. 2 i.e. Mrs. Gopika Pillai. On 3rd July, 2010, the Judgment Debtors filed two Chamber summons bearing No. 922 of 2010 and 923 of 2010 inter alia praying for determination of the amounts and for stay of the Execution proceedings.

11. On 3rd August, 2010, the Judgment debtor No. 2 deposited the sum of Rs. 18,68,898/- in favour of Judgment Creditor No. 3 in this court towards satisfaction of the decree and also deposited sum of Rs. 6,37,700/- towards satisfaction of the decree in favour of the Judgment Creditor no. 4. The Judgment Creditors through their advocates filed praecipe before Prothonotary and Senior Master and objected to marking of satisfaction of the decree on the ground that the amount deposited by Judgment debtor no. 2 was far below the decretal amount.

12. On 25th March, 2011, the Judgment Creditors submitted an offer to accept Rs. 81 lacs in full and final settlement to the Judgment Debtor. There was no response from the Judgment Debtor No. 2 to the said offer made by the Judgment Creditors.

13. Mr. Sanjay Kothari, learned counsel appearing for the judgment creditors

submits that though by order dated 26th February, 2009 passed by this Court in Chamber Summons No. 892 of 2008 the judgment debtor no. 2 was directed to disclose the details with regard to the properties and assets of the judgment debtors, the said order has not complied with by the judgment debtors. It is submitted that by the said order, liberty was granted to the decree holder/judgment creditors to apply for the order of arrest and detention against the judgment debtor no. 2 if affidavit was not filed by her within a period of 12 weeks from the date of the said order. It is submitted that the said order passed by this court has not been stayed and/or set aside. It is submitted that since judgment debtor no. 2 has failed to comply with the said order, judgment creditors/decrees holders became entitled to apply for an order of arrest and detention of judgment debtor no. 2 under Order 21 Rule 41 of the Code of Civil Procedure, 1908. It is submitted that since the judgment debtor no. 2 has not complied with the order passed by this court, she is not entitled to be heard in the matter unless order passed by this court is first complied with.

14. Mr. Kothari, learned counsel submits that three execution applications were filed for enforcement of the cost certificates issued by the foreign court. Execution Application No. 204 of 1997 was filed by defendant no. 3 in respect of two costs certificates issued by foreign court whereas defendant no. 4 filed Execution Application Nos. 205 and 206 of 1997 for enforcement of two costs certificates issued in his favour by foreign court. It is submitted that Notice No. 1772 of 1997 was made absolute in Execution Application No. 205 of 1997 which was filed by judgment creditor no. 4. Notice No. 1774 of 1997 was made absolute in Execution Application No. 204 of 1997 which was filed by judgment creditor no. 3. Notice No. 1775 of 1997 was made absolute which was in Execution Application No. 204 of 1997 filed by judgment creditor no. 3. It is submitted that Notice No. 1773 of 1997 was allowed in Execution Application No. 206 of 1997 which was filed by judgment creditor no. 4. However, the number of execution application in which Notice No. 1773 of 1997 was issued, it was inadvertently mentioned as 204 of 1997 instead of 206 of 1997. Learned counsel invited my attention to Notice No. 1773 of 1997 which was issued in Execution Application NO. 206 of 1997 filed by judgment creditor no. 4. It is submitted that there were four separate execution applications in which four separate notices under Order 21 Rule 22 of the CPC were taken out by the judgment creditors and all such four applications were allowed by a common order passed by this Court on 8th August, 2003 after hearing the judgment debtors at length. Judgment debtor no. 2 was thus fully aware that there were four separate execution applications, two filed by judgment creditor no. 3 and other two were filed by judgment creditor no. 4. It is submitted that being aggrieved by the said order dated 8th April, 2003 passed by this court allowing these four notices, judgment debtors had filed four separate appeals in this court (1121 to 1124 of 2003). It is submitted that against the said order of the Division Bench of this court in those appeals granting unconditional stay of 8th August, 2003, judgment creditors had filed four separate Special Leave Petitions in the Supreme Court. It is submitted

that against the order of Division Bench dismissing four appeals (1121 to 1124 of 2003) filed by the judgment debtors in this court, judgment debtors filed four separate special leave petitions in the Supreme Court. It is submitted that judgment debtor did not make any deposit in respect of the order passed by this court in Notice No. 1773 of 1997 in Execution Application No. 206 of 1997 filed by judgment creditor even according to her own calculation. Mr. Kothari submits that it is not the case of the judgment debtor no. 2 that judgment creditor no. 4 had filed two execution applications in respect of the same amount arising out of two costs certificates issued by foreign court or that there was any other cost certificate issued by foreign court in favour of judgment creditor no. 4 in addition to two cost certificates. Learned counsel pointed out that in view of the inadvertent error in mentioning number of execution application, judgment debtors have taken advantage of such inadvertent error and did not comply with the order passed by this court. Office has now clubbed the said Execution Application No. 206 of 2007 alongwith these Chamber Summons on board for hearing. It is submitted that the said application No. 206 of 2007 was wrongly placed on board for dismissal. Mr. Kothari, the learned counsel appearing on behalf of the Judgment Creditors invited my attention to the Execution Applications filed by defendant nos. 3 and 4 in this court (Execution Application Nos. 204/97, 205/97, 206/97 and 207/97) and also four notices filed by the Judgment Creditors in such four execution applications.

15. Mr. Kothari, the learned counsel pointed out that in affidavit in support of Chamber Summons No. 922 of 2010 filed by the Judgment Debtor No. 2 and in particular paragraph 6, it has been admitted that the Taxing Master's two certificates, favouring Judgment Creditor no. 4 being subject matter of the Execution Application No. 205/97, quantified the cost awarded to Judgment Creditor no. 4 at sterling pounds 75920 only calculated by considering the cost of pound 11744.67 in Execution Application No. 205 of 1997 and pound 64175.05 in Execution Application No. 206 of 1997 both filed by Judgment Creditor No. 4. It is however, contended that the said pounds 75920 has to be converted into Indian currency at the rate prevailing on the date of the certificate issued on 28th June, 1996. It is contended by the Judgment Debtor No. 2 that the conversation rate in the year 1996 was Rs. 54.30 or thereabout and thus the amount due and payable by the judgment debtor No. 2 in favour of Judgment Creditor no. 4 under the orders/certificate of foreign court is only Rs. 41,75,600/- or thereabout. The learned counsel also invited my attention to the affidavit in reply filed by the Judgment Creditor and in particular paragraph 4 by which the Judgment Creditors dealt with paragraph 6 of the affidavit in support filed by Judgment Debtor No. 2 contending that the correct and proper date of conversion should be 10th June, 2008 being the date when the said certificates became executable under orders passed by this court which was at Rs. 84.99 per sterling pound and therefore, the total liability of the judgment debtor towards the said certificate would be Rs. 64,52,441/- (75920 x 84.99) in favour of Judgment Creditor No. 4 and 29,24,196 (Pound 34418 x 84.99) in favour of the

Judgment Creditor no. 3 aggregating to Rs. 93,77,627/-. Mr. Kothari also placed reliance upon the letter addressed by the United Bank of India dated 12th July, 2010 confirming that the TT Selling Card rate as on 10th June, 2008 for sterling pound was Rs. 84.99/-. Learned counsel pointed out that the Judgment Debtors for the first time in their rejoinder dated 28th August, 2010 raised false plea that they were under bona fide mistake while stating in paragraph 6 of the affidavit in support that the notices issued under Order 21 Rule 22 in Execution Application No. 205 of 1997 cover the Taxing Master's two costs certificates favouring Judgment Creditor No. 4 for an aggregate sum of Pound 75920/-. It is further alleged in the said rejoinder that in the said Execution Application No. 205 of 1997 only the balance sum of Pound 11744 was still due under the cost certificate for pound 32594 and nothing more. It is alleged for the first time that Judgment Creditor no. 3 had wrongly lodged additional sum of pound 64176 purported to be due under another cost certificate as being part of claim in execution application No. 205 of 1997 which was not the subject matter of the claim in Execution Application No. 205 of 1997. The Judgment Debtors alleged that vide praecipe dated 3rd August, 2010 filed under the provisions of Order 21 Rule 1 read with Rule 335 of the Bombay High Court Rules, the Judgment Debtors have deposited sum of Rs. 6,37,700/- in this court in full satisfaction of the cost certificate alleged to be the subject matter of Execution Application No. 205 of 1997. Mr. Kothari the learned counsel then submits that the Judgment Debtor has not deposited the amount as per the conversion rate applicable even according to her own calculation on entire amount certified in four cost certificates. No amount has been deposited by the Judgment Debtor in respect of the subject matter of Execution Application No. 206 of 1997 in which notice taken out by the Judgment Creditor No. 4 (1773 of 1997) came to be allowed by this court by passing common order dated 8th August, 2003. It is submitted that in addition to cost incurred by Judgment Creditors in defending various proceedings, the Judgment debtor is liable to pay Rs. 10,56,348/- after giving credit of Rs. 18,68,898/- deposited out of Rs. 29,25,246/- to Judgment Creditor No. 3 and Rs. 58,14,741/- after giving credit of Rs. 6,37,700/- deposited in court out of Rs. 64,52,411/- to Judgment Creditor No. 4.

16. Mr. Kothari, learned counsel then submits that the date of conversion of sterling pounds considered by the Judgment Debtors is incorrect. It is submitted that as soon as cost certificate was issued by the foreign Court, the judgment Creditors filed applications u/s 44A of the Code of Civil Procedure, 1908 in this court having jurisdiction. The learned counsel submits that since the application was made by the Judgment Creditors u/s 44A of Code of Civil Procedure, 1908 under Order 21 Rule 22 of the Code of Civil Procedure, 1908, the Executing Court has to issue notice to the person against whom the execution is applied for requiring him to show cause on the date to be fixed as to why the decree should not be executed against him. The learned counsel further submits that accordingly four separate notices were filed by the Judgment Creditor i.e. Notice No. 1772 to 1774 of 1997 in four execution applications. It is submitted that by

order dated 8th August, 2003 all such four notices filed under Order 21 Rule 22 came to be allowed. The appeal court granted unconditional stay of the said order dated 8th August, 2003 on 13th April, 2004. In SLP filed by the Judgment Creditors against the said order dated 13th April, 2004, the Supreme Court directed the appeal court to modify the order dated 13th April, 2004 by requiring the Judgment Debtors to furnish security as a condition for stay. By an order dated 29th April, 2008, the appeal court directed the Judgment Debtor to furnish bank guarantee as directed within the period of six weeks. It is submitted that the period of six weeks expired on 10th June, 2008 but respondent did not furnish the bank guarantee. Ultimately the Supreme Court dismissed the SLP filed by the Judgment Debtor against the order dated 8th August, 2003 and order passed by the Division Bench. The learned counsel thus submits that in view of the stay granted by this court initially unconditionally which was modified by order dated 29th April, 2008, pursuant to order dated 21st April, 2008 passed by the Supreme Court granting stay on the condition that the Judgment Debtors furnishes bank guarantee, the decree could be executed only after expiry of six weeks from 29th April, 2008 when the said order came to an end i.e. on 10th June, 2008. The learned counsel thus submits that the date of conversion of sterling pound into Indian currency claimed by the Judgment Creditors as on 10th June, 2008 is correct. It is submitted that the Judgment Debtors cannot consider the date of conversion of the decretal amount as on the date of the decree i.e. date of issuance of cost certificate by the Foreign Court. It is submitted that the Judgment Debtors had challenged the order passed by this court allowing notices under order 21 rule 22 of the Code of Civil Procedure, 1908 and obtained stay and did not comply with the conditions imposed by the Division Bench of this court while granting stay. The Judgment Creditors thus could not implement the order passed by this court allowing the notices filed under order 21 rule 22 of the Code of Civil Procedure.

17. Mr. Sen the learned counsel on behalf of the Judgment Debtors on the other hand submits that the cost certificate in sum of pound 34418 was issued in favour of defendant no. 3 (Judgment Creditor No. 3) which was subject matter of Execution Application No. 204 of 1997. It is submitted that the only pound 11744 was payable to defendant no. 4 (Judgment Creditor No. 4) after giving credit of the amount deposited by the judgment debtors in English court which was the subject matter of Execution Application No. 205 of 1997. It is submitted that as per the cost certificate issued by the Foreign Court, pound 64175 was payable to the defendant no. 4 (Judgment Creditor No. 4) which was subject matter of the Execution Application No. 206 of 1997. Learned counsel submits that by an order dated 8th August, 2003, Notice No. 1773 of 1997 in Execution Application No. 204 of 1997, Notice No. 1772 of 1997 in Execution Application No. 205 of 1997, Notice No. 1774 of 1997 in Execution Application No. 204 of 1997 and Notice No. 1775 of 1997 in Execution Application No. 204 of 1997 came to be allowed. The learned counsel thus submits that there was no notice filed by the Judgment Creditors in Execution Application No. 206 of 1997 and thus there was no

question of this court allowing any notice under order 21 rule 22 in Execution Application No. 206 of 1997. The learned counsel submits that the said Execution Application No. 206 of 1997 came on the board for dismissal before the Prothonotary & Senior Master which has been now clubbed with this chamber summons. Learned counsel submits that even order dated 30th March, 2010 passed by the Division Bench by which four appeals filed by the Judgment Debtors were disposed of would clearly indicate that the said appeals were arising out of the orders passed in Execution No. 204 of 1997 and 205 of 1997. It is submitted that no leave was granted by this court in Execution Application No. 206 of 1997. The learned counsel submits that even Chamber Summons No. 892 of 2008 filed by defendant no. 3 (Judgment Creditor No. 3) under order 21 rule 41 of the Code of Civil Procedure, 1908 was only for recovery of pound 34418. No such application under Order 21 rule 41 was filed by defendant no. 4 (Judgment Creditor No. 4). Mr. Sen submits that though in the affidavit in support of the chamber summons No. 922 and 923 of 2010 which were filed by the Judgment Debtor to ascertain the amount in Indian currency payable to Judgment Creditor no. 4 by the Judgment debtors under Taxing Master's two certificates being the subject matter of the Execution Application No. 205 of 1997 awarded at pound 75920 only, on realizing the bona fide mistake in mentioning the said figure in the affidavit in support, the Judgment Debtors corrected the said mistake in rejoinder filed by the Judgment Debtors in the said proceedings. It is submitted that accordingly whatever amount was due and payable by the Judgment Debtor No. 2 has been already deposited in Execution Application No. 205 of 1997 in this court. The learned counsel submits that even the order of Supreme Court passed in SLP filed by the Judgment Debtors was arising out of Execution Application No. 204 and 205 of 1997 and not 206 of 1997. The learned counsel submits that though the Supreme Court had directed this court to ascertain/determine the amounts payable to Judgment Creditor no. 3 and under the Costs Certificates being the subject matter of Execution Application No. 204 and 205 of 1997 and which amounts were not ascertained, the Judgment Debtors have voluntarily deposited sum of Rs. 18,68,818/- in Execution Application No. 204 of 1997 and sum of Rs. 6,37,700/- in Execution Application No. 205 of 1997 payable to Judgment Creditor Nos. 3 and 4 respectively and thus the decree which was subject matter of the Execution Application No. 204 and 205 of 1997, shall be marked satisfied.

18. Mr. Sen in support of his plea that the date of conversion of pound into Indian currency, shall be considered at the rate of Indian currency prevailing on the date of issuance of the cost certificate, the learned counsel placed reliance upon the judgment of the Supreme Court in the case of Forasol Vs. Oil and Natural Gas Commission, . Both the learned counsel placed reliance on the said judgment and in particular paragraphs 10 to 12, 23, 24, 27, 40, 42, 45, 46, 51 to 54, 68 to 70 and 77 which read thus:

10. During the period of extension covered by the said Addendum No. 3 and after the expiry of that period disputes and differences arose between the

parties. These were referred to arbitration as provided in the said contract. The parties appointed their respective arbitrators. The time for making the award was extended from time to time with the consent of the parties but as Forasol did not consent to any further extension, the disputes were referred for arbitration to Mr. N. Rajagopala Iyyengar, a retired judge of this Court, "being the Umpire appointed by the arbitrators. In the arbitration proceedings Forasol made claims against ONGC and ONGC made counter-claims against Forasol. On March 8, 1972, the Umpire entered upon the Reference and on December 21, 1974, the Umpire made his award. To the said award an erratum was annexed by which a particular portion of the said award was deleted and substituted by a fresh portion to which we will revert later. For the present, suffice it to say that by the said Erratum the Umpire awarded that from November 30, 1966 the rupee portion should be converted at the rate of FF 1,000 equal to Rs. 1,517.80 instead of the rate of exchange of FF 1,033 equal to Rs. 1.000 provided in Article IX. 3.1 of the said contract and that this enhanced rate of exchange would apply to both Forasol and ONGC.

11. The said award was filed in the Delhi High Court and on May 7, 1975, a decree in terms thereof was passed by that High Court with interest at the rate of 6 per cent per annum from the date of the decree till the date of payment of the net decretal amount. It is pertinent to note that neither party raised any objection to the said award or to the form in which the said decree was passed.

12. After the said decree was drawn up, Forasol filed in March 1976 an application for execution of the said decree being Execution No. 77 of 1976. Under the said award certain amounts were directed by the Umpire to be paid to Forasol by ONGC in French Francs and certain amounts in Indian rupees, and the amounts payable by Forasol to ONGC were to be adjusted and set off against the amounts payable by ONGC to Forasol. In the said execution application the rupee credit in favour of Forasol was converted into French Francs at the rate of Rupee 1.5178 equal to FF 1.000 being the enhanced rate of exchange specified in the said award. After deducting the amounts payable to ONGC the balance payable to Forasol was shown as FF 5,89,727.51 being the equivalent of Rs. 11,79,455 with interest on the principal sum upto the date of payment and the costs of execution. The mode of execution specified in the said execution application was attachment and sale of the movable properties belonging to ONGC and specified in an annexure to the said execution application. In its objections to the said execution application ONGC contended that the enhanced rate of exchange specified in the said award was only with respect to the interest payable to Forasol from November 30, 1966, and that to the rest of the payments to be made under the said award the rate of exchange mentioned in Article IX-3.1, namely, FF 1.033 equal to Rupee 1.000, was applicable and that this contract rate of exchange applied both to the French Franc part as also the Indian rupee part of the said contract. ONGC also raised certain other contentions. On the basis of these contentions, it was submitted by ONGC that instead of any amount being due to Forasol a sum of Rs. 6,43,831.44 was due by Forasol to ONGC. The

learned Single Judge of the Delhi High Court who heard the said execution application rejected all the contentions of ONGC. He held that the contract rate of exchange applied only to the rupee part of the payment in respect of the items specified in Article IX-3.1 of the said contract and that in respect of such payments from November 30, 1966, the-enhanced rate of exchange provided in the said award was to apply but in respect of the other payments to be made to Forasol in French Francs the rate of exchange prevailing at the date of the decree, namely, FF 1.000 equal to Rs. 1.938 would apply. The learned Single Judge directed that ONGC could satisfy the judgment debt by making payment in French Francs or, if it so preferred, by paying the equivalent of it in Indian rupees at the rate of exchange prevailing at the date of the decree and further ordered that if the decretal amount was not paid within two weeks, attachment as prayed for should issue. Against the said judgment and order of the learned Single Judge ONGC filed an intra-court appeal being E. F. A. (OS) 5 of 1977. The Division Bench of the Delhi High Court, which heard the said appeal, upheld the contention of ONGC that the enhanced rate of exchange specified in the said award applied only to the interest payable to Forasol and that with respect to the rupee amount due to ONGC and which was to be adjusted against French Francs payable to Forasol, the contract rate of exchange applied. It further held that as the said award was in French Francs, by reason of the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973), before executing the said award the French Francs would have to be converted into Indian rupees at the rate of exchange prevailing on the date of the said award, namely, FF 1.000 equal to Rupee 1.831. The Division Bench negatived the other contentions raised by ONGC. It is against this judgment and order of the Division Bench of the Delhi High Court that the present cross appeals have been filed.

23. The question which now remains to be considered in Forasol's appeal is the date to be selected by the Court for converting into Indian rupees the French Franc part of the said award in respect of which no rate of exchange has been fixed either by the said contract or the said award.

24. In an action to recover an amount payable in a foreign currency, five dates compete for selection by the Court as the proper date for fixing the rate of exchange at which the foreign currency amount has to be converted into the currency of the country in which the action has been commenced and decided.

These dates are:

- (1) the date when the amount become due and payable;
- (2) the date of the commencement of the action;
- (3) the date of the decree;
- (4) the date when the court orders execution to issue; and
- (5) the date when the decretal amount is paid or realized.

27. The question which one out of the date mentioned above is the proper date to be selected by the court does not appear to have been decided in this country, and no authority of any Indian court on this point has been brought to our notice. The question, however, has formed the subject-matter of decisions in England and both the learned Single Judge as also the Division Bench of the Delhi High Court have referred to the decision of the House of Lords in *Miliangos v. George Frank (Textiles) Ltd.* and other English cases. They have however, reached differing conclusions, the learned Single Judge holding that the conversion of French Francs into Indian rupees should be made at the rate of exchange prevailing on the date of the said decree and the Division Bench holding that such conversion should be at the rate of exchange prevailing at the date of the said award. It will be convenient, therefore, to turn now to the English decisions on the point to ascertain whether we can find some guidance from them in arriving at our conclusion. The judicial view on this point in England has undergone a radical change and it will not be out of place to ascertain the earlier view which the courts in England took and the view which now prevails with them and to take a brief survey of how this change in view came about.

40. We have spent some time in ascertaining the English law on the subject by reason of the absence of any authority of any Indian court on this point and because the learned Single Judge has based his decision on the *Miliangos* case while the Division Bench of the Delhi High Court has based its on the *Jugoslavenska* case. Further, the English decisions referred to by us are of courts of a country from which we have derived our jurisprudence and a large part of our laws and in which the judgments were delivered by judges held in high repute. Undoubtedly, none of these decisions are binding upon this Court but they are authorities of high persuasive value to which we may legitimately turn for assistance. Whether the rule laid down in any of these cases can be applied by our courts must, however, be judged in the context of our own law and legal procedure and the practical realities of litigation in our country. When a foreigner has to receive a sum of money which should justly be payable to him in a foreign currency and, because of the default of the paying party, seeks to recover its payment through the court, the first question which arises is whether a court in India would have jurisdiction to pass a decree for a sum expressed in a foreign currency. Though on principle there is no reason why a court should not be able to do so, no court can pass a decree directing a defendant to do an impossible or an illegal act and in view of the provisions of our Foreign Exchange Regulation Act, 1973, and the restrictions contained therein on making payments in a foreign currency, if a decree were to be passed *Simpliciter* for a sum expressed in a foreign currency, it would be to direct the defendant to do an act which would be in violation of the Foreign Exchange Regulation Act, 1973. Such a decree can, therefore, only be passed by making the payment in foreign currency subject to the permission of the foreign exchange authorities being granted. If however, the authorities do not grant permission for payment of the judgment debt in foreign currency, it would not be possible for the defendant to make such payment,

resulting in the decree becoming infructuous and the plaintiff getting nothing under it. The view of Lawton L.J. in the *Schorsch Meier* case that the plaintiff should be given judgment in the form in which he asked for it and must be left to extricate himself from the intricacies of the law relating to execution and exchange control does not commend itself to us for it does not appear to us to be conducive to the ends of justice. The court must, therefore, provide for the eventuality of the foreign exchange authorities not granting the requisite permission or even if such permission is given, the defendant not paying the decretal debt, or not wanting to discharge the decree by making payment in foreign currency or in Indian rupees. This can only be done by the decree providing in the alternative for payment of a sum of money in Indian rupees, which will be equivalent to the sum decreed in foreign currency. It is but just that a man, who is in law entitled to receive a sum of money in a foreign currency, should either receive it in such currency or should receive its equivalent in Indian rupees. It is here that the question of the date which the court should select for converting foreign currency into Indian rupees arises. The court must select a date which puts the plaintiff in the same position in which he would have been had the defendant discharged his obligation when he ought to have done, bearing in mind that the rate of exchange is not a constant factor but fluctuates, and very often violently fluctuates, from time to time. With these considerations in mind", we will now examine the feasibility of the several dates set out by us at the beginning of our discussion on this point.

42. The second of the dates mentioned above, namely, the date of the commencement of the action or suit, is equally subject to the same criticism. This date was rejected in the *Miliangos* case because, according to Lord Wilberforce (at page 469), it placed "the creditor too severely at the mercy of the debtor's obstructive defences.. or the law's delay." In that case Lord Fraser of Tullybelton pointed out (at page 502) that if the date of the commencement of the action "were to be taken for conversion, a period of a year or more might easily elapse, allowing for appeals, before payment was made." In our country, it is the misfortune of litigants that by reason of ever increasing volume of litigation, overcrowded court dockets and undermanned courts, suits are often not disposed of for an unconscionably long time and if we take into account the time that would be spent in appeals, further appeals, and revision and review applications which may be filed, the longevity of the litigation is doubled, if not tripled, so that none can with any certainty predict even a probable date for its termination. The selection of the date of the filing of the suit would, therefore, leave the parties in as uncertain and precarious a position as the selection of the date when the amount became payable or the "breach date",

45. A further difficulty in selecting the date of granting an execution application is that execution can only issue for a sum expressed in Indian currency. What is being executed is the decree and the sum for which execution is to issue in a money decree must, therefore, be for the particular sum specified in the decree, that is, the judgment debt. It cannot be for a sum which would be determined

and fixed by the executing court at the time of granting the execution application, for under Order 21 Rule 11(2)(g) of the CPC, 1908, an application for execution has to state "the amount with interest (if any) due upon the decree".

46. The above difficulties would rule out the taking of the date when the court grants an application for execution as the date of conversion and would make inapplicable to our courts the rule laid down in the Miliangos case.

51. The difficulty with respect to execution which would arise if the court were to select the date of payment as the date of conversion is that execution must issue for a specific sum expressed in Indian currency "due upon the decree." It can not issue for a sum which would become ascertainable only when realized or paid as would be the case were execution to issue for the rupee equivalent at the time of payment in rupees of a foreign currency sum. Further, as pointed out earlier, execution can issue only with respect to the amount due upon the decree.

52. For the above reasons, it is not possible for us to accept the date of payment or realization of the decretal debt as the proper date for the rate of conversion.

53. This then leaves us with only three dates from which to make our selection, namely, the date when the amount became payable, the date of the filing of the suit and the date of the judgment, that is, the date of passing the decree. It would be fairer to both the parties for the court to take the latest of these dates, namely, the date of passing the decree, that is, the date of the judgment.

54. The learned Single Judge of the Delhi High Court also reached the same conclusion. He, however, did so relying upon the Miliangos case under an erroneous belief that when in that case it was held that the proper date should be the date when the judgment becomes enforceable what was meant was the date when the judgment was given, that is, when the decree was passed. The learned Single Judge was in error in so reading the judgment of the House of Lords. When the majority in the Miliangos case spoke of the date when the court gives leave to enforce the judgment what they were referring to was not the date of the judgment but the date on which the court gives leave to execute the judgment. In Halsbury's Laws of England (4th ed., vol. 1-7, para 401) the word "execution" is defined as follows:

The word "execution" in its widest sense signifies the enforcement of or giving effect to the judgments or orders of courts of justice. In a narrower sense, it means the enforcement of those judgments or orders by a published writ under the writs of fieri facias, possession, delivery, sequestration, fieri facias de bonis ecclesiasticis, etc.

(The emphasis has been supplied by us.)

68. It was also submitted on behalf of ONGC that an award, unless it is set aside by the court, is a final adjudication of the rights and liabilities of the parties in respect of the matters referred to arbitration and, therefore, Forasol could not claim to convert the French Franc part of the said award into Indian rupees at the

rate of exchange prevailing on the date of the decree but can only do so at the rate of exchange prevailing on the date of the award. We find this submission wholly untenable. Undoubtedly, the said award, not having been Set aside or modified by the court, is final and binding on the parties and, in respect of the matters referred to arbitration, Forasol cannot claim any amount from ONGC other than that awarded by the Umpire. Forasol is, however, not making any such claim. It is claiming only the sum in French Francs which it has become entitled to receive from ONGC under the said award. All that Forasol wants is that ONGC should pay to it the sum of FF. 5,89,727.51 due to it under the said award or its rupee equivalent as at the date when the court pronounced judgment according to the said award and passed the decree in terms thereof. This is a very different thing from making a claim de hors the said award. The claim made by Forasol is actually one under the said award for if the sum awarded to it in French Francs was not paid or could not be paid by ONGC, Forasol would be entitled to receive its rupee equivalent. On the decree being passed in terms of the said award the said award became merged in the said decree and the sum of FF. 5,89,727.51 payable to Forasol under the said award became a judgment debt payable to Forasol under the said decree and, as pointed out above, at the time of passing the decree the court would have to direct payment of the rupee equivalent of this foreign currency debt only at the rate of exchange prevailing on the date of the decree.

69. For the reasons set out above, we are of the opinion that the rule in the jugoslavska case cannot be applied to this country and the fact that a decree is in terms of an award for a sum of money expressed in a foreign currency makes no difference to the date to be taken by the court for converting into Indian currency the foreign currency sum directed to be paid under the award and that such date should also be the date of the decree.

70. It would be convenient if we now set out the practice, which according to us, ought to be followed in suits in which a sum of money expressed in a foreign currency can legitimately be claimed by the plaintiff and decreed by the court. It is unnecessary for us to categorize the cases in which such a claim can be made and decreed. They have been sufficiently indicated in the English decisions referred to by us above. Such instances can, however, never be exhausted because the law cannot afford to be static but must constantly develop and progress as the society to which it applies, changes its complexion and old ideologies and concepts are discarded and replaced by new. Suffice it to say that the case with which we are concerned was one which fell in this category. In such a suit, the plaintiff, who has not received the amount due to him in a foreign currency and, therefore, desires to seek the assistance of the court to recover that amount, has two courses open to him. He can either claim the amount due to him in Indian currency or in the foreign currency in which it was payable. If he chooses the first alternative, he can only sue for that amount as converted into Indian rupees and his prayer in the plaint can only be for a sum in Indian currency. For this purpose, the plaintiff would have to convert the foreign

currency amount due to him into Indian rupees. He can do so either at the rate of exchange prevailing on the date when the amount became payable for he was entitled to receive the amount on that date or, at his option, at the rate of exchange prevailing on the date of the filing of the suit because that is the date on which he is seeking the assistance of the court for recovering the amount due to him. In either event, the valuation of the suit for the purposes of court-fees and the pecuniary limit of the jurisdiction of the court will be the amount in Indian currency claimed in the suit. The plaintiff may, however, choose the second course open to him and claim in foreign currency the amount due to him. In such a suit, the proper prayer for the plaintiff to make in his plaint would be for a decree that the defendant do pay to him the foreign currency sum claimed in the plaint subject to the permission of the concerned authorities under the Foreign Exchange Regulation Act, 1973, being granted and that in the event of the foreign exchange authorities not granting the requisite permission or the defendant not wanting to make payment in foreign currency even though such permission has been granted or the defendant not making payment in foreign currency or in Indian rupees, whether such permission has been granted or not, the defendant do pay to the plaintiff the rupee equivalent of the foreign currency sum claimed at the rate of exchange prevailing on the date of the judgment. For the purposes of court-fees and jurisdiction the plaintiff should, however, value his claim in the suit by converting the foreign currency sum claimed by him into Indian rupees at the rate of exchange prevailing on the date of the filing of the suit or the date nearest or most nearly preceding such date, stating in his plaint what such rate of exchange is. He should further give an undertaking in the plaint that he would make good the deficiency in the court-fees, if any, if at the date of the judgment, at the rate of exchange then prevailing, the rupee equivalent of the foreign currency sum decreed is higher than that mentioned in the plaint for the purposes of court-fees and jurisdiction. At the hearing of such a suit, before passing the decree, the court should call upon the plaintiff to prove the rate of exchange prevailing on the date of the judgment or on the date nearest or most nearly preceding the date of the judgment. If necessary, after delivering judgment on all other issues, the court may stand over the rest of the judgment and the passing of the decree and adjourn the matter to enable the plaintiff to prove such rate of exchange. The decree to be passed by the court should be one which orders the defendant to pay to the plaintiff the foreign currency sum adjudged by the court subject to the requisite permission of the concerned authorities under the Foreign Exchange Regulation Act, 1973, being granted, and in the event of the Foreign Exchange authorities not granting the requisite permission or the defendant not wanting to make payment in foreign currency even though such permission has been granted or the defendant not making payment in foreign currency or in Indian rupees, whether such permission has been granted or not, the equivalent of such foreign currency sum converted into Indian rupees at the rate of exchange proved before the court as aforesaid. In the event of the decree being challenged in appeal or other proceedings and such appeal or other proceedings being decided in whole or in

part in favour of the plaintiff, the appellate court or the court hearing the application in the other proceedings challenging the decree should follow the same procedure as the trial court for the purpose of ascertaining the rate of exchange prevailing on the date of its appellate decree or of its order on such application or on the date nearest or most nearly preceding the date of such decree or order. If such rate of exchange is different from the rate in the decree which has been challenged, the court should make the necessary modification with respect to the rate of exchange by its appellate decree or final order. In all such cases, execution can only issue for the rupee equivalent specified in the decree, appellate decree or final order, as the case may be. These questions, of course, would not arise if pending appeal or other proceedings adopted by the defendant the decree has been executed or the money thereunder received by the plaintiff.

77. In the result, we allow Civil Appeal No. 628 of 1981 filed by Forasol and set aside the order passed by the Division Bench of the Delhi High Court in the appeal filed by the Oil and Natural Gas Commission, namely, E.F.A. (O.S.) 5 of 1977 and we restore and confirm the order passed and directions given by the learned Single Judge of the Delhi High Court in the Execution Application filed by Forasol, namely, Execution No. 77 of 1976, with this modification that if the Oil and Natural Gas Commission wants to pay in French Francs the amount due by it under the said decree, it will be at liberty to do so after obtaining the requisite permission of the concerned authorities under the Foreign Exchange Regulation Act, 1973.

19. Mr. Sen the learned counsel for the Judgment Debtors submits that the date of deciding the Execution Application would not postpone the date of the judgment and would also not postpone the date of conversion of the rate of sterling pound into Indian currency. It is submitted that events in the execution application are not relevant for the purpose of determining the rate of conversion. Reliance is placed on paragraph 45 and 46 and 54 of the said judgment of the Supreme court in support of this submission. Learned counsel submits that in Execution applications the Judgment creditors have claimed in pounds and did not convert into Indian currency.

20. The first question that arises for consideration of this Court is whether by a common order dated 8th August 2003 passed by this Court, notice filed by judgment-creditor No. 4 was filed in execution application No. 206 of 2007 and was made absolute or not ?

21. On perusal of record it is revealed that foreign Court had issued two certificates in favour of judgment-creditor No. 3 and other two separate certificates in favour of judgment-creditor No. 4. Judgment-creditor No. 3 filed an execution application in this Court being execution application No. 204 of 1997 for enforcement of both the costs certificates. Judgment-creditor No. 4 however filed two separate execution applications being 205 of 1997 and 206 of 1997. Judgment-creditor No. 3 filed notice No. 1774 of 1997 and 1775 of 1997 in the

said execution application No. 204 of 1997. Judgment-creditor No. 4 filed notice No. 1772 of 1997 for recovery of the balance ₹11,744.67 in execution application No. 205 of 1997. Judgment-creditor No. 4 filed notice No. 1773 of 1997 for recovery of ₹64,174.05 in execution application No. 206 of 1997. By the said common order dated 8th August 2003 passed by this Court, all four notices which were subject matter of three execution applications were allowed. Being aggrieved by the said common order allowing all four notices, judgment-debtors filed four separate appeals before the Division Bench of this Court (Appeal Nos. 1121 to 1124 of 2003). By an order dated 13th April 2004, Division Bench of this Court granted unconditional stay of the order dated 8th August 2003 passed by learned Single Judge. Judgment-creditors filed four Special Leave Petitions in the Supreme Court challenging the said order dated 13th April 2004 passed by Division Bench of this Court. The Supreme Court by an order dated 21st April 2008 directed the Division Bench of this Court to modify order dated 13th April 2004 by requiring the judgment-debtors to furnish security as a condition for stay. Pursuant to the said order passed by Supreme Court, Division Bench of this Court had directed the judgment-debtor No. 2 to furnish Bank Guarantee within a period of six weeks. It is clear that all four notices which were taken out by judgment-creditor Nos. 3 and 4 in three separate execution applications for enforcement of cost certificates issued by foreign Court were allowed by this Court. Though notice No. 1773 in the said order passed by this Court on 8th August 2003 shows in the cause title that the said notice was filed in execution application No. 204 of 1997, the same was actually filed in execution application No. 206 of 1997. It is not the case of the judgment-debtor No. 2 that there was any overlapping claims made by judgment-creditor No. 4 in execution application No. 204 of 1997 and 206 of 1997. It is not the case of the judgment-debtor No. 2 that in execution application No. 204 of 1997, the judgment-creditor No. 4 had made a composite application for enforcement of two certificates. In my view, Mr. Kothari learned counsel appearing on behalf of the judgment-creditor Nos. 3 and 4 is right in his submission that it was an inadvertent error in the cause title of the common order passed by this Court and that judgment-debtors have taken undue advantage of such inadvertent error by mentioning wrong number of execution application in so far as notice No. 1773 is concerned.

22. On perusal of the affidavit in support of Chamber Summons No. 922 of 2010 filed by judgment-debtor No. 2, it is clear that judgment-debtor No. 2 had rightly understood that the Taxing Master had issued two certificates favouring judgment-creditor No. 4 quantifying the cost awarded to judgment-creditor No. 4 at ₹75,920 though it was inadvertently mentioned as two certificates being the subject matter of execution application No. 205 of 1997. The only issue raised by the judgment-debtor No. 2 in the said affidavit was that the date of decree shall be considered as the date for conversion of the pounds in Indian currency and not the date when the stay order passed by the Division Bench stood vacated. It is only in the re-joinder the judgment-debtor No. 2 changed her stand and purported to correct her alleged error in paragraph 6 of the Affidavit in support of

the chamber summons by contending that there was no notice issued by this Court in execution application No. 206 of 2007 and thus there was no need to make any deposit in the said execution application. In my view, there is no substance in the submissions of Mr. Sen learned counsel appearing on behalf of judgment-debtor No. 2 that notice filed by judgment-creditor No. 4 in execution application No. 206 of 2007 was not made absolute or that the same was rightly kept for dismissal by the Prothonotary and Senior Master. In my view, as the notices were made absolute in all three execution applications including Application No. 206 of 1997, all the three Applications became executable on this Court allowing notices filed under Order 21 Rule 22 of CPC 1908.

23. The next issue that arises for consideration of this Court is whether the date of cost Certificate issued by Taxing Master of foreign Court shall be the date of conversion of pounds into Indian currency or it shall be 10th June 2008 when order passed by Division Bench of this Court granting unconditional stay of order dated 8th August 2003 passed by learned Single Judge of this Court on furnishing Bank Guarantee within a period of six weeks expired.

24. On perusal of record it is clear that Taxing Master of the Queen's Bench Division, The High Court of Justice had issued four separate certificates on 8th June 1995. Two certificates were issued in favour of judgment-creditor No. 3 in the sum of ₹7583.33 and ₹26,835.38 respectively. Other two certificates were issued in favour of judgment-creditor No. 4 in the sum of ₹64375.05 and ₹32,594.67 respectively.

Section 44-A of CPC 1908 reads thus:

44-A. 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.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

25. In view of applicability of Section 44-A of the Code of Civil Procedure, 1908 for execution of decree passed by foreign Court, judgment-creditors filed execution application in this Court for enforcement of costs certificates issued by Taxing Master in their favour against the judgment-debtors. Order 21 Rule 22

which is relevant for the purpose of deciding the issue raised in this proceedings would be relevant which reads thus:

Order 21 Rule 22: notice to show cause against execution in certain cases:- (1)
Where an application for execution is made---

(a) more than (two years) after the date of the decree, or

(b) against the legal representative of a party to the decree (or where an application is made for execution of a decree filed under the provisions of section 44-A) (or)

(c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent), the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than (two years) having elapsed between the date of the decree and the application for execution if the application is made within (two years) from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

26. On bare reading of Order 21 Rule 22, it is clear that where an application is made for execution of a decree filed under the provisions of Section 44-A, the Court executing the decree has to issue a notice to the person against whom execution is applied for requiring him to show cause as to why the decree should not be executed against him. On conjoint reading of Section 44-A with Order 21 Rule 22, it is clear that unless execution application for enforcement of cost certificates issued by foreign Court was filed in this court having jurisdiction and unless notice under Order 21 Rule 22 of CPC 1908 is filed by the decree holder for enforcement of such Decree and/or order passed by foreign Court and unless show cause notice is issued by Court having jurisdiction, such foreign Decree and/or order cannot be executed. Filing notice under Order 21 Rule 22 and issuance of show cause notice by Court is mandatory and till such notice is allowed, such decree and/or order passed by foreign Court cannot be enforced.

27. On perusal of the order passed by this Court on 8th August 2003, it is clear that judgment-debtor had opposed all the four notices vehemently and after considering the arguments of both the parties, the learned Single Judge of this

Court allowed all such four notices filed under Order 21 Rule 22. Being aggrieved by the said common order, judgment-debtors filed appeals. The Division Bench of this Court granted unconditional stay of the order dated 8th August 2003 on 13th April 2004. Judgment-creditors filed SLP impugning the said order dated 13th April 2004 before the Supreme Court. By an order dated 21st April 2008, Supreme Court disposed of those four appeals filed by judgment-creditors and directed the Division Bench of this Court to modify the order dated 13th April 2004 by requiring the judgment-debtors to furnish security as a condition for stay. By an order dated 29th April 2008, Division Bench modified earlier order dated 13th April 2004 and directed the judgment-debtor No. 2 to furnish Bank Guarantee within a period of six weeks as a condition for granting stay of the order dated 8th August 2003. The said period of six weeks expired on 10th June 2008. The judgment-debtor No. 2 however did not furnish any Bank Guarantee as a result whereof, the said conditional stay granted by this Court on 29th April 2008 came to an end and the decree became executable on 10th June 2008.

28. Learned counsel appearing on behalf of the judgment-debtors and judgment-creditors placed reliance on various paragraphs of Judgment of Supreme Court in case of Forasol (supra) in which Supreme Court has considered various options for considering the date of conversion of foreign currency into Indian currency in cases where execution application is made for enforcement and awarding payment in foreign currency. Mr. Sen learned counsel appearing on behalf of judgment-debtors placed strong reliance on para Nos. 43, 45, 46, 51, 52, 53 and 54 in support of his submission that date of conversion of foreign currency shall be the date on which the decree sought to be executed is passed.

29. Mr. Kothari learned counsel appearing for judgment-creditors on the other hand distinguished the paragraphs referred to by learned counsel Mr. Sen and relied upon para Nos. 43 to 45 and 69 and 70 of the said Judgment.

30. On perusal of Judgment of Supreme Court in case of Forasol (supra), it is clear that in the arbitration proceedings, Forasol had made claims against the ONGC and ONGC had made counter-claim against Forasol. The arbitral tribunal had directed that the conversion at the rate of FF 1,000 equal to Rs. 1,617.80 instead of the rate of exchange of FF 1.033 equal to Rs. 1.000 provided in the contract entered into between the said parties. The said award was filed in the Delhi High Court. None of the parties challenged the said award. Delhi High Court passed a decree in terms of the said award. After the decree was drawn up, Forasol filed an application for execution of said decree before the Delhi High Court. Question arose before the Delhi High Court in execution application whether conversion rate should be applied prevailing on the date of award or whether should be at the rate of exchange prevailing on the date of the decree passed in terms of award by the Delhi High Court. In para 24 of the said Judgment, Supreme Court considered five different dates for selection by the Court as the proper date for fixing the rate of exchange at which the foreign currency has to be converted into currency of the country in which action has

been commenced and decided. Out of such five dates one of the date considered by the Supreme Court was the date of decree and also the date when the Court orders execution to issue.

31. In para 43 of the said Judgment, Supreme Court held that to select the date of decree of the trial court as the conversion date would be to adopt as unrealistic a standard as the "breach date". It is further observed that the said difficulty could easily overcome by selecting the date when the action is finally disposed of in the sense that the decree becomes final and binding between the parties after all remedies against it are exhausted. It is further held that it can be achieved by the Court which hears the appeal providing that the date of its decree or other proceedings in which the decree which is challenged would be the date for conversion of the foreign currency sum into Indian rupees in cases where the decree has not been executed in the mean time.

32. Supreme Court did not agree with the view taken by the House of Lords in case of *Miliangos* in which House of Lords had taken a view that the proper date of conversion would be the date when the court orders execution to issue.

33. In para 70 of the said Judgment, Supreme Court held that in the event of the decree being challenged in appeal or other proceedings being decided in whole or in part in favour of the plaintiff, the appellate court or the court hearing the application in the other proceedings challenging the decree should follow the same procedure as the trial court for the purpose of ascertaining the rate of exchange prevailing on the date of its appellate decree or of its order on such application or on the date nearest or most nearly preceding the date of such decree or order. It has been held that if such rate of exchange is different from the rate in the decree which has been challenged, the court should made the necessary modification with respect to the rate of exchange by its appellate decree or final order.

34. It is not in dispute that the conversion rate of sterling pound on the date of issuance of cost certificate by the Taxing Master and the date on which stay order granted by Division Bench of this Court came to be vacated, was different. Conversion rate on the date when stay order came to be vacated was much more than the rate prevailing on the date of issuance of first certificate by the Taxing Master of the English Court.

35. Considering the facts of this case, on perusal of various orders, it is clear that the judgment-debtor had vehemently opposed the notice under Order 21 Rule 22 filed by the judgment-creditors. Judgment-debtors had also challenged the order passed by learned Single Judge of this Court allowing such notices. Supreme Court directed the Division Bench to consider the conditions to be imposed while granting stay of the order passed by the learned single Judge. Division Bench had directed the judgment-debtor to execute Bank Guarantee as condition precedent after granting stay and had granted six weeks time for compliance. In spite of such order, judgment-debtor did not comply with the said order. From

the date of the order passed by learned single Judge on 8th August 2003 till 10th June 2008, there was stay of execution of the decree and the order passed by this Court on 8th August 2003 making the notice filed by judgment-creditor under Order 21 Rule 22 of the CPC 1908 absolute. I am not inclined to accept the submission of the learned counsel appearing for judgment-debtors that time taken for execution proceedings and in particular disposal of the proceedings arising out of notice filed under Order 21 Rule 22 cannot postpone the date of conversion of rate for the purpose of making payment in Indian currency. In my view para 70 of the Supreme Court Judgment is clear on the issue that if the rate of conversion on the date of passing decree or when such decree became final is different, Court should make necessary modification with respect to the rate of exchange. In my view, judgment-debtor having taken advantage of the stay order for a period of five years by filing one or the other application and thereafter not complying with the conditional order of stay, cannot be allowed to take advantage of the proceedings filed by themselves obstructing the decree on one or the other ground.

36. Supreme Court in the case of Forasol (supra) had not considered a situation where decree was passed by foreign Court and which could be executed only in Indian Court where the judgment-debtor and/or properties of the judgment-debtors are situated. Supreme Court was not also dealing with the situation where show cause notice under Order 21 Rule 22 was mandatory to be given to the judgment-debtor before passing order of execution of decree against such judgment-debtor. It is thus clear that unless such mandatory procedure of filing notice under Order 21 Rule 22 would have been complied with in view of the application for execution of decree made under provisions of Section 44-A and such notice was disposed of by the executing court, judgment-creditor could not have executed the decree. Whatever time was taken in disposal of the notice issued under Order 21 Rule 22 filed by the judgment-creditor was in view of the objection raised by the judgment-debtor and in view of various proceedings filed up to Supreme Court. In my view, the date of conversion of sterling pounds into Indian rupees would be thus on 10th June 2008 when time granted by the Division Bench of this Court to the judgment-debtor to furnish Bank Guarantee while granting stay of the order passed by this court under order 21 Rule 22 came to be vacated. Till such order was passed, judgment-creditor could not have taken any further steps to execute the decree against the judgment-debtor. In my view, learned counsel appearing for judgment-debtor is not correct in his submission that this Court could consider the date of issuance of cost certificate only as the date of conversion for the purpose of making payment in execution of the decree in favour of the judgment-creditor.

37. As far as rate of sterling pound on 10th June 2008 claimed by judgment-creditor is concerned, judgment-creditor has annexed a copy of Confirmation Letter dated 10th July 2010 from Union Bank of India confirming that T.T. Selling Card for sterling pound as on 10th June 2008 was Rs. 84.99. There is no reason to disbelieve the said certificate issued by Union Bank of India confirming the

rate of sterling pound as on 10th June 2008 @ Rs. 84.99. In view of the fact that the judgment-debtors have not made payment in accordance with the conversion rate prevailing on 10th June 2008 and in any case not deposited the amounts due under all the four certificates in respect of which four separate notices were filed under Order 21 Rule 22 and were made absolute by order dated 8th August 2003, in my view, after giving credit of the amount deposited by the judgment-debtor in this Court with accrued interest if any, judgment-debtor is liable to pay the balance amount to be computed by considering the date of conversion as 10th June 2008 and the rate of sterling pounds at Rs. 84.99 per sterling pound within two months from the date of this order as directed by the Supreme Court by order dated 13th May 2010. Judgment-debtor No. 2 shall file an affidavit stating the particulars of her assets within six weeks from today. It is ordered accordingly.

38. In view of the order passed by Supreme Court directing this Court to determine the amount payable and which amount is determined by this order, I am not inclined to pass any order against judgment-debtor No. 2 for arrest and detention as prayed in chamber summons No. 888 of 2010 at this stage. It is made clear that judgment-creditors would be at liberty to exercise their rights as may be available under the provisions of CPC 1908 in case of the judgment-debtor No. 2 not complying with the order passed by this Court.

39. Prothonotary & Senior Master is directed to pay the amount deposited by the judgment-debtor in this Court on 3rd August 2010 in execution application No. 204 of 1997 and 205 of 1997 with accrued interest within four weeks from today to the judgment-creditors on whose proceedings such amounts were deposited.

40. It is made clear that judgment-debtor shall pay the balance amount in respect of all the four certificates within a period of two months from the date of this order.

41. Chamber summons are accordingly disposed of in aforesaid terms. Judgment-debtors are also directed to pay cost to the judgment-creditor Nos. 3 and 4 for filing and defending aforesaid proceedings quantified at Rs. 30,000/- each payable within two weeks from today.