

(2015) 04 BOM CK 0149

In the Bombay High Court

Case No : Chamber Summons No. 864 of 2014 and Notice of Motion No. 253 of 2015 in Execution Application No. 910 of 2014 in Suit Case No. 2007

Kolmar Group AG

APPELLANT

Vs

Traxpo Enterprises Pvt. Ltd.

RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, Order 2 Rule 2, Order 21 Rule 21, Order 21 Rule 41, Order 21 Rule 41 (2)
Specific Relief Act, 1963 — Section 38, 41(a)

Citation : (2015) 6 ABR 185 : (2015) 6 ALLMR 853 : (2015) 5 BomCR 39

Hon'ble Judges : R.S. Dalvi, J

Bench : Single Bench

Advocate : Karl Tamboly, a/w. Rakesh Mandavkar, Advocate a/w. Akshita Buch, Advocate i/b. Mulla and Mulla and CB and C, for the Appellant; Mathews Nedumpara, Advocates for the Respondent

Judgement

R.S. Dalvi, J.—The applicant / decree holder / judgment creditor (plaintiff) has obtained a judgment in the above suit from the Royal Courts of Justice, London, UK against the respondent / judgment debtor (defendant) herein on 1st February, 2010, which the plaintiff desires to execute. Consequently the above execution application is filed for execution of the above judgment. In the above execution the plaintiff has taken out the above Chamber Summons for depositing of decretal amount and failing which for disclosing the particulars of the assets and properties of the defendant, for issue of notices, precepts and warrant as may be required under Order 21 of the CPC, for an injunction against defendant from transferring, alienating and creating any third party rights of any of its properties, appointment of receiver, for detaining the defendant in civil prison upon non compliance of order of disclosure and other incidental reliefs and costs of the application.

2. The certified copy of the above judgment is filed. The plaintiff would contend that the foreign judgment is conclusive between the parties and can be executed

by this Court. The Chamber Summons came to be served upon the defendant by post on 12th September, 2014 and by hand delivery of 9th September, 2014. The notice taken out in the above application also came to be served through personal service by bailiff of this Court upon the defendant on 23rd October, 2014. The defendant failed to file any reply. An ad-interim injunction came to be granted on 3rd November, 2014. The respondent was represented and applied for time which was granted making the Chamber Summons returnable on 19th November, 2014.

3. On 19th November, 2014 the defendant absented itself. No affidavit in reply was filed. The Chamber Summons was granted in terms of prayer "a" directing defendant to deposit the decretal amount of Rs.11.31 crores with interest as claimed in prayer "a" of the Chamber Summons within four weeks from that day. If the defendant did not deposit the amount the defendant was directed to disclose its assets, means and properties within 8 weeks from that day. It was directed that if it was not disclosed further orders under Order 21 Rule 41 would have to be passed. The Chamber Summons came to be adjourned to 21st January, 2015.

4. On 21st January, 2015 the defendant was again represented. No affidavit in reply was filed. The decretal amount was not deposited. No disclosure was made. Order under Order 21 Rule 41(3) came to be passed. A precept came to be issued for the properties of the defendant which was not within the territorial jurisdiction of this Court. A bailable warrant came to be issued for sum of Rs.50,000/- by way of cash bail against director of the defendant. It was made returnable on 25th February, 2015.

5. On 25th February, 2015 the defendant was represented by the present advocate. The directions passed on 19th November, 2014 were yet not complied. A director of the defendant was arrested under the bailable warrant issued and appeared before the Court. The cash bail of Rs.50,000/- was deposited in this Court. The decretal amount was not deposited and the affidavit of disclosure was not filed. The defendant applied for time to file the affidavit in reply. The bailable warrant came to be cancelled. The defendant was given time to file reply to the plaintiff's Chamber Summons with a direction that if the defendant failed, further Order 21 Rule 41(3) would be passed. The order of injunction against alienation and encumbrance of the properties of defendant or creating any third party rights thereunder also came to be passed. The director was directed to remain present on the forthcoming dates of hearing.

6. On 11th March, 2015 when the Chamber Summons again appeared on board, the affidavit of disclosure was not filed. The time was requested as the father of the advocate had expired. The Chamber Summons came to be adjourned to today.

7. In the mean time, instead of filing any affidavit of disclosure, the defendant took out above Notice of Motion for recalling the initial order of deposit of the

decretal amount under prayer "a" of the plaintiff's Chamber Summons dated 11th November, 2014 on the ground that it was passed ex parte and without hearing defendant and without allowing him an opportunity of being heard.

8. It may be mentioned that the order came to be passed against the defendant as it failed to appear despite service. The Notice of Motion of the defendant was taken out on 16th December, 2014. Yet it was not served until 28th January, 2015 when the plaintiff's Chamber Summons reached hearing. It has been served thereafter.

9. Counsel on behalf of the defendant argued why the above judgment, which is a foreign judgment, cannot be executed by the plaintiff. Hence both the above applications are heard together.

10. Mr. Nedumpara on behalf of the defendant argued on various aspects of various laws which may be only enumerated. Suffice to say that they are either totally irrelevant or inapplicable except the argument on territorial jurisdiction of this Court and the non conclusiveness of the above foreign judgment under Section 44-A and 13 of the CPC respectively which shall be considered in detail.

11. Mr. Nedumpara argued that the plaintiff is not entitled to immediate execution.

The executing Court has to go into entire facts.

There is no estoppel and no application of the principles of res-judicata.

The judgment is only prima facie evidence and is not conclusive.

The doctrine of comity is applicable.

The test of Order 41 Rule 1 must be applied to foreign judgments.

The judgment has no finality because a fresh suit has been filed by the defendant.

Order 1 Rule 1, Order 2 Rule 2, Order 23 Rule 3(1) of the CPC would apply.

Section 38 and Section 41(a) of the Specific Relief Act are applicable.

12. Mr. Nedumpara on behalf of the defendant produced a photocopy of an entire English book relating to principles of estoppel in which the earlier preface is of the 19th century and the later preface is of 1906. A rather tattered book has been photocopied and bound. It would be seen to be of the year 1906. It would lay down English law of estoppel as of that date. That would be the common law. The common law would be applicable in India in the absence of any statute. Section 13 of the CPC came on the statute book of 1908 under the CPC of 1908. It is remained unamended or unchanged through the amendments of the CPC in 1976, 1999 and 2002. It is the special law with regard to conclusivity of foreign judgment in respect of such subject matter. Therefore, the common law principles of estoppel or any other aspects of English jurisprudence would not

apply to foreign decrees and judgments which are sought to be executed in India.

13. It is easy to see that these contentions do not deserve further consideration. The judgment of the foreign Court is conclusive under Section 13 of the CPC with regard to all matters directly adjudicated between the parties except if it falls within the 6 exceptions set down therein.

14. The defendant would claim exception under clauses a,b,d of Section 13 which runs thus :

13. When foreign judgment not conclusive.-

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except.

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the fact of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of (India) in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in (India).

15. The contentions of the defendant may be considered thus:

Court of Competent Jurisdiction

16. The plaintiff has produced a certified copy of the said judgment. Under Section 14 of the CPC there is a presumption that it was pronounced by Court of competent jurisdiction. The presumption can be rebutted by proving want of jurisdiction.

17. The defendant must show that the Court did not have jurisdiction, inherent, pecuniary or territorial. The defendant would claim that the UK Court had no jurisdiction (which jurisdiction is not specified). The defendant entered appearance, filed its WS / submission and traversed the averments in the suit. The defendant has annexed the WS and submission as Exh.A to its counter affidavit the defence filed in the above suit being claim 2007 Folio 1642 in the High Court of Justice, Queen's Bench Division, Commercial Court, London, UK. The entire defence runs on merits. A reading of the defence does not show that the jurisdiction of the Court was challenged. Mr. Nedumpara has not shown the Court the challenge to the jurisdiction in the said defence. The defence has been filed on 25th March, 2008 by Sohal and Company solicitors. The contention of

the defendant in paragraph 6 of the counter affidavit in the above application that the defendant disputed the jurisdiction is seen to be false.

18. The dispute with regard to the jurisdiction would have to be raised at the first instance. It was not raised. The defence was taken on merits. It cannot be raised thereafter.

19. The challenge to jurisdiction of the English Court is raised in paragraph 7 of the counter affidavit of the defendant in the above Chamber Summons for the first time. It is stated that the defendant company is in Calcutta, more than 5000 kms from London. It could not have engaged a lawyer or be present in London because the cost of travel, stay, legal and incidental expenses would be prohibitive. The defendant would claim that it has sent the submissions to the Court. The defendant has annexed the same as Exh.B to its counter affidavit.

20. The defendant is shown to have written to the Court office as also learned Judge various letters / faxes / emails on 11th November, 2009, 4th December, 2009, 8th December, 2009, 11th December, 2009, 15th December, 2009 and 16th December, 2009 before the trial was to commence on 17th December, 2009 putting on record various facts that transpired between the parties, the merits of the defence and the appeal for adjournment. The last of the defendant's letter is dated 15th December, 2009 in which the defendant put on record that it had good defence in the trial which is scheduled to begin on 17th December, 2009 and that its request for an adjournment to the trial had been denied. The defendant is distantly located. It had no counsel representing it and had asked for adjournment of two months to comply with procedures as may be required. It faxed a copy of the application made to the trial Judge. A copy of that application showed that the defendant had inclination to settle the matter. Its director visited London in the first or second week of November, 2009.

This would show that the defendant had travelled more than 5000 kms from Calcutta to London to settle the matter in November, 2009 and it not having been settled was set down for trial on 17th December, 2009. The office of the Court registry emailed the defendant on 16th December, 2009 at 8.51 pm that the Judge had directed a copy to the claimant and that the defendant's application will go before the trial Judge. The defendant emailed the Court office on 16th December, 2009 at 9.34 pm thanking the Court office.

The matter was heard on 17th December, 2009 upon the defendant's case in its defence which was already on record.

21. After the matter was heard on 17th December, 2009 the defendant has written two further letters to the Court office on 27th January, 2010 and 29th January, 2010 directing Court to keep in abeyance the judgment since the defendant had applied for adjournment, the plaintiff's case was a concocted and fabricated story and its erstwhile solicitor had withheld its documents. The defendant claimed that in order to get proper justice it had to be heard prior to "your judgment".

22. These are stated to be the submissions made by the defendant. Indeed some of the letters show the merits of the defendant's case with which this Court is not concerned as the executing Court cannot go behind the decree, even a foreign decree.

23. The Court has to see only whether the defendant was served and in fact appeared and consequently submitted himself to the jurisdiction of that Court.

24. Mr. Tamboly on behalf of the plaintiff drew the specific attention of the Court to defendant's submission to the learned Judge in the claim No. 2007 Folio 1642 in the defendant's affidavit, part of Exh.C thereto. It shows that the defendant had furnished written submissions and witness statements recorded by its solicitors. The matter was contested. The defendant was geographically situate in Mumbai. The defendant had inclined to settle the matter. The defendant's director had visited London in the first or second week of November, 2009 etc. Mr. Tamboly would argue that not only the defendant had filed its defence, but it was not even only sent from India. The defendant was represented by a firm of solicitors. The defendant's director had admittedly also visited London in November, 2009 and hence could visit in December, 2009 when the matter was set down for trial.

25. Indeed it is seen that the defendant has been represented by two firms of solicitors. The first firm which is stated to have filed certain witness statements (analogous to affidavits on evidence in India). The defence has been filed by Sohal and Company solicitors without taking any exception to that Court's jurisdiction. Hence it cannot now be contended that court was not a Court of competent jurisdiction.

Principles of Natural Justice

26. The defendant would argue that the judgment was against the principles of natural justice.

27. The aforesaid events would show not only that the defendant was properly served and was consequently represented but that the defendant appeared through its director prior to the trial and sought to settle the dispute which could not be settled. It was then for the defendant to remain present at the time of trial. Making applications for adjournment until the day before the trial would not disentitle any Court from going on with the trial, duly fixed. No right of natural justice can be stated to have been violated of a party who is allowed to show cause but does not show cause, who has an opportunity to contest but does not contest an action and who merely seeks adjournments to defeat and delay the plaintiff's claim.

28. The defendant would claim that the judgment was rendered without the defendant "being ever heard" and therefore, it is without affording an opportunity of hearing the defendant. (This is much like the order of this Court dated 19th November, 2014 which is also claimed to be illegal on the ground that

it was passed ex parte without hearing the defendant !)

29. Hence the principles of natural justice are seen to be followed and not violated.

Merits of the claim

30. It may be mentioned that an ex parte order / decree/ judgment is held not to be enforceable and inconclusive on the ground it being per se ex parte .

31. What are the merits of a case to be considered in a foreign judgment has now been well settled. In the case of *Algemene Bank Nederland NV Vs. Satish Dayalal Choksi*, AIR 1990 Bom 170 which was a summary suit in which the writ of summons was served and an application for summary judgment was made. Upon an affidavit in reply filed by the defendant unconditional leave was granted by the Supreme Court of Hong Kong to defend the suit. The defendant filed his defence. In a summons for directions taken out by the plaintiff, the defendant disclosed guarantee executed by the defendant in favour of the plaintiff bank and relied upon an entry in the register of guarantees. The suit was set down for trial. The defendant did not appear but produced a medical certificate. The suit came to be adjourned. The defendant, who was an Indian, thereafter sought leave of the RBI to sanction funds to prosecute his defence in the suit. That was rejected. The defendant did not take steps to make any application in Court against the refusal of the RBI to release foreign exchange to him. The defendant failed to appear. It was observed to be due to his own lapse. A decree came to be passed and whether or not it was passed on the merits of the case came to be considered.

The learned Single Judge of this Court considered inter-alia number of judgments including the judgment in the case of *D.T. Keymer vs. P. Viswanath Reddi* 21 CWN 358 (Privy Council) . In that case the defendant had refused to answer the interrogatories of the plaintiff. His defence was struck out. A judgment was given on that footing. The Privy Council has held that the decision could not be taken to be on merits under Section 13(b) of the CPC since the controversy raised in the action was not the subject of direct adjudication of the Court. Upon such a ruling the Single Judge of this Court observed that in that case the defence filed by the defendant questioned the execution of the guarantee and the entry in the register of guarantees. No evidence was led. The judgment set out that "on the defendant's failure to appear and upon the proof of the plaintiff's claim" the judgment was given. The plaintiff bank did not properly prove its documents. Certain alterations and erasures and a corner sticker which was on the documents came to be observed. The learned Single Judge observed that there was no material to show that those aspects were examined by the Supreme Court of Hong Kong. The Court observed :

The court seems to have proceeded to pronounce judgment in view of the defendant's failure to appear at the hearing of the case to defend the claim on merits."

The Court held that such was not a decree on merits.

32. In appeal therefrom the Division Bench of this Court under an unreported judgment in the case of ABN AMRO Bank N V Vs. Satish Dayalal Choksi dated 3rd August, 1992 disagreed with and overruled the learned Single Judge on this aspect. On Page 31 and 32 of the judgment it is observed that :

In our judgment, an ex parte order can be held to be not on merits only in cases where a judgment is delivered on the ground of limitation or want of jurisdiction or where the defence is struck off as in the case before the Privy Council. In such cases, the Court declines to examine the merits because the suit is barred by limitation or the Court lacks jurisdiction to entertain the suit or the defendant is prevented from defending the suit. It is only in these kind of exceptional cases that it is possible to suggest that the decree is not passed on merits. Even when the Court passes an ex parte decree, the Court examines the merits of the plaintiff's claim and the defendant cannot be permitted to claim that the decree is not on merits and take advantage of his own wrong in not defending the suit. In our judgment, on the facts and circumstances of the present case, the conclusion is inescapable that the judgment delivered by the Hong Kong Court is on merits of the case and consequently such judgment is enforceable and the bar of Section 13(b) of the Code of Civil Procedure is not attracted.

33. The judgment of the Supreme Court of India in the case of M/s. International Woolen Mills Vs. M/s. Standard Wool (U.K.) Ltd., AIR 2001 SC 2134 : (2001) 5 JT 147 : (2001) 3 SCALE 516 : (2001) 5 SCC 265 : (2001) 3 SCR 166 : (2001) 2 UJ 1007 : (2001) AIRSCW 1806 : (2001) 3 Supreme 554 is the authority on what the merits of the case would be. In paragraph 30 of the judgment the Supreme Court has held that whether or not a judgment is on merits would be apparent from the judgment itself. It is not enough if there is decree or decision of the Court. It has to be a judgment. The judgment must have directly adjudicated the question arising between the parties. The Court should have applied its mind and considered the evidence in which case there would be an adjudication on merits. The plaintiff should have adduced evidence in support of the claim so that the Court duly considered such evidence instead of passing a decree merely on default of appearance of the defendant. The Supreme Court has held that in the former case there is judgment on the merits of the case; in the latter case when the decree is upon default of appearance the judgment is not on merits. Hence whether or not it is ex parte it can be a judgment on merits upon the aforesaid tests. The two diametrically different situations have also been set out in the latter part of paragraph 30 thus :

a) If the judgment is solely on account of the default of the defendant without considering whether the claim is well founded or not and whether there is evidence to sustain it, it could be a decree passed by way of penalty.

b) If there is an application of mind by the Court it would be a judgment on merits. If it is without any evidence of any kind but passed only on the pleadings

it cannot be a decision on merits.

c) If the judgment is passed as matter of course or by way of penalty it would not be a judgment on merits. If it is passed on consideration of the truth or otherwise of the plaintiff's claim it is on merits.

The Supreme Court considered in that judgment and the decree in that case was passed as matter of course on account of the default of the appearance without any evidence and without consideration of the tenability or justness of the plaintiff claim and hence was not a judgment on merits.

34. It is to be seen whether the judgment in the above suit would fall within the parameters laid down by the Supreme Court in the case of International Woolen Mills Ltd. (Supra). The judgment running in 28 pages for computation of damages under the aforesaid 4 heads is passed upon considering the assessment. The judgment shows that the counsel of the plaintiff was heard and thereafter the claim was decreed for specified amount of damages, interests and costs.

The judgment was not merely on account of the default of the appearance of the defendant. Consequently it was not by way of penalty. It was not without evidence of any kind and not passed only on pleadings. It was not passed as matter of course by way of penalty. It considered the truth of the plaintiff's claim upon its evidence and upon the assessment of damages. It, therefore, considered the question of damages raised by the plaintiff. It would, therefore, show application of mind to an action for damages. It would have to be seen whether there was due consideration of the evidence. Since the defendant failed to appear and argue its case raised by it what was stated by the plaintiff would have to be accepted. The decree for damages, interests and costs would be the only corollary.

Upon the aforesaid test laid down by the Supreme Court, the judgment would fall within the parameters of the case decided on merits and not simply upon the default of the defendant, pleadings of the plaintiff's, documents of the plaintiff or as matter of course by way of penalty. Similarly upon the test laid down by the Division Bench of this Court it is not a judgment in which the Court declined to examine the merits because of any bar of limitation, lack of jurisdiction or striking out of defence etc. Hence even when the Court passed an ex parte decree or judgment it would be that it would examine the plaintiff's case on merits. On what material it had examined the case on merits and how and where that is done is evident from the judgment and hence, as observed by the Division Bench of this Court, the defendant cannot be permitted to claim that the decree is not on merits and take advantage of his own wrong in not defending the suit.

35. What has to be seen is whether the judgment which is sought to be enforced in the above execution application has been given on merits of the case or not. The plaintiff filed the suit. The defendant filed its defence. The defence is on merits. The defence runs in 23 pages. The suit is fixed for trial. The judgment

has been passed. The judgment runs in 28 pages with a judgment / order (being the operative part pronounced thereafter)

36. The judgment considers and sets out the contract between the parties dated 27th and 28th August, 2007 the clauses thereof. It also considers the chronology of events of what transpired from 29th August, 2007 onwards. It considers the letter of credit setting out the articles thereunder and the chronology of what happened thereupon. It also considers amendments to the letter of credit. Thereafter it considers various legal questions including economic duress, provisions for letter of credit and amendments thereto. Further it considers the plaintiff's claim for restitution and want of consideration, intimidation, short delivery, the contract and market price and the difference thereunder for considering the damages, the demurrage and the shifting charges. Upon concluding the entitlement of the plaintiff under the four separate heads for which it grants specific amounts or recovery, it considers the question of interest and costs separately and accordingly a final judgment (operative part) has been passed on 1st February, 2010 for the trial which commenced on 17th December, 2009.

37. The judgment is, therefore, by no means not on merits.

38. Hence the judgment sought to be enforced is not a judgment which can be reopened. This Court as the executing Court cannot go behind the judgment. Such a judgment is entitled to execution. It is not merely prima facie evidence. It is conclusive as to matters adjudicated between the parties. It falls within the parameters of conclusivity under Section 13 of the CPC.

39. Mr. Nedumpara argued that this Court also would not have jurisdiction to execute the above foreign judgment as only a District Court can so execute a foreign judgment. Mr. Nedumpara relied upon a judgment in the Delhi High Court in the case of Goyal MG Gases Pvt. Ltd. Vs. Messer Griesheim GMBH, EFA (OS) No. 3/2014 dated 1st July, 2014 which has considered definition of District in Section 2(4) along with Section 44A of the CPC along with Section 5(2) of the Delhi High Court Act. It is held that only in respect of suits where the value exceeded the prescribed amount, the Delhi High Court's jurisdiction was envisaged. It is observed that it would not make the High Court of Delhi the principal civil Court of original jurisdiction in Delhi and therefore a District Court could execute the decree.

The reliance upon this judgment is misconceived. The jurisdiction of the Delhi High Court is not under the Royal Charter which is the Letters Patent. The jurisdiction of the Delhi High Court is under the Delhi High Court Act.

The jurisdiction of the Bombay High Court is under clause 11 of the Letters Patent which is relied upon the counsel on behalf of the plaintiff. Under clause 11 this High Court would exercise ordinary original civil jurisdiction within the local limits of its jurisdiction. It would accordingly be the principal Court of jurisdiction in Mumbai. The District Court would be the principal Court of civil jurisdiction

outside Mumbai. The Bombay City Civil Court would be the principal Court of civil jurisdiction to the extent of the claim within its pecuniary limits. The claim under the above judgment is, as aforesaid, Rs.12.23 Crores which is outside the pecuniary limits of Bombay City Civil Court and the territorial limits of any of the District Courts of Maharashtra.

40. Mr. Tamboly on behalf of the plaintiff relied upon the judgment in the case of Janardhan Mohandas Rajan Pillai and Another Vs. Madhubhai Patel and Others, AIR 2003 Bom 490 : (2003) 4 ALLMR 9 : (2004) 1 BomCR 736 : (2004) 1 MhLj 37 also considered in an appeal in which a decree of English Court staying a suit for defamation filed in England in which it was held that there was no jurisdiction and decree of security of costs was sought to be executed as foreign judgment. It was observed by the learned Single Judge that under Section 44A the jurisdiction of this Court for a decree to reciprocating Court could be filed in a District Court and the High Court was the District Court for the purpose of execution of the decree and hence the execution application was filed in the proper forum. This ratio decidendi was upheld in appeal. Consequently this Court's territorial as also pecuniary jurisdiction is not barred in the above execution application.

41. In execution the plaintiff would be entitled to take out and has taken out the above Chamber Summons as aforesaid. It was served. The defendant was represented. The defendant was directed to file the affidavit of disclosure which was not filed. The application was made under Order 21 Rule 41(1) (b) of the CPC as the defendant is a company represented by its director. Consequently the defendant was directed to file the affidavit of disclosure setting out the particulars of its assets under Order 21 Rule 41 (2) of the CPC. Since the assets were not disclosed certain properties of the defendant had to be protected and consequently the order of injunction against alienation and transfer of the defendant properties came to be passed and has been continued. Similarly a precept has been issued under Section 46 of the CPC for the property which was shown to be outside the territorial limits of the jurisdiction of this Court.

42. The disclosure is yet not made. The assets, means, properties and receivables of the defendant would have to be ascertained. The defendant is bound and liable to disclose the same to Court. If the same is not disclosed and the order of disclosure is disobeyed, the Court would require to make an order for detaining the director of the defendant, who has been directed to remain present all through the proceedings, in civil prison under Order 21 Rule 41(3) of the CPC.

43. In view of the above the defendant's Notice of Motion is worked out. The defendant has been fully heard through its counsel Mr. Nedumpara. The opportunity of hearing is granted in terms of prayer "a" of the Notice of Motion of the defendant. Upon hearing the defendant's counsel it is seen that the judgment in the above suit is conclusive and consequently executable in India. In execution, therefore, the defendant must deposit the decretal amount or make a

disclosure of its assets so that the plaintiff would execute the foreign judgment. The defendant's properties must be protected against further alienation and transfer. If the defendant continues to disobey the order of the disclosure of this Court, the defendant would have to be committed to the civil prison.

44. Hence the following order:

1. In view of the hearing granted to the defendant's counsel Notice of Motion No. 253 of 2015 has become infructuous and is disposed of as such.
2. The foreign judgment in the above suit is conclusive and executable.
3. The defendant shall deposit the decretal amount of Rs.12.23 Crores in this Court as per prayer "a" to the above Chamber Summons within two weeks from today.
4. If the amount is not deposited the defendant shall disclose its assets and properties within four weeks from today.
5. The defendant shall not sell, alienate, transfer, encumber, create any third party rights or handover possession of any of its properties and assets, movable and immovable, including its bank accounts in any manner.
6. The appointment of Court Receiver is refused.
7. The plaintiff shall be entitled to take out a fresh Chamber Summons in terms of prayer "f" if and when required.
8. Chamber Summons is disposed of accordingly.
9. The execution shall proceed.
10. This order is stayed for 2 weeks except point No. 5 granting the injunction as above.