

(2013) 11 DEL CK 0351

In the Delhi High Court

Case No : Ex. P. No. 70 of 2006 and EA No's. 32 of 2007, 152 of 2008, 470-471 of 2009, 653-654 of 2009

Messer Griesheim GMBH

APPELLANT

Vs

Goyal MG Gases Pvt. Ltd.

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 112(2), 13, 13(a), 13(b), 13(c)
Companies Act, 1956 — Section 194, 195, 196, 197, 198
Copyright Act, 1957 — Section 62(2)
Delhi High Court Act, 1966 — Section 13, 5(1), 5(2)
General Clauses Act, 1897 — Section 3(17)
Registration Act, 1908 — Section 2(4)
State Financial Corporations Act, 1951 — Section 31
Trade Marks Act, 1999 — Section 134(2)

Citation : (2013) 205 DLT 248 : (2013) 139 DRJ 556

Hon'ble Judges : S. Muralidhar, J

Bench : Single Bench

Advocate : Amit Sibal and Ms. Mohana M. Lal, Mr. Amrinder Singh and Ms. Geetali Talukdar, for the Appellant; Maninder Singh and Mr. P.S. Bindra and Ms. Shweta Priyadarshini, for the Respondent

Final Decision : Disposed Off

Judgement

Dr. S. Muralidhar, J.

EA No. 471 of 2009

1. For reasons stated therein, this application is allowed. The application stands disposed of.

EA Nos. 32 of 2007, 152 of 2008 and 470 of 2009

2. Execution Petition No. 70 of 2006 has been filed by Messer Griesheim GMBH (presently called Air Liquide Deutschland GmbH) against Goyal MG Gases Pvt. Ltd. (Judgment Debtor) u/s 44A of the Code of Civil Procedure, 1908 ("CPC")

and Section 151 thereof for execution of a foreign judgment and decree dated 7th February 2006 passed by the High Court of Justice, Queen's Bench Division, Commercial Court, Royal Court of Justice, U.K. By the said judgment and decree, the Decree Holder ("DH") has been awarded an aggregate sum of US\$ 5824564.74 and Euro 31,364.74 comprising:

a) US \$4794762.98 plus

b) Interest up to the date of the Order in the sum of US \$1019751.76 plus.

c) Costs and expenses in the sum of:-

i. Euro 31364.74 and

ii. US\$ 10050.00

together with

d) Interest on the aforesaid sum of US \$ 5824564.74 and Euro 31364.74 (Judgment sum) @ 8% p.a. from 7th February 2006 upto the date of payment.

Accompanying the Execution Petition is a certified copy of the aforementioned judgment and decree together with a certificate u/s 10 of the Foreign Judgments (Reciprocal Enforcement) Act, 1973 ("FJREA") certifying that the said judgment and decree has not been satisfied in full or in part by means of execution or otherwise within the jurisdiction of the High Court of Justice, Queen's Bench Division, Commercial Court. A copy of the order dated 7th February 2006 containing the reasons for passing of the decree of that date has also been enclosed.

3. The background to the execution petition is that the Judgment Debtor ("JD") entered into a loan agreement with the lender bank (Citibank International Plc) for a term loan of US \$ 7 million on 30th June 1997 in order to finance the acquisition of capital equipment. The DH, a company incorporated in Germany, held 49% of the shares in the JD. In that capacity the DH agreed to irrevocably and unconditionally guarantee the loan.

4. Under Clause 16.12 of the loan agreement, the DH was to be subrogated the rights of the lender bank against the JD. The loan agreement was governed by English law.

5. With defaults committed by the JD, the DH as guarantor was obliged to pay US \$4,794,762.98 to the lender bank. It paid the said amount to the lender bank. Thereafter, the DH raised the demand on the JD to clear the outstanding amount. The JD failed to make the payment.

6. On 17th January 2003, the DH initiated the proceedings against the JD before the High Court of England for recovery of the aforementioned sum. The JD did not enter appearance and accordingly a default judgment dated 6th February 2003 was passed by the High Court of England. On 25th March 2003, the DH issued a notice of demand to the JD u/s 434(1)(a) read with Section 433(e) of

the Companies Act, 1956. The JD took a stand in the reply to the notice that the said default judgment dated 6th February 2003 was not enforceable in India since it was not a judgment on merits and had been passed in the absence of the JD.

7. On 6th July 2005, the DH applied to the High Court of England to set aside the default judgment and for a judgment on merits. The JD was served in the said proceedings and appeared before the High Court of England. The JD did not raise any objection to the jurisdiction of the High Court of England. The JD also filed the statements of its witnesses.

8. One of the pleas raised by the JD before the High Court of England was that although it was not willing to comply with the default decree, the said default decree should not be set aside.

9. The summary of the detailed reasons given in the judgment dated 7th February 2006 of the High Court of England is as under:

(i) There was no injustice to the JD in setting aside the default judgment and in enabling the JD to put forth the defences it might have on merits. The JD could not both ignore due process and also rely on it. Accordingly, the default judgment was set aside.

(ii) There was no merit in the defence raised by the JD in the statement of its Deputy General Manager, Mr. Dhar, that there was an agreement earlier entered into on 13th June 1997, two weeks prior to the execution of the loan agreement, at a meeting of the Board of Directors (BoD) of the JD that in the event the DH was called upon to pay under the proposed guarantee to be given to it by the lender bank, it would not have recourse to either the shareholders in the JD or the JD itself. The said oral agreement was not referred to in any document and was in any event wholly inconsistent with the loan agreement made thereafter and approved by the BoD of the JD. The minutes of the Board meeting also made no reference to any such oral agreement. They only referred to the draft of the loan agreement and approved its terms.

(iii) The purport of the two conditions in the letter dated 3rd September 1997 from the Reserve Bank of India (RBI) to the JD giving permission for the DH to guarantee the loan to the JD was that if the guarantor i.e. the DH paid the lender bank then the JD would have no liability to the lender bank. In the circumstances, it was difficult to see why the RBI would be concerned that the same liabilities were owed by the JD to the DH as long as they ceased to be owed to the lender bank. In any event, the incidence of Indian Foreign Exchange law would invalidate a contractual obligation only if Indian law was the proper law of contract or the law of the place for its performance. In the present case, however, the parties had agreed to the application of the law of England.

(iv) The second line of defence in Mr. Dhar's evidence was that there was another oral agreement entered into between the DH and the JD in August 2001

under which the DH agreed to pay the amount outstanding under the loan agreement and not for repayment from the JD. The agreement was undocumented. The letter written by the JD to the lender bank with a copy to the DH on 22nd September 2001 made no reference to any such agreement between the JD and the DH. It is simply alleged that the DH was in breach of its obligations and had failed to pay the JD Rs. 5 billion. The document dated 23rd September 2001 produced by Mr. Dhar bore no signature nor was it on any printed or recognizable papers. It was not received by the JD.

(v) As regards the submission that the annual report of the JD for the year ended 31st December 2001 recorded the understanding between the JD and the DH and the payment made by the DH pursuant thereto, there was a note entitled "Contingent Liabilities not accounted for" which read as under:

Contrary to the understanding with the company, Messer had made a demand on the company to make payment of the amount of USD 4.78 Million being the amount of ECB Loan paid by Messer to Citi Bank. The company is of the view that contentions of Messer has no merits.

Mr. Schmidt, a Director appointed by the DH on the BoD of the JD wanted to record his disagreement at the Board meeting held on 27th May 2002 as recorded in the minutes of that meeting. That the 2002 Annual Report also contained a Contingent Liability Note which referred back to the 2001 note on "Treatment of ECB Loan Repayment" adding "the loan of US\$ 4.8 millions as agreed by the DH was not payable and, therefore not shown as a contingent liability." However, on 19th October 2003 Mr. Schmidt sent an email to the Director and Company Secretary of the JD pointing out his decision which he had already expressed in the earlier Board meeting.

(vi) The documents highlighted the untenability of the JD's assertions. The JD could not rely on the so-called oral agreements of August and September 2001. As a result the DH was entitled to rely upon the clause in the loan agreement which entitled it to recover from the JD the amount paid by the DH to the lender bank.

(vii) The third line of defence was that there was a further oral agreement between the parties in December 2002, prior to the commencement of the proceedings in the High Court of England and that the proceedings brought before it were for the DH's own internal purposes. The contention of the JD was that it was understood that while the proceedings would culminate in a default judgment, that judgment in fact would not be enforced. There was no documenting of any such oral agreement. There was no evidence to support the suggestion of the JD that the DH was seeking some tax advantage under the enforceable judgment. The evidence on record refuted any such suggestion.

(viii) Another defence of the JD was that when in May 2004, the DH was acquired by another company which was the JD's competitor, the JD began proceedings in India in connection with the said acquisition and this provided a trigger for the

DH to launch a counter-attack and as a result, the default judgment was resurrected. The said defence was held to be not supported by any evidence.

10. After elaborate discussion of the defences of the JD, the High Court of England gave a summary judgment as under:

I have already addressed such defences as Goyal has sought to raise. None, in my judgment, provide any real prospect of a defence to the claim succeeding. Messer is entitled to summary judgment. No issues have been raised on the amount of the claim. At 16 January 2006 the claim was for the principal sum of US\$ 4,794,762.98 together with interest calculated in accordance with the loan agreement of US\$ 996,842.94. A small further amount of interest will be due when this judgment is handed down. There is also a claim under clause 17.5 of the loan agreement to recover certain legal fees. If there are any points to be made on the precise amount of the Part 24 judgment to be entered they should be raised when this judgment is handed down if they cannot be agreed beforehand.

11. In the order dated 7th May 2006, in para 7, it was noted by the High Court of England that in response to the summons, the written statements dated 25th November 2005 and 12th January 2006 and the witness statement of Ved Prakash Gupta dated 15th January 2006 were filed by the JD. In para 18 the Court concluded "that there is no real prospect of the Defendant successfully defending the Claimant's claim and that there is no reason why the Claimant's claim against the Defendant should be disposed of at trial." However in para 19 it is noted that there was "no objection by the Defendant to the validity of the Proceedings or the Application or the service of the Witness Statement or the Further Evidence on the Defendant".

12. The judgment awarded interest @ 8% per annum calculated on the judgment debt and costs from the date of the judgment till payment. The certificate dated 13th March 2006 u/s 10 of the FJREA noted that no appeal against the said judgment or order had been brought within the time prescribed and that enforcement of the judgment and order was not, for the time being, stayed or suspended, and that the time for their enforcement had not expired. The certificate noted that the judgment or order had not been satisfied in full or in part by means of execution or otherwise within the jurisdiction of the High Court of England.

13. On 26th April 2006, the present execution petition was filed. On 27th April 2006, in the presence of counsel for the JD notice was issued. A statement was made by the JD that till the next date of hearing, the two properties belonging to the JD, i.e. one at No. A-4/2, South Side of GT Road, UPSIDC, New Area Ghaziabad and the other at Plot No. 8/7, Industrial Area, Site IV, Sahibabad, near Maharajpur, District Ghaziabad, would not be alienated or transferred or encumbered any further without the leave and liberty of the Court.

14. On 17th January 2007 the JD filed EA No. 32 of 2007 raising the following

objections:

(a) There was no basis on which the default judgment could have been set aside under Rule 13 of the English Civil Procedure Code.

(b) In any event, the London Court could not have passed a decree exceeding the amount in the default decree dated 6th February 2003.

(c) The judgment and decree dated 7th February 2006 was illegal, invalid and obtained in complete disregard to the principles of natural justice. It was in breach of the law of the land in India, was liable to be disregarded and not enforceable.

(d) The judgment dated 7th February 2006 was against the principles of natural justice and, therefore, could not be enforced in India.

(e) The modification/variation of the default judgment was in breach of the law of the land in India and, therefore, not enforceable under Indian law.

(f) The suit filed by the DH was not under the summary procedure and there was no prayer for a summary judgment; there was no admission by the JD of any sum owed to the DH and, therefore, no summary judgment could have been passed without trial.

(g) The London Court could not have passed any judgment contrary to any law of India, including the Foreign Exchange Regulation Act (FERA).

15. The above objections pertained to Sections 13(b), 13(c) and 13(d) of the CPC. It is significant that at this stage the JD did not raise any objection as regards the jurisdiction of either the High Court of England or of this Court to entertain the execution petition.

16. Nearly a year thereafter, on 31st March 2008, the JD filed EA No. 152 of 2008 on the ground that the High Court of England had no jurisdiction to pass the decree.

17. The record of proceedings shows that the arguments were heard in the application and the matter remained part-heard. By an order dated 3rd November 2009, the JD was relieved of the statement made on its behalf on 27th April 2006 to the extent of the Ghaziabad property and the restraint order was continued in respect of the Sahibabad property. On 29th August 2009 while the matter was part-heard, the JD filed EA No. 470 of 2009 raising a preliminary objection that this Court had no jurisdiction as it was not a District Court under the CPC. The JD also filed EA No. 471 of 2009 on 29th August 2009 raising two additional objections; (a) that the decree of the English Court was in breach of Sections 194 and 211 of the Companies Act, 1956 (this was relatable to Section 13(c) CPC) (b) the email dated 19th February 2003 was not placed on record by either party before the English Court (this was relatable to Section 13(e) CPC).

18. On 20th May 2013, the counsel for the JD insisted that the Court should hear

arguments on the issue of jurisdiction as a preliminary issue. This was negated by the following order:

Mr. P.S. Bindra, learned counsel for the Defendant states that arguments only on the issue of jurisdiction should be heard first.

However, this Court finds that no preliminary issue has been framed in the matter. As six years have lapsed after filing of the present execution petition, this Court is of the view that present petition should be heard in its entirety. Needless to say, learned counsel for the judgment debtor will be at liberty to address arguments even on the issue of jurisdiction.

Both the parties are given liberty to file written submissions on all issues not exceeding five pages. Let written submissions be filed within ten days.

List in the category, of "Final Matters" in the week commencing 1st July 2013 amongst first five items. Interim order to continue.

19. The first objection of the JD pertains to the jurisdiction of this Court to entertain the present execution petition. The submission of the JD is that Section 44A CPC mandatorily requires presentation before the District Court of the execution petition by the DH of a foreign judgment and that this Court cannot for that purpose be considered to be a "District Court". Reliance is placed on the judgment in *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, to urge that the decree passed by the foreign court would be deemed to be passed by the District Court. It is further submitted that unlike Section 39 CPC, Section 44A does not speak about the competence of the transferee court executing a decree to itself pass a decree. Thus, it is argued that there is a distinction between the law governing execution of domestic decrees and that governing the execution of foreign decrees. Reference is made to the judgment of the Supreme Court in *M.V. Al Quamar Vs. Tsavlis Salvage (International) Ltd. and Others*, (hereafter the "Al Quamar case").

20. Mr. Maninder Singh, learned Senior counsel and Mr. P.S. Bindra, appearing for the JD, submitted that when Section 5(2) of the Delhi High Court Act, 1966 ("DHCA") is read with Section 24 of the Punjab Courts Act, 1918 ("PCA") it is evident that the High Court is a principal civil court only for suits of pecuniary value of Rs. 20 lakhs and above and not for any other purpose. In particular, it is submitted that this Court cannot and does not become an executing court for the purpose of Section 44A CPC. Reliance is placed on the decisions in *Bakshi Lochan Singh and Others Vs. Jathedar Santokh Singh and Others*, , *Mary Assumption Trinidad etc. Vs. Vincent Manuel Trinidad and Others*, and *R.P. Sachdeva (deceased by LR.) and Others Vs. The State*, . It is submitted that execution proceedings cannot be equated to proceedings in a suit as was held in *Morepen Laboratories Ltd. and Others Vs. Morgan Securities and Credits Pvt. Ltd.*, and *M/s LLOYD Insulations (India) Ltd. and Others Vs. Cement Corporation of India Ltd. and Another*, .

21. Mr. Maninder Singh sought to distinguish the judgment of this Court in *Oakwell Engineering Ltd. Vs. Enernorth Industries Inc.* which appears to hold a contrary view. He submitted that the said judgment was per incuriam in terms of the law explained in a series of judgments including *Municipal Corporation of Delhi Vs. Gurnam Kaur*, . He also distinguished the decision in *Dallah Albaraka Investment Co. Ltd. Vs. Ajitabh Bachchan and another*, by pointing out the difference between the position under the Bombay City Civil Court Act and the DHCA. Lastly, it was submitted that the petition itself was premature as the mandatory permission of the RBI u/s 47 of the erstwhile FERA had not been obtained. Reliance was placed in this regard on the decision of the Bombay High Court in *Algemene Bank Nederland NV Vs. Satish Dayalal Choksi*, . It was submitted that the Court had to decide the issue of jurisdiction at the threshold before deciding the merits of the JD's objections. In support of this submission, reliance was placed on the decision of the Supreme Court in *Arun Agarwal v. Nagreeka Exports*, (2002) 10 SCC 101 .

22. Mr. Amit Sibal and Ms. Mohna M. Lal, learned counsel for the JD, on the other hand submitted that the objection as to jurisdiction was taken by the JD belatedly and not in the first instance when notice was accepted by it in the execution petition. In particular, it was pointed out that the objection was raised in EA No. 470 of 2009 filed on 29th August 2009 i.e. 3 years and 5 months after notice was accepted in the execution petition by the JD. It was submitted that the High Court is also a District Court for the purposes of the CPC. It is submitted that the definition u/s 2(4) CPC of the expression "District Court" included the principal civil court of original jurisdiction. At the time of enacting the CPC, the Letters Patent was already in vogue and, therefore, the expression "district court" encompassed the High Court as well. It was submitted that u/s 5(2) DHCA it is the High Court which has exclusive jurisdiction in respect of suits of the value of Rs. 20 lakhs and more and, therefore, the High Court was a court of competent jurisdiction.

23. Mr. Sibal submitted that Sections 38 and 39 CPC did not apply to Section 44A CPC but were helpful in understanding the expression "District Court" u/s 5(2) DHCA. Reference was made to the provisions of Section 2(4) of the Registration Act, Section 134(2) of the Trade Marks Act, 1999 ("TM Act") and Section 62(2) of the Copyright Act ("CA") which also referred to the expression "District Court". While not disputing that Section 44A provided a mechanism for execution of a foreign decree which was different from the legal regime for the execution of a domestic decree, it was submitted that the present execution petition could not have possibly been filed in a court subordinate to the High Court since the monetary value of the decree was nearly Rs. 40 crores. It was submitted that when there was a split jurisdiction like in the cities of Delhi, Kolkata, Chennai and Mumbai, a purposive interpretation would have to be placed on Section 44A CPC. Otherwise there would be an anomalous situation where a court which otherwise had no competence to entertain the suit in which the foreign decree was passed, would be executing the decree. Apart from the decision in the *MV Al Quamar*

case, Mr. Sibal referred to the decision in Bank of India Vs. Harshadrai Odhavji Mody and Central Bank of India, , Janardhan Mohandas Rajan Pillai and Another Vs. Madhubhai Patel and Others, , Oakwell (supra), Radhamani India Ltd. Vs. Imperial Garments Ltd. and Another, , Arjan Singh Vs. Union of India, , D.P. Bhalla Vs. Cement Corporation of India Ltd., , East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, .

24. As regards the prior permission of the RBI, reference was made to a recent circular dated 1st July 2013 which did not require it. Reference was also made to the decisions in Life Insurance Corporation of India Vs. Escorts Ltd. and Others, , Mr. Navin Khilnani Vs. Mashreq Bank psc., , M/s. International Woolen Mills Vs. M/s. Standard Wool (U.K.) Ltd., and Renusagar Power Co. Ltd. Vs. General Electric Co., .

25. In order to appreciate the above submissions, the definitions of the relevant terms in the CPC may be referred to first. Section 2(4) CPC defines "District" as under:

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

26. The other relevant definitions are of the expression "foreign court" Section 2(5), "foreign judgment" Section 2(6) and "judge" Section 2(8). This may be distinguished from the definition of "District Court" in Section 3(17) of the General Clauses Act, 1897 which reads as under:

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

27. As regards the hierarchy of Courts, Section 3 CPC states that the "District Court" is subordinate to the "High Court". Section 6 CPC concerns pecuniary jurisdiction and reads as under:

Section 6 - Pecuniary jurisdiction

Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

28. Section 9 CPC states that Courts shall have jurisdiction to try all suits of a civil nature. Sections 13 and 14 CPC pertain to "foreign judgment" and read asunder:

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 face 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.

14. Presumption as to foreign judgments.--The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

29. Section 15 CPC states that every suit shall be instituted in the Court of the lowest grade competent to try it. Competence could be, inter alia, with reference to pecuniary jurisdiction, subject matter jurisdiction and territorial jurisdiction.

30. Part II of the CPC deals with execution. Section 36 states that the provisions of the CPC relating to execution of decrees shall also apply to execution of orders. The expression "Court which passed the decree" has been defined u/s 37 to include where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance and where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit in which the decree was passed was instituted at the time of making the application for execution of the decree, would have jurisdiction to try such suit.

31. u/s 38 CPC "a decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution". The word "sent" envisages one court sending the decree to another Court of competent jurisdiction for the purposes of execution. Section 39 CPC sets out instances when the Court which passed a decree may transfer the decree to another Court of competent jurisdiction. Section 39(3) CPC states that "for the purposes of this Section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed".

32. Section 39(3) CPC was inserted by the CPC (Amendment) Act, 1976 with effect from 1st February 1977 and by this time Section 44A was a part of the CPC. It was inserted in 1937 itself. A serious argument was advanced on whether Section 39(3) CPC had a bearing on Section 44A CPC and whether the difference in the wording of the two provisions meant that the court executing a foreign

decree in terms of Section 44A CPC could never mean the High Court.

33. Section 42 CPC talks of the power of a Court in executing a transferred decree and states that such execution court "shall have the same powers in executing such decree as if it had been passed by itself. In other words, even if the executing court otherwise would not have been the Court of the original instance for the purposes of filing of the suit, it would be deemed to be a competent Court when it acts as the executing Court. Section 42 CPC was also relied upon heavily by the JD to contend that in the present case the execution petition ought to have been filed only in the "District Court".

34. Section 44A CPC which is central provision as far as the present petition is concerned reads as under:

44A. Execution of decrees passed by Courts in reciprocating territory--(1) Where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court.

(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.

35. Turning now to the DHCA, Sections 5(1) and 5(2) thereof read as under:

5. Jurisdiction of High Court of Delhi

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

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

36. In the considered view of the Court, there can be no manner of doubt that as far as the territory of Delhi is concerned, if one were to bring a suit of pecuniary value of Rs. 20 lakhs and above, it is the High Court that would have exclusive jurisdiction to try such a suit. In other words, the competent Court for the purposes of such a suit for money decree of Rs. 20 lakhs and above would be the

High Court. It must be remembered that as far as the present case is concerned, the decree of which execution is sought is a money decree.

37. The expression "superior Courts of any reciprocating territory" in Section 44A CPC need not detain the Court for long. A notification has been issued by the Central Government way back in 1953 to clarify as under:

S.R.O. 399, dated the 1st March, 1953-In exercise of the power conferred by Explanation 1 to Section 44A of the Code of Civil Procedure, 1908 (Act 5 of 1908), the Central Government hereby declares the United Kingdom of Great Britain and Northern Ireland to be a reciprocating territory for the purposes of the said section, [and the House of Lords, the Court of Appeal] and the High Court in England, the Court of Session in Scotland, the High Court in Northern Ireland, the Court of Chancery of the County Palatine of Lancaster and the Court of Chancery of the County Palatine of Durham to be superior courts of that territory.

[M. of Law No. F. 34-I/52-L.]

[Gazette of India, Extraordinary, 1953, Petitioner II, Sec. 3, p.591]

38. Consequently, there can be no manner of doubt that the decree in question of the High Court of England would be considered to be a decree of a "superior Court of a reciprocating territory".

39. Next turning to the expression "District Court", the definition u/s 2(4) CPC is relevant because it includes the principal civil court of original jurisdiction and this includes "the local limits of the ordinary original civil jurisdiction of a High Court". u/s 5(2) DHCA, the Delhi High Court does have ordinary original civil jurisdiction for suits of the value of Rs. 20 lakhs and above. The question was examined by the Full Bench of the High Court in Arjan Singh v. Union of India (supra). At that time for suits of the value of Rs. 25,000 and above, it was the High Court which had exclusive jurisdiction. The Full Bench discussed the provisions of the CPC and the DHCA and answered the questions posed to it as under:

(a) All applications under the CPC other than execution applications in suits which have been decreed by the Subordinate Courts prior to 31st October, 1966, the valuation of which suits was more than twenty five thousand rupees it will be the High Court which will have jurisdiction to entertain and try the same;

(b) execution applications in suits decreed by the Subordinate Courts which had a valuation of more than twenty five thousand rupees prior to 31st October, 1966 can be entertained by the Court which actually passed the decree or the High Court though the jurisdiction to execute the decree may mean any entertaining the application and then transfer of the application to the proper court for execution having territorial or pecuniary jurisdiction in the matter.

40. For some reasons the decision dated 21st May 1971 of the Full Bench in

Arjan Singh appears to have not been referred to in the decision dated 14th August 1975 of the learned Single Judge in *Mrs. Mary A. Trinidad v. Vincent Trinidad* (supra). That was a case under the Indian Succession Act (ISA). The question whether the non-obstante clause in Section 5(2) DHCA ousted the jurisdiction of the Probate Court was answered in the negative. It was held that it was not possible to exclude "District Judge" from the definition in Section 5(2) DHCA. The question here, however, is entirely different. Likewise, in *M/s. Parkash Playing Cards Manufacturing Co., Delhi and others Vs. Delhi Financial Corporation, New Delhi*, the question was concerned with Section 31 of the State Financial Corporation Act and whether it ousted the jurisdiction of the High Court. The above decisions do not help the case of the JD.

41. The decision in *Oakwell* covers the point and cannot be said to be per incuriam. The decision in *Bakshi Lochan Singh* was in fact in consonance with the judgment of the Full Bench and, therefore, rightly relied upon by the learned Single Judge in *Oakwell*. It was correctly pointed out in *Oakwell* that the decision in *R.P. Sachdeva* did not help the JD to avoid the execution proceedings. This Court concurs with the view expressed in *Oakwell* and negatives the plea of the JD in the present case that this Court does not have jurisdiction to entertain the execution petition.

42. The observations in *Morepen Laboratories Ltd. v. Morgan Securities and Credits Pvt. Ltd.* were in a different context altogether. The issue there concerned the interpretation of the definition of the word "suit" under the Usurious Loans Act, 1918. It was in that context that the Court held that the said word would not include "execution proceedings" and it would not be open to a JD to resist execution on the ground that interest awarded by way of the decree was excessive. The observation of the Court in para 21 of the judgment makes this position clear. In the considered view of the Court, the said decision is of no assistance to the JD. Section 47 of the CPC permits the Court executing a foreign decree to answer all questions including the objections that might be raised by the JD in resisting the execution. Section 47 read with Section 13 CPC permits the executing court, which includes in appropriate cases the High Court exercising original jurisdiction, to deal with all objections on merits.

43. In the considered view of the Court, the Full Bench in *Arjan Singh* answered the question that for the purpose of pecuniary jurisdiction in relation to suits for the value of Rs. 20 lakhs and above it is the High Court which is the competent Court. There would be no purpose served in interpreting the expression "District Court" in Section 44A CPC in the context of execution of a money decree of Rs. 20 lakhs to mean only the "District Court" which is subordinate to the High Court when in fact the District Court has no jurisdiction whatsoever if such a suit is to be presented in the District Court. It would lead to an anomalous situation and create unnecessary confusion. There is no legal impediment for the DH to approach the High Court in the first instance for execution of the decree of a value of more than Rs. 20 lakhs, as in the instant case. Further, the JD cannot be

said to be prejudiced at all if it were asked to defend itself in the High Court rather than in the District Court.

44. As regards the requirement of prior permission under the FERA, it must be noticed that FERA is no longer in existence and has been substituted by the Foreign Exchange Management Act, 1999 ("FEMA"). The current circular of the RBI which is relevant is Circular No. 12/2013 dated 1st July 2013. The relevant portion of the Circular reads as under:

The Reserve Bank vide its Notification No. FEMA. 29/RB-2000 dated September 26, 2000 has granted general permission to a resident, being a principal debtor to make payment to a person resident outside India, who has met the liability under a guarantee. Accordingly, in cases where the liability is met by the non-resident out of funds remitted to India or by debit to his FCNR(B)/NRE account, the repayment may be made by credit to the FCNR(B)/NRE/NRO account of the guarantor provided, the amount remitted/credited shall not exceed the rupee equivalent of the amount paid by the non-resident guarantor against the invoked guarantee.

45. In any event, as explained in *Renusagar* even an ex post facto permission of the RBI could be obtained by the DH if it seeks to repatriate the funds deposited by the JD in the execution proceedings. It would be for the DH to comply with all the requirements of the RBI at that stage. Consequently, this objection is without merit.

46.1 *MV Al Quamar* was a case which arose under the admiralty jurisdiction. Respondent No. 2 before the Court had suffered a foreign decree passed by the High Court in England by way of damages for breach of contract for salvaging and towing the vessel re named as *MV Al Quamar*. Respondent No. 1 was the Decree Holder ("DH"), which had filed a suit in the admiralty Court in England. The vessel in question was found anchored in Visakhapatnam, Andhra Pradesh. On coming to know of that fact, the DH filed an execution petition u/s 44A CPC in the High Court of Andhra Pradesh seeking arrest and detention of the ship for recovery of the decretal amount. Since the ship was to be attached, it was joined as a party opponent. The master of the ship raised a preliminary objection as to the maintainability of the execution petition in the High Court. By an interim order, the ship was attached and was detained at the Visakhapatnam port awaiting further orders of the High Court.

46.2 The Supreme Court noted that the High Court of Andhra Pradesh, in exercise of its admiralty jurisdiction, fell within the definition of district court on a conjoint reading of Section 44A and 2(4) of the CPC. One of the contentions was that the High Court was not a competent court for the purposes of Section 44A CPC. One other contention was that u/s 112(2), matters concerning admiralty jurisdiction stood excluded from the CPC. By referring to Section 140 CPC, it was held the bar of Section 112(2) is confined to the question of an appeal to the Supreme Court and did not apply to Section 47 CPC, which dealt with the

execution of decrees. Reference was made to Section 140 CPC, which dealt with the appointment of assessors in admiralty proceedings.

46.3 In discussing Section 44A in light of Section 39(3) CPC, the Supreme Court pointed out that Section 44A permits a foreign judgment debtor to challenge the foreign decree even before the executing court, being the district court in India on any of the grounds mentioned in Section 13(a) to (f). It was held that once a decree of a foreign superior court is sought to be executed u/s 44A CPC, as if it were a decree of an Indian court, "no further question would survive regarding competence of such executing court." It was further held that even reading Section 39(3) with Section 44A, there was no escape from the conclusion that at the time when the execution petition was moved before the Andhra Pradesh High Court, by even treating it as a transferee Court, it was perfectly competent to entertain such a suit "even in its inception against the ship as well as its alleged owner and to resolve the dispute between respondent No. 1 and respondent No. 2."

46.4 In the concurring judgment of Justice U.C. Banerjee, it was held that "The conferment of jurisdiction in terms of Section 44A, cannot be attributed to any specific jurisdiction but an independent and an enabling provision being made available to a foreigner in the matter of enforcement of a foreign decree." It was categorically held that "the legal fiction created by Section 44A makes the Andhra Pradesh High Court, the Court which passed the decree and as such competency of the High Court to entertain the execution proceeding cannot be doubted in any way." It was further held that "Section 47 CPC shall apply, subject to the exceptions specified in Clauses (a) to (f) of Section 13."

47. In *Bank of India Vs. Harshadrai Odhavji Mody and Central Bank of India*, the DH/Bank of India obtained a money decree from the High Court at England and filed an execution petition in the Bombay High Court. On the constitution of the Debt Recovery Tribunal ("DRT"), the execution petition was transferred to the DRT. The JD then applied to the High Court for retaining the matter in the High Court. The question that arose was whether the decree could be executed u/s 44A CPC or could be executed only in accordance with Recovery of Debts Due to Banks and Financial Institutions Act, 1993. It was held that execution of the foreign decree could be heard and decided by the DRT and, therefore, the proceedings should be transferred to the DRT. The Court noted that a foreign decree u/s 44A must be executed in accordance with law in India.

48. Turning to the objections on merits, first it is submitted that the High Court in England refused to recognize the Indian law on foreign exchange and, therefore, was in breach thereof. Secondly, it is submitted that the judgment of the High Court in England disregarded the mandate of Section 194 read with Section 211 of the Companies Act, 1956. It is pointed out that the Annual Report of 2001, approved by the BoD of the JD on 27th May 2002, reflected the settlement agreement. The ECB loan repayment was approved by the shareholders in the Annual General Meeting ("AGM") held on 27th May 2002.

This was followed by the Annual Report of 2002 which again was approved both by the BoD and the AGM on 31st January 2003. In terms thereof the loan of US\$ 4.8 million was not payable, and this was agreed to by the DH. The presumption, therefore, was that the balance sheet was true and correct and, therefore, the JD was not liable to pay any sum to the DH.

49. In response, it is pointed out by the DH that the High Court considered and negated the above submissions with detailed reasons. There was no presumption of the genuineness of the balance sheet. Sections 397 and 398 of the Companies Act provided a remedy to a majority shareholder to question the mismanagement of the affairs of a company, which included the right to question minutes and the improper maintenance of financial records. It is pointed out by the DH that the JD had filed two petitions before the CLB inter alia challenging the veracity of the books of accounts. It is further pointed out that the decree was not in violation of FERA which stood repealed in 1999. In any event, permission under FERA could be sought even at a subsequent stage, if required.

50. As regards the objection that the High Court at England ignored the provisions of FERA, the DH is right in pointing out that the permission could be obtained even at a subsequent stage. Under a Master Circular dated 1st July 2013, the RBI has granted general permission to a principal debtor to make a payment to a person residing outside India, who has made the liability under guarantee. It has been held in *Silver Shield Construction Co. Ltd. v. Recondo Ltd.* 1994 (15) CLA 92 (Bom) and *Dhanrajamal Gobindram Vs. Shamji Kalidas and Co.*, that the permission of RBI u/s 47(3) (b) of FERA need not be obtained prior to filing of the execution petition.

51. The presumption under Sections 194 to 211 was a rebuttable one. The High Court in England discussed not only the Annual Reports of 2001-2002, but the minutes of the meeting of the BoD. In particular, the High Court in England noted the dissent recorded by the nominee director of the DH on the board of the JD. After considering all the above objections and negating them with detailed reasons, the High Court in England decided to pass a summary judgment in favour of the DH. It cannot, therefore, be said that the High Court in England ignored or acted in breach of any provision of the Companies Act.

52. It is then submitted that the default decree of 6th February 2003 could not have been recalled under Order XLVII CPC. Further, it is contended that Section 152 CPC does not apply since there was no clerical or arithmetical mistake. Section 152 cannot be invoked to alter or add to the terms of the original order; a foreign judgment founded on a jurisdiction not recognised by Indian law would be unenforceable in India; the words "any other sufficient reason" occurring in Order XLVII Rule 1 CPC must mean "sufficient grounds" analogous to those specified in the Rules and that the exercise of review in a manner other than that permitted in Order XL VII Rule 1 amounts to an abuse of the process of law. Reference is made to the decisions in *Moran Mar Basselios Catholicos and Another Vs. The Most Rev. Mar Poulouse Athanasius and Others*, , *Gherulal Parakh*

Vs. Mahadeodas Maiya and Others, , Abdul Hameed Vs. Mohd. Ishaq, , Ajit Kumar Rath Vs. State of Orissa and Others, , Y. Narasimha Rao and Others Vs. Y. Venkata Lakshmi and Another, , Jayalakshmi Coelho Vs. Oswald Joseph Coelho, , M/s. International Woolen Mills Vs. M/s. Standard Wool (U.K.) Ltd., , M/s. Plasto Pack, Mumbai and Another Vs. Ratnakar Bank Ltd., , Union of India (UOI) Vs. Tarit Ranjan Das, , U.P.S.R.T.C. Vs. Imtiaz Hussain, , State Bank of India and Others Vs. S.N. Goyal, and The State of West Bengal and Others Vs. Kamal Sengupta and Another, .

53. The defences raised by the JD before the High Court in England have been noticed in the judgment dated 7th February 2006. The above objection was not one of them. On the contrary, the submission made was that the default judgment could not be recalled and yet the JD would not submit to the default judgment. This has been comprehensively dealt with by the High Court of England and rejected with cogent reasons. Under Clause 31.2 of the loan agreement, the parties irrevocably agreed to the submission of the jurisdiction of the English Courts. Under Clause 31.3 of the loan agreement the JD waived all present and future objections to the jurisdiction in English Courts. It is too late in the day for the JD to now question the jurisdiction of the English Courts.

54. The Court is unable to accept the submission that the decree in execution in the present case is in breach of Indian law because there is no procedure in Indian law for modifying a previous decree. Even under the Indian law, a decree can be modified, reviewed or set aside by the Court which passed the decree as well as by an appellate Court. The ground u/s 13(f) CPC is not made out by the JD.

55. The next objection is that the judgment under execution has been obtained by fraud since the English Court was misled into believing that the e-mail dated 19th February 2003 of the DH was not denied by the JD. It is submitted that by a letter dated 20th February 2003, the JD disputed the above e-mail and in fact the DH admitted to the receipt of this letter in the petition filed by it before the CLB.

56. As far as the above submission is concerned, it is pointed out by the DH that this letter could easily have been placed before the High Court in England by the JD itself. Nothing prevented the JD from doing so. In any event, it appears to this Court that even if the above letter is taken into consideration, it does not make much difference to the conclusion drawn by the High Court in England. On the foot of the letter, it is observed as under:

I have just received your e-mail of February 19, 2003. I am surprised to receive such a message from a top Corporate Treasurer. I totally disagree to what you have written and nothing can be changed from what has already been agreed and signed.

57. In reply to EA No. 471 of 2009, the DH has stated that the JD itself could have filed the above letter since it was written by the JD itself. In any event, this

was at best a ground in a possible appeal against the judgment dated 7th February 2006.

58. It is seen that the judgment under execution discussed the defence of the JD and, in particular, to the position in the accounts and balance sheets of 2001-2002 in great detail. It refers to the email of Mr. Schmidt dated 19th February 2003. Although the letter dated 20th February 2003 does record the objection of the JD that "nothing can be changed what has already been agreed and signed", the above objection of the JD was not determinative of whether the annual reports and balance sheets reflected the true state of affairs. The Court fails to appreciate how the DH could be alleged to have committed fraud by not producing the above letter. The JD could easily have produced the letter. Importantly, the JD did not question the judgment dated 7th February 2006 of the High Court in England in appeal. There is no merit whatsoever in the contention that the judgment under execution is hit by Section 13(e) CPC on the ground that it has been obtained by fraud.

59. The next objection is that the judgment under execution is not given on the merits of the case. It is submitted that the JD ought to have been permitted to lead evidence. Reliance is placed on the decisions in O.P. Verma Vs. Lala Gehrilal and Another, , K.M. Abdul Jabbar Vs. Indo Singapore Traders P. Ltd., , Gurdas Mann and others Vs. Mohinder Singh Brar, . Reference is also made to a transcript of the proceedings before the English Courts.

60. At the cost of repetition, it must be noted that the JD did not choose to file any appeal against the judgment dated 7th February 2006 and, therefore, cannot now question the said judgment on the ground of not being permitted to lead evidence. The judgment was pronounced after hearing the parties and after examining the witness statements of the JD. A judgment passed on a summary procedure is indeed a decree on merits and enforceable in India.

61. In Navin Khilnani v. Mashreq Bank PSC (supra), this Court observed as under:

16. What follows from the discussion of this judgment of the Supreme Court is that an ex-parte judgment or a judgment by way of penalty is passed without discussing the merits of the case, it would not be a judgment on merits. On the other hand, even an ex-parte judgment, if based on the consideration of the evidence produced by the plaintiff, would be a judgment on the merits of the case. We may state at the outset that there was no dispute that if a judgment, given by a foreign court, is by way of penalty namely is the result of the default, then the said judgment would not be a judgment on merits. The clear examples of such situations would be the following:

a) In a summary suit, the defendant does not appear and treating the averments made in the suit as correct, the judgment and decree is passed.

b) Again in a summary suit, if the application for leave to contest the suit is not filed and due to this default, the judgment is pronounced and decree passed

treating the averments made in the plaint as correct.

c) In an ordinary suit, the defendant does not appear and an ex-parte decree is passed without recording the evidence and only on the basis of averments made in the plaint supported by the affidavits filed in support of the plaint.

d) In a situation akin to Order 8 Rule 10 CPC of the Indian Code of Civil Procedure. This would arise when inspired of repeated opportunities given to the defendant, he defaults by not filing the written statement and the decree is passed under Order 8 Rule 10 CPC without directing the plaintiff to prove the case by leading evidence.

18. We are, Therefore, of the opinion that in those cases where suits are tried under summary procedure, leave to defend application is filed but by passing speaking orders the Court has refused to grant the leave to defend and that would be a decision on the merits of the case. Even in *International Woollen Mills v. Standard Wool (U.K.) Ltd.* (supra), the Court has observed that when the decision is given after due application of mind of the Court to the truth or falsity of the plaintiffs case and after judicial consideration that would be a judgment on merit. The test laid down is as to whether "it was merely formally passed as a matter of course or by way of penalty or it was based on the consideration of the truth or otherwise of the plaintiffs claim". Whereas it would not be a judgment on merit if it is merely formally passed as a matter of course or by way of penalty, it would be a judgment on the merits if it is passed on the consideration of the truth or otherwise on the plaintiffs claim.

62. To the same effect, are the decisions in *M/s. International Woolen Mills Vs. M/s. Standard Wool (U.K.) Ltd.*, , *R. Viswanathan Vs. Rukn-UI-Mulk Syed Abdul Wajid*, , *Bank of Baroda Vs. Manubhai Jethabhai Patel and Others*, , *Silver Shield Construction Co. Ltd. v. Recondo Ltd.* (supra) and *California Pacific Trading Corporation Vs. Kitply Industries Ltd.*, .

63. The next ground urged is that the judgment under execution is opposed to the principles of natural justice inasmuch as no opportunity was given to the JD to lead evidence. Here again, it must be pointed that the JD was permitted to file an affidavit of evidence. Its evidence was properly considered and discussed by a detailed and reasoned order. The said judgment was not appealed against by the JD and, therefore, attained finality. In *Janardhan Mohandas Rajan Pillai v. Madhubhai Patel* (supra), the legal position was explained thus:

When an issue is decided or adjudicated upon, it would mean that the issue has been conclusively decided between the parties. Adjudication in every case does not mean that evidence must be led. The term "adjudication" means to decide on, pronounce, sit in judgment. This decision or pronouncement can be made even without evidence being led by the parties if there is sufficient material for the adjudicating authority to draw any conclusion in respect of the issue involved between the parties. Therefore, the adjudication of a matter on merits would not necessarily mean that evidence must be led.

64. It is not possible, therefore, to accept the submission of the JD that the judgment under execution was not given on the merits of the case, thus attracting Section 13(b) or that it was opposed to the principles of natural justice, thus attracting Section 13(d) of the CPC.

65. The last objection is that the English Court had no jurisdiction. It must be noted that this is a ground urged by way of the applications filed by the JD long after the first set of objections. Although there is merit in the contention of the DH that these objections should be not permitted to be raised at a belated stage, the Court proposes to deal with the merits of the objections since they have been argued at length. As already pointed out, the JD submitted to the jurisdiction of the English Court. The loan agreement was never questioned by the JD. It participated in the proceedings and submitted its evidence by way of witness statements. It was fully heard on the merits of the matter. In fact, there were four defences raised and all of them were considered in detail by the High Court at England. There was no objection taken by the JD as regards the jurisdiction of the English Courts. In similar circumstances, in *Shaligram Vs. Daulat Ram*, , it was held:

A person who appears in obedience to the process of a foreign court and applies for leave to defend the suit without objecting to the jurisdiction of the court when he is not compellable by law to do so must be held to have voluntarily submitted to the jurisdiction of such court.

66. In *Narhari Shivram Shet Narvekar Vs. Pannalal Umediram*, , the above principle was reiterated. Later, in *Y. Narasimha Rao and Others Vs. Y. Venkata Lakshmi and Another*, , the Court elaborately discussed the legal position and held that a Court should be held to be a Court without jurisdiction "unless both the parties voluntarily and unconditionally subject themselves to the jurisdiction of that Court."

67. Under the concept of "neutral forum" in private international law, the parties to a contract can agree to have their disputes resolved in a neutral foreign Court. This was recognised by the Supreme Court in *Modi Entertainment Network and Another Vs. W.S.G. Cricket PTE. Ltd.*, and *British India Steam Navigation Co. Ltd. Vs. Shanmughavilas Cashew Industries and Others*, . In any event, on a reading of the judgment of the High Court of England, it is clear that the JD never raised any objection to the jurisdiction of that Court and should be held to have waived its objection on that ground.

68. Consequently, there is no merit in any of the objections of the JD. EA Nos. 32 of 2007, 152 of 2008 and 470 of 2009 are hereby dismissed.

EA No. 653 of 2009

69. This is an application by the DH for a direction to the JD to deposit the original title deeds of Sahibabad property.

70. For the reasons stated therein, the application is allowed and a direction is

issued to the JD to deposit the original title deeds of the property, land measuring 18774 sq. yds. at 8/7, Site-IV, Sahibabad, Industrial Area, Sahibabad, District Ghaziabad in the Court within two weeks, and when so deposited, it shall be kept in a sealed cover by the Court. At the time of filing the original title deeds, the JD will deliver to the learned counsel for the DH a photocopy thereof.

EA No. 654 of 2009

71. By this application, the DH seeks a clarification that the order dated 3rd November 2009 passed by the Court releasing the lien on the property at Ghaziabad, Uttar Pradesh should be made conditional upon the Managing Director ("MD") or any other competent director of the JD furnishing a written undertaking that the Ghaziabad property is free from all encumbrances and further that no written consent from the State Bank of India ("SBI") under Clause 11 of the agreement for hypothecation of goods and assets dated 24th November 2008 is required.

72. Despite notice having been served in both these applications way back on 20th November 2009, no reply has been filed to this application.

73. Consequently, the application is allowed and a direction is issued to the MD/ authorised Director of the JD to file an affidavit in this Court within two weeks clarifying (a) that the property at Sahibabad, Ghaziabad is free from all encumbrances or charge as on the date of the order dated 3rd November 2009; (b) that no written consent from the SBI under Clause 11 of the Agreement for hypothecation of the goods and assets dated 24th November 2008 is required for enforcing the said order vis-?-vis the said Sahibabad property in terms of the statement made by the JD to the Court on 27th April 2006 and (c) that, as on date, there is no lien/charge etc. created on the Sahibabad property.

74. The application is disposed of.

Ex. P. No. 70 of 2006

75. The JD is now given twelve weeks" time to satisfy the decree before the next date by making payment of the decretal amount to the DH, failing which the Court will proceed with the next steps for realizing the decretal amount in accordance with law. List on 5th May 2014 for further directions.