
(2013) 04 BOM CK 0082

In the Bombay High Court

Case No : Civil Revision Application No. 680 of 2011

M/s. Alcon Electronics Pvt. Ltd.

APPELLANT

Vs

Celem S.A. of FOS and Celem Passive Components Ltd.

RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 21, Order 21 Rule 32, Order 39 Rule 1, Order 39 Rule 2, 10

Citation : (2013) 3 ABR 1041 : AIR 2013 Bom 108 : (2013) 4 ALLMR 729 : (2013) 4 BomCR 652 : (2013) 3 MhLj 587

Hon'ble Judges : K.K. Tated, J

Bench : Single Bench

Advocate : Jui Nerurkar instructed by Mr. P.S. Dani, for the Appellant; C.T. Chandratre, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Tated, J.—Heard learned counsel for the parties. Rule.

2. Rule made returnable forthwith.

3. By consent, the matter is taken on board for final hearing at the stage of admission itself.

4. By this Civil Revision Application, the Defendant-Judgment Debtor challenges the order dated 15th April, 2011 passed by the learned District Judge-2, Nashik below Exhibit 1 in Special (Civil) Darkhast no. 1 of 2007, rejecting the Petitioner's Application for declaration that the recovery proceeding filed by the Respondents-original Plaintiffs be disposed off/dismissed for lack of jurisdiction or even otherwise on facts and holding that the execution proceeding filed by Respondents being maintainable and the judgment and order dated 19th October, 2006 passed by High Court of Justice, Chancery Division, Patents Court is executable before District Court at Nashik.

5. A few facts of the matter are as under:

The Respondents-original Plaintiffs filed a Suit against the Petitioner-original Defendant in the High Court of Justice, Chancery Division, Patents Court in the England. In the said Suit, the Petitioner preferred Application dated 11th May, 2006 for declaration that the High Court of Justice, Chancery Division, Patents Court, U.K. have no jurisdiction to entertain the Claim no. HC 06C00720. The said Application was rejected by the Hon''ble High Court of Justice, Chancery Division, Patents Court, United Kingdom by an order dated 19th October, 2006 and imposed a costs in the sum of ? 12,429.75 equivalent to Rs. 10,16,753.55 paise with interest at the rate of 8% per annum. Thereafter, the Respondents-original Plaintiffs filed Special (Civil) Darkhast no. 1 of 2007 in the Court of District Judge -2, Nashik for execution of the order passed by the Foreign Court, for recovery of sum of Rs. 10,16,753.55 towards decretal amount under Order dated 19th October, 2006 (costs) and Rs. 67,786/- towards interest at the rate of 8% per annum on the principal amount from the date of the order date i.e. 19th October, 2006 to 14th August, 2007 and further interest till the recovery of the amount. In the said Execution Petition, the Petitioner preferred Exhibit 1 on 1st March, 2008 for declaration that the Execution Application filed by the Respondents is not maintainable as the same is in respect of the costs imposed by the foreign Court at the time of dismissing the Petitioner''s Interim Application, whereas, the main matter is still pending for hearing and final disposal on its own merits. The said Application is rejected by the District Judge-2, Nashik by impugned order dated 15th April, 2011 and hence, the present Civil Revision Application.

6. The learned counsel appearing on behalf of the Petitioner submits that the impugned order passed by the District Judge-2, Nashik dated 15th April, 2011 is against justice, equity and good conscience and the same is liable to be set aside. He submits that the District Court, Nashik failed to appreciate that the Execution Application filed by the Respondents for recovery of costs imposed by foreign Court on Interim Application, whereas, the main matter is pending for hearing and final disposal on its own merits, therefore, the Execution Petition is not maintainable for recovery of costs imposed by the foreign Court at the time of deciding Interim Application. He submits that the District Judge-2, Nashik ought to have seen that under Indian Law interim order for payment of costs are not executable unless it has been made into a form of a decree, which is passed at the time of final hearing of the suit and as such the execution of an order passed by the Court in England which was interim order awarding cost, could not have been held to be maintainable. He further states that the learned Executing Court failed to notice that only such part of an order or decree is executable in India which part is in consonance with the law on the subject in India as well. If there is any order passed by the foreign Court in respect of a legal position, which is contrary to the one prevailing in India, such an order cannot be executed in Indian Courts. Thus, the fundamental aspect of the matter has been completely lost sight of by the Executing Court. He further submits that the decree as defined u/s 2(2) of Code of Civil Procedure, 1908 can only be put in execution

and not otherwise. He submits that the Foreign Court has not passed any order on merits till today, and, therefore, the present Execution filed by the Respondents is not maintainable. He submits that the Respondents is seeking to execute an interim order passed by the foreign Court. It involves the question arising out of Sections 13 and 14 of the Code of Civil Procedure, 1908. It relates to the enforceability of a foreign Court Order in India. Only the interlocutory order for payment of cost cannot be put to execution in India. According to him, therefore, the execution proceedings commenced by the Respondents are liable to be rejected. He submits that the foreign Court by an order dated 19th October, 2006 dismissed the Petitioner's Application but no where it is stated in the said Order that the Petitioner has to pay a cost of ? 12,429.35. He submits that the operative part of the order issued separately shows the payment of costs. Therefore, the Respondents have no right to execute the said order in India. He further submits that imposing a costs for more than Rs. 10,00,000/- is contrary to the provisions of Section 35A of the Civil Procedure Code, 1908. He submits that the maximum costs prescribed in Section 35A of the Code of Civil Procedure, 1908 is only Rs. 3,000/-. On the basis of these submissions, the learned counsel appearing for the Petitioner states that the impugned order passed by the District Court, Nashik rejecting the Petitioner's Application below Exhibit 1 is liable to be set aside and this Court be pleased to allow the Application below Exhibit 1.

7. On the other hand, the learned counsel appearing on behalf of the Respondents-original Plaintiffs vehemently opposed the present Civil Revision Application. He submits that after hearing both the sides the High Court of Justice, Chancery Division, Patents Court passed an order dated 19th October, 2006. He submits that in view of provisions of Sections 2(2), 2(9) and 2(14) of Code of Civil Procedure, 1908, the Execution Application filed by the Respondents is according to law and the same is maintainable. He submits that in view of Section 44A of Code of Civil Procedure, 1908 the District Court at Nashik has jurisdiction to entertain the Execution Application filed by them. He further submits that the High Court of Justice, Chancery Division, Patents Court issued the operative part of order dated 19th October, 2006 in which it is specifically stated that the Respondents have to pay the costs of the Application summarily assessed in the sum of Pounds ? 12,429.75. Therefore, there is no bar under law to execute the said order along with interest before the Indian Court in view of Section 44A of Code of Civil Procedure, 1908. He submits that the term "order" as defined u/s 2(14) of the Code of Civil Procedure, 1908 means the formal expression of any decision of a Civil Court and, therefore, it is executable as decree. He submits that bare reading of Section 36 of the Code of Civil Procedure, 1908 it is crystal clear that all provisions applicable for execution of decree are also applicable for execution of order. In support of his contention, he relies on unreported judgment of High Court of Judicature at Bombay Bench at Aurangabad in the matter of Satyapal s/o Vaidyaram Katariya vs. Sanjay s/o Jagannath Kanjune & Ors. in Writ Petition no. 735 of 2010, dated 8th February,

2010. Paras 9 to 14 of that judgment read thus:

9. Expression "order" is defined u/s 2 (14) of the Code meaning thereby the formal expression of any decision of a Civil Court which is not a decree. In the case on hand, in my view, order passed by the competent Civil Court under Order 39 Rule 1 and 2 of the Code, restraining the defendant, from interfering possession of the plaintiff over the suit property is an order u/s 2 (14) of the Code.

10. Having held that the order of temporary injunction is an order within the parameters of section 2 (14) of the Code, now it would be essential to consider, as to whether the order of temporary injunction, passed by the competent Civil Court can be sought to be executed with the mechanism provided under Order 21 of the Code. At this juncture, it would be beneficial to refer to section 36 of the Code, which reads:

36. Application to orders.- The provisions of this Code relating to the execution of decrees (including provisions relating to payment under a decree) shall, so far as they are applicable, be deemed to apply to the execution of orders (including payment under an order).

11. Part II of the Code is titled as "Execution", Subtitle is General. Section 36 lays down that the provisions of this Code relating to the execution of decrees (including provisions relating to payment under a decree) shall, so far as they are applicable, be deemed to apply to the execution of orders (including payment under an order). The Code of Civil Procedure, 1908 is a procedural code for conduct of civil cases. Ordinarily, there are two branches of law; civil laws and penal laws. Procedure to be followed in relation to conduct of civil cases, is provided under the Code of Civil Procedure. So far as penal laws are concerned, procedure therefor is made available under the Code of Criminal Procedure, 1898. The procedural laws under the CPC and the Criminal Procedure Code have undergone amendments from the competent Legislature from time to time. The Higher Courts in the country and Legislature are worried and concerned about pendency of cases in various Courts and at all levels. To curtail life span of civil cases, the Legislature, in its wisdom, has recently introduced and implemented some amendments. In substance, time span of civil cases in various Courts is being tried to be curtailed down by the Legislature and the Honourable Supreme Court is also of the same view. Every endeavor is being suggested and tried to be implemented.

The CPC primarily consists of two parts. The first part comprises of various sections right from sections 2 to section 158. The first part i.e. section 2 to 158 can be said to be a substantive part of the Code of Civil Procedure. The procedure for carrying out the objects of section 2 to 158, is laid down in the schedule, which is titled as the First schedule. Order 1 makes reference to parties to suits. Last is the Order 52 in the first Schedule of the Civil Procedure Code. When it comes to interpretation of the provisions of the Civil Procedure Code,

ordinarily, sections in the first part of the Code and the orders which are made available in the first schedule are considered conjointly. Primacy however is to be given to the substantive part of sections in the Code.

12. In the case on hand, section 36 is the provision, which I have referred here in above. In my view, it is substantive provision which has made applicable procedure for seeking implementation of the order, with the aid of Order 21 of the Code. In this view of the matter, any order passed under the provisions of the Code after hearing the parties and not altered by superior Court, in my view, is implementable with the assistance of Order 21 of the Code. Grant of temporary injunction which has been uphold up to the High Court is an important and significant facet of order passed by the competent civil Court, in the case on hand. Such order is required to be honoured, obeyed and implemented. Orders passed by the Civil Court are not for decorating the dwelling of the decree holder. Order passed in accordance with the provisions of law are required to be executed and holder thereof is entitled to fruits of the order in accordance with the provisions of law.

13. The Legislature, however, in its wisdom, has made available the mechanism for execution of decree for perpetual injunction, Order 21 Rule 32 and also Order of temporary injunction with the assistance of section 36 and Order 21 of the Code.

14. Many a times, winner litigant, so far temporary injunction is concerned, are/ is anxious to seek implementation of the temporary injunction. It would be unjust to say to such litigant to wait till passing of the decree by the civil Court i.e. perpetual injunction. It is more unjustifiable in this era of inter-net. It is for this reason, in my view, section 36 will have to be read with order 21 of the Code.

8. The learned counsel for Respondents further relies on the Division Bench judgment of this Court in the matter of Janardhan Mohandas Rajan Pillai (deceased through Lrs.) & Anr. vs. Madhubhai Z. Patel & Ors. reported in 2010 (6) ALL MR. 834, in which it is held that order passed by the English Court staying proceeding in Suit and order for payment of costs in those proceedings can be executed in District Court in India as Orders or decrees within the meaning of Section 44A of Code of Civil Procedure, 1908. Para 3 of the judgment reads thus:

3. Now in order to decide the controversy that falls for consideration, it is necessary to refer to the provisions of Section 44A of the C.P.C. It reads as under:-

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

(1) Where a certified copy of 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.

[Explanation I- "Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purpose of this section; and "superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation II.- "Decree" with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect to a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment.]

Perusal of the above provisions of Section 44A of the C.P.C. shows that where a certified copy of a decree of any of the Superior Court's of any reciprocating territory is filed in a District Court, the decree is capable of being executed treating it as a decree passed by the District Court. The term "decree" is defined by Explanation II, to mean any decree or judgment of such Court under which a sum of money is payable. The term "decree" is defined by Section 2(2) of the C.P.C. and still the Parliament chose again to define the term "decree" by Explanation II to Section 44A. The intention, therefore, is clear that the Parliament wanted to either expand or reduce the scope of the term "decree" found in Section 2(2) of the Code. Section 2(2) of the C.P.C. reads as under:-

2. Definitions-In this Act, unless there is anything repugnant in the subject or context -

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 44, but shall not include-

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

Explanation-A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication

completely disposes of the suit. It may be partly preliminary and partly final.

The term "judgment" is defined by Section 2(9) of the C.P.C. which reads thus:

2(9) "judgment" means the statement given by the judge on the grounds of a decree or order;

A comparison of the two above quoted definitions shows that "Judgment" is a wider concept than "decree". Perusal of the Explanation II in Section 44A of the Code shows that the legislature intentionally has included even "judgment" within the meaning of the term "decree" for the purpose of Section 44A. The intention was to expand or to enlarge the scope of term "decree" for the purposes of Section 44A of the Code. Therefore, an order which may not amount to a decree, but may amount to a judgment would be a decree for the purpose of Section 44A of the Code. The term "order" is defined by Section 2(14) of C.P.C. which reads as under:-

2 Definitions:-

(14) "order" means the formal expression of any decision of a Civil Court which is not a decree;

Perusal of definition of term "decree" found in Section 2(2), definition of term "judgment" found in section 2(9) and definition of term "order" found in Section 2(14), makes it clear that a "judgment" may amount to a "decree" or a judgment may amount to an "order". To our mind, it is clear that the intention of the legislature behind incorporating "Explanation II" was to permit execution u/s 44A of the Code of such orders which may not amount to decrees but which amount to orders.

9. The learned counsel for Respondents submits that the present case is squarely covered by the judgment of the Division Bench in the matter of Janardhan Mohandas Rajan Pillai (supra). In respect of payment of interest he relies on the provision of section 17 of the Judgments Act, 1838 which reads thus:

17 Judgment debts to carry interest.

(1) Every judgment debt shall carry interest at the rate of 8 pounds per centum per annum from such time as shall be prescribed by rules of court until the same shall be satisfied, and such interest may be levied under a writ of execution on such judgment.

(2) Rules of court may provide for the court to disallow all or part of any interest otherwise payable under subsection (1).

In view of the above provision the Respondents are entitled to claim interest while executing the order for payment of costs being decree holder as defined in section 2(3) of the Code of Civil Procedure, 1908. In view of this provision Respondents are entitled interest on the decretal amount.

10. With the above submissions, the learned counsel appearing on behalf of

Respondents states that there is no substance in the present Civil Revision Application and the same is liable to be dismissed with costs.

11. I heard both the counsel at length. I have gone through the impugned order passed by the learned District Judge-2, Nashik, order passed by the High Court of Justice, Chancery Division, Patents Court dated 19th October, 2010 and other relevant documents. For deciding the issue involved in the present Civil Revision Application, it is necessary to reproduce Sections 2(2), 2(9), 2(14), 35A, 36, 44A of Code of Civil Procedure, 1908, which read thus:

2. Definitions-In this Act, unless there is anything repugnant in the subject or context -

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 44, but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation-A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.

(9) "judgment" means the statement given by the judge of the grounds of a decree or order:

(14) "order" means the formal expression of any decision of a Civil Court which is not a decree;

35A. Compensatory costs in respect of false or vexatious claims or defenses.

(1) If any suit or other proceeding, including an execution proceedings but excluding an appeal or a revision any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed abandoned or withdrawn in whole or in part, the Court, [if it so thinks fit] may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment the objector by the party by whom such claim or defence has been put forward, of costs by way of compensation.

(2) No Court shall make any such order for the payment of an amount exceeding three thousand rupees or exceeding the limits of its pecuniary jurisdiction, whichever amount is less:

Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small

Cause Courts Act, 1887 or under a corresponding law in force in any part of India to which the said Act does not extend and not being a Court constituted under such Act or law are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees:

Provided, further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this section.

(3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.

36. Application to orders:-

The provisions of this Code relating to the execution of decrees (including provisions relating to payment under a decree) shall, so far as they are applicable, be deemed to apply to the execution of orders (including payment under an order).

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.

[Explanation I- "Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and "Superior Courts", with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation II.- "Decree" with reference to a Superior Court means any decree or

judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect to a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment.]

12. Admittedly, in the present proceeding, the High Court of Justice, Chancery Division, Patents Court passed an order dated 19th October, 2006 dismissing the Petitioner's Application challenging the jurisdiction of that Court. At the time of dismissing the Petitioner's Application, the English Court passed an order for payment of costs in the sum of ? 12,429.75. In the Certificate u/s 10 of the Foreign Judgment (Reciprocal Encroachment) Act, 1933 in Para 6, it is specifically stated that the order carries interest at the rate of 8% per annum, therefore, the objection raised by the learned counsel for the Petitioner that there is no order passed by the English Court about payment of interest is not correct. Another objection raised by the Petitioner is about the quantum of costs. Though u/s 35A of the Code of Civil Procedure, 1908 it is stated that maximum costs can be paid only Rs. 3,000/- that is not applicable in the present case at all. As per the rules and regulations of that Country, the English Court has passed an order for payment of costs and the same is binding on the Petitioner in view of Section 44A of the Code of Civil Procedure, 1908. Whether the order passed by the English Court dated 19th October, 2006 is executable or not is the main question involved in the present Civil Revision Application. It is to be noted that bare reading of Sections 2(2), 2(14) and 36 of Code of Civil Procedure, 1908 makes it clear that the said order is executed in India also.

13. Section 44A read with relevant explanation shows that before it is invoked by any decree holder, he must satisfy the following conditions:

i) A Decree-Holder who seeks execution must be armed with a money decree passed by any of the superior court of any reciprocating territory, being any foreign country or territory which the Central Government may, by notification in the official gazette, has declared to be a reciprocating territory for the purpose of the section.

ii) Such an Execution Petition can be entertained by executing Court in India being the District Court that will be clothed with the legal fiction as if the said foreign decree was passed by itself and whose aid and assistance are required for executing such a decree.

iii) Such a decree can be put for an execution before a District Court in India being the principal Civil Court of original jurisdiction and which will include the local limits of original civil jurisdiction of a High Court.

iv) Once such Execution Petition is filed before the appropriate District Court the entire machinery of section 47 for execution of India decree would be automatically get attracted.

v) In such execution proceedings, the judgment debtor of a foreign court decree/

order will be entitled to satisfy the executing Court in India that the foreign decree/order cannot be executed against him as it is hit by any of the exceptions specified in clauses (a) to (f) of Section 13 of Code of Civil Procedure.

14. Section 44A of CPC indicates an independent right conferred on to a foreign Decree Holder for enforcement of a decree/order in India. It is a fresh cause of action and has no co-relation with the jurisdictional issues. The factum of the passing of the decree and the assumption of jurisdiction pertaining thereto, do not really obstruct the full play of the provision of section 44A of CPC which gives a new cause of action irrespective of its original character.

15. Perusal of the explanation in section 44A of CPC shows that legislation intentionally has included even judgment within the meaning of the term decree for purpose of section 44A of Code of Civil Procedure. The intention was to expand or enlarge the scope of term decree for the purpose of this section. Therefore, an order which may not amount to a decree but may amount to judgment would be a judgment for the purpose of Section 44A of Code of Civil Procedure. Thus, awarding costs would amount to decree within the meaning of section 44A and can be recovered by executing order u/s 44A of Code of Civil Procedure.

16. The issue of jurisdiction of this Court to execute order/decreed of a country having reciprocal arrangement with our country is squarely covered by the Division Bench of this Court in the matter of Janardhan Mohandas Rajan Pillai (deceased through Lrs.) & Anr. (supra). Therefore, I am of the opinion that the Execution Petition filed by the Respondents for execution of the order dated 19th October, 2006 passed by the English Court is maintainable in law. The Petitioner has not pointed out any provision of law or the facts for coming to the conclusion that the District Court, Nashik has acted in exercise of its jurisdiction illegally or with material irregularity in passing the impugned order which needs to be corrected by this Court by exercising revisional jurisdiction.

17. Rule is discharged. Civil Revision Application is accordingly dismissed.