

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14283 OF 2023

Elis Jane Quinlan and Ors.

.....PETITIONERS

: VERSUS :

Naveen Kumar Seth,
Director of Candica Industries

....RESPONDENT

Mr. Shrey Fatterpekar with Mr. Aakash Shinaa i/b M/s. Juris Corp for Petitioners.

Mr. Rohan Kelkar with Ms. Smruti Kanade i/b M/s. Negandhi Shah & Himayatullah for Respondent.

CORAM : SANDEEP V. MARNE, J.

JUDG. RESD. ON: 2 FEBRUARY 2026.

JUDG. PRON. ON: 10 FEBRUARY 2026

JUDGMENT:

1) **Rule.** Rule made returnable forthwith. Since the pleadings in the Petition are complete, the parties have requested for final hearing of the Petition. Accordingly, with the consent of the learned counsel

appearing for the parties, the Petition is taken up for hearing and final disposal.

- 2) By this Petition, Petitioners have challenged Order dated 3rd November 2022 passed by the District Judge, Pune allowing application at Exhibit 20 filed by the Respondent-Judgment Debtor and framing issues with further liberty to the parties to lead evidence thereon.
- 3) Petitioner is a foreign Decree Holder and has filed execution proceedings for execution of the decree passed by Fujairah Civil Court, United Arab Emirates (**UAE**). According to the Petitioner, Fujairah Civil Court, UAE is notified by Government of India as reciprocating territory within the meaning of Section 44A of the Code of Civil Procedure, 1908 (**Code**) and that therefore the decree can be executed as if it is a domestic decree under Section 47 of the Code. Petitioners are accordingly aggrieved by the Court's directions for framing of issues and for liberty to the parties to lead evidence.
- 4) Facts of the case as pleaded in the Petition are that Candica Industries FZC (**Company**) is an incorporated entity in Fujairah Free Zone, UAE, and engaged in the business of manufacturing and trading in the confectionery under a trade license issued from the Free Trade Zone in the Emirate of Fujairah, UAE. The Company had taken readymade infrastructure and building in the year 2003 along with open land from Fujairah Free Zone Authority on lease for a period of five years in order to enable it to utilise the funds on the equipment and machinery rather than constructing the facilities. According to the Petitioner, the Company

incurred substantial pre-operative expenses on account of delay and incurred operational losses. In view thereof, the directors of the Company decided to sell their stake in the Company at intrinsic value to the Respondent and requested him to run the business. The reserve price of AED 6.5 million was fixed for taking over of assets of the company by the Respondent. Petitioner No.1 was looking for opportunity to invest in the food processing business of the Company and offered to buy out Company's business along with certain specified assets and liabilities of the company at the price of AED 41,72,362/-, which was accepted by the Respondent. Pursuant to the agreement between the parties, a Memorandum of Understanding (**MOU**) dated 19 July 2007 was executed between the Petitioners, Company and the Respondent. According to the Petitioners, it has complied with the obligations under the terms and conditions of the MOU and that the Respondent received sale consideration of AED 4,172,362/-. Petitioners claim that additional amount of AED 100,000/- was paid to the Company towards loan in respect of the leased warehouse, land and Company's assets. According to the Petitioners, Respondent failed to fulfill obligations under the MOU, leading to losses to the Petitioners. Petitioners claim that Respondent went absconding in the year 2009.

5) Petitioners filed Suit No.241 of 2011 before the Fujairah Civil Court in April 2011 *inter alia* against the Company and the Respondent in accordance with Article 6 of the MOU. According to the Petitioners, all attempts to serve the Respondent with suit summons failed as his representative in UAE refused to accept service of summons. That notice

to attend Fujairah Civil Court was also pasted on Respondent's Company address in UAE. However, Respondent failed and neglected to appear before the Fujairah Court. Fujairah Civil Court proceeded to pass a default judgement as if it was issued in the presence of all parties. On 27th January 2013, the Court held Respondent solely liable to pay amount of AED 3,182,357/- to the Petitioners.

6) Since Respondent did not have any assets in UAE, the decree could not be executed there. Accordingly, at the request of the Petitioners, Ministry of Justice, Government of UAE, issued certificate dated 26 November 2015 under the provisions of UAE Civil Code certifying that the decree remained completely unsatisfied due to non-payment by the Respondent. The certificate was issued for compliance under the Section 44A (2) of the Code.

7) Petitioners filed Execution Application No. 807 of 2016 (**first Execution Application**) in India under Section 44A of the Code. Apparently at that time, UAE was not a reciprocating territory. The First Execution Application was served on the Respondent on 1 March 2018. Respondent claims having acquired knowledge about Fujairah Civil Court and the Decree for the first time on 1 March 2018. The First Execution Application was however dismissed by the Executing Court on 17 January 2019 since UAE was not then a reciprocating territory.

8) Petitioners filed suit on the foreign decree on 28 February 2019, which was apparently dismissed on 19 October 2019 for non-removal of office objections. On 17 January 2020, Government of India

notified UAE as a reciprocating territory. Petitioners thereafter filed fresh Execution Application bearing *Darkhast* No. 2554 of 2020 for execution of decree of Fujairah Civil Court. Respondent appeared in the execution proceedings and filed application at Exhibit 10 seeking dismissal of execution proceedings under Section 13 read with Section 47 of the Code. Respondent also filed Application at Exhibit 20 for framing of issues and for leading of evidence. Petitioner filed replies to both the applications opposing the same. By order dated 3 November 2022, the learned District Judge has allowed the Application at Exhibit 20 and has framed issues for adjudication under Section 13 read with Sections 44A and 47 of the Code and has granted liberty to the parties to lead evidence on the issues so framed. Petitioner is aggrieved by the order dated 3 November 2022 and has initially filed Civil Revision Application No. 198 of 2023, which was permitted to be converted into a Writ Petition by order dated 6 November 2023. Respondent has appeared in the Petition and filed affidavit in reply opposing the same. Petitioners have filed affidavit in rejoinder. Since pleadings in the Petition are complete, the same is taken up for final hearing.

9) Mr. Fatterpekar, the learned counsel for the Petitioners submits that the Executing Court has erred in framing issues and in permitting parties to lead evidence in Execution Application filed under Section 44A of the Code. That Section 44A creates a necessary and important distinction between the decrees passed by the foreign court in a reciprocating territory and a non-reciprocating territory. That in respect of the decree passed by the foreign court in reciprocating territory, there

is no need to file suit based on foreign decree and the foreign decree itself can be executed as if it is a domestic decree. That if issues are framed and evidence is permitted to be led, this important distinction between the decree passed by the foreign court in reciprocating territory and non-reciprocating territory would get wiped out, which is not the legislative intent. That the legislative intent is to ensure swift execution of decree passed by the foreign court in reciprocating territory. He relies on judgment of this Court in **Marine Geotechnics LLC vs. Coastal Marine Construction and Engineering Ltd**¹. That the impugned order passed by the Executing Court is in the teeth of the legislative intent and results in a situation where there will be delay in execution of the decree. He relies on judgment of the Apex Court in **Alcon Electronics Private Limited vs. Celem S.A. of FOS 34320 Roujan, France and Anr.**² and of this Court in **Arvind Jeram Kotecha vs Prabhudas Damodar Kotecha**³ in support of his contention that the objections raised by the judgment debtor under Section 13 must be decided merely on the basis of decree and proceedings before foreign court in reciprocating territory. That for such inquiry, it is not necessary to lead evidence. He submits that Section 44A (3) of the Code requires application of provisions of Section 47 of the Code to execute the decree of foreign court in reciprocating territory. That Section 47 of the Code contemplates adjudication of limited nature of issues relating to discharge and does not contemplate a full-fledged trial every time the objections under Section 13 (a) to (f) of the Code are raised by the judgment debtor. That the legislative object behind introduction of Section 44A of the Code would be completely destroyed if Executing

¹ 2014 SCC OnLine Bom 309

² (2017) 2 SCC 253

³ 2020 SCC Online Bom 2611

Court conducts a full-fledged trial by framing of issues and leading of evidence.

10) Mr. Fatterpekar submits that even if it is assumed that recording of evidence in execution proceedings under Section 44A of the Code is permissible in exceptional cases, the Executing Court has not recorded any exceptional circumstances in the impugned order. That the Executing Court has framed issues and directed parties to lead evidence in a routine manner without making out any exceptional circumstances for doing so. That the Executing Court has merely recorded submissions of parties and not even a single finding is rendered for holding that the objection raised under Section 13 of the Code requires recording of evidence. That the Executing Court has not recorded subjective satisfaction about existence of exceptional circumstances for recording evidence.

11) Mr. Fatterpekar would further submit that the findings rendered by the Executing Court in respect of the objections raised by the Respondent under Section 13 of the Code are capable of being adjudicated based on material on record and it is not necessary to lead any evidence. He would take me through clauses (a) to (f) of Section 13 of the Code and demonstrates that the entire inquiry into the objections under clauses (a) to (f) of Section 13 of the Code can easily be conducted based on the material already available on record. He demonstrates that the decree has been pronounced by the Court of competent jurisdiction satisfying clause (a). He further demonstrates that the decree has been given on

adjudication of merits of the case satisfying requirement under clause (b). He further points out that no objection has been raised by the Respondent under the clause (c) of section 13. So far as clause (d) is concerned, he submits that principles of natural justice have been followed by while rendering the foreign decree. That records of the foreign court are already available before the Executing Court and verification thereof would provide an answer to the efforts made for service of the suit summons on the Respondent. That the objection of fraud under clause (e) is not specifically raised by the Respondent but mere allegation of suppression of documents is raised, which does not qualify as fraud. In any case, the documents available on record would indicate whether there is suppression or not and that therefore, conduct of a trial in that regard is not necessary. That the objection under clause (f) about sustenance of claim founded on any law in force in India is not raised by the Respondent.

12) Mr. Fatterpekar would submit that the execution proceedings are within limitation and reliance is placed on judgment of the Apex Court in Bank of Baroda vs. Kotak Mahindra Bank Limited.⁴ He submits that notification notifying foreign court as reciprocating territory applies retrospectively as held by Kerala High Court in Kadheeja Kalladi Puthanpurayil vs. Mohammed Nazir Abdul Aziz⁵ and Green Branches Trading Co (LLC) vs. Shabana Trading⁶. Mr. Fatterpekar would accordingly pray for setting aside the impugned order and decree.

⁴ (2020) 17 SCC 798

⁵ 2021 SCC Online Ker 1972

⁶ 2022 SCC Online Ker 6186

13) Mr. Kelkar would appear for the Respondent for opposing the Petition. He submits that the Executing Court has merely framed issues and has permitted leading of evidence by the parties. That there is no adjudication of objections by the Executing Court as of now. That therefore, there is no warrant for interference in the impugned orders in exercise of extraordinary jurisdiction of this court under Article 227 of the Constitution of India. He submits that the Executing Court can frame issues in a given case and in exceptional circumstances. In support of his submission that Executing Court can act with prudence while framing issues, he relies on judgment of this Court in ***C.V. Joshi vs. Elphinstone Spinning and Weaving Mills Co. Ltd***⁷. In support of his submission that issues can be framed in exceptional circumstances, he relies on the judgment of the Apex Court in ***Rahul S. Shah vs. Jinendra Kumar Gandhi and Ors***⁸. That the impugned order satisfies both, the test of prudence and the test of exceptionality. That the case involves exceptional circumstances where the execution proceedings are barred by limitation. He relies on judgment of the Apex Court in ***Bank of Baroda*** (supra) contending that the decree was passed on 29 January 2013 and the first execution application was filed on 25 January 2016. That Petitioners thereafter filed suit on foreign decree on 28 February 2019 which was dismissed on 19 October 2019. After UAE was notified as reciprocating territory, the third execution proceedings are filed on 27 July 2020. That therefore, issue of limitation is vital and goes to the root of the matter, necessitating framing of issues and leading of evidence. That there is no provision in law allowing operation of notification of reciprocating

⁷ 2001 (2) Mh.L.J. 195

⁸ (2021) 6 SCC 418

territory retrospectively and that therefore, maintainability of the Petition under section 44A of the Code is also a vital issue going to the root of the matter, making up an exceptional circumstance.

14) Mr. Kelkar further submits that under Section 44A (3) of the Code, the decree can be executed only if it does not fall in any of the exceptional circumstances of clauses (a) to (f) of Section 13 of the Code. That given the peculiar circumstances of the case, it is more than an argument that the foreign decree suffers from at least three disqualifications – i) as the same is not given on the merits of the case [clause (b)]; ii) as the proceedings are conducted by Fujairah Civil Court in breach of natural justice [clause (d)]; and iii) as the decree is obtained by fraud [clause (e)]. That determination of these three disqualifications clearly requires framing of issues and leading of evidence. Mr. Kelkar further submits that the Trial Court has recorded detailed reasons as to why it felt the need for framing of issues and leading of evidence. That the subjective satisfaction recorded by the Executing Court does not warrant interference in exercise of writ jurisdiction under Article 227 of the Constitution of India. He prays for dismissal of the Petition.

15) Rival contentions of the parties now fall for my consideration.

16) The short issue that arises for consideration in the present Petition is whether the Executing Court while executing a decree passed by foreign court in reciprocating territory under Section 44A of the Code can frame issues and direct the parties to lead evidence while conducting

inquiry into existence of exceptions specified in clauses (a) to (f) of Section 13 of the code.

17) Petitioners have secured a decree from Fujairah Civil Court in UAE, under which the Suit of the Petitioners has been decreed, and the Respondent is directed to pay an amount of AED 4,082,357/- along with interest at the rate of 9% per annum with effect from 24 April 2011 in addition to awarding Attorney fees of AED 300.

18) Respondent initially filed first execution application on 25 January 2016 under Section 44A of the Code, at which point of time, UAE was not notified as a reciprocating territory by the Central Government. This resulted in dismissal of the first execution petition by order dated 17 January 2019. Since UAE was not a reciprocating territory, Petitioners exercised the remedy of filing a suit on foreign judgment on 28 February 2019 and Respondent alleges that the same was dismissed for non-removal of office objections on 19 October 2019. Thereafter, the Government of India notified UAE as a reciprocating territory on 17 March 2020. The Notification dated 17 March 2020 reads thus :

MINISTRY OF LAW AND JUSTICE
(Department of Legal Affairs)
NOTIFICATION
New Delhi, the 17th January, 2020

G.S.R. 38(E).—In exercise of the powers conferred by Explanation 1 to section 44A of the Code of Civil Procedure, 1908 (5 of 1908), the Central Government hereby declares, United Arab Emirates to be a reciprocating territory for the purposes of the said section and the following Courts in United Arab Emirates to be superior Courts of that territory, namely:-

- (1) Federal Court-
 - (a) Federal Supreme Court;

(b) Federal, First Instance and Appeals Courts in the Emirates of Abu Dhabi, Sharjah, Ajman, Umm Al Quwain and Fujairah;

(2) Local Courts-

- (a) Abu Dhabi Judicial Department;
- (b) Dubai Courts;
- (c) Ras Al Khaimah Judicial Department;
- (d) Courts of Abu Dhabi Global Markets;
- (e) Courts of Dubai International Financial Center.

[F. No. J-14014/1/2015-Judl.]

RAJVEER SINGH VERMA, Addl. Secy.

19) After notification of UAE as reciprocating territory vide Notification dated 17 March 2020, Petitioners have filed the instant execution proceedings bearing *Darkhast* No. 2554 of 2020 before the District Judge, Pune. The execution proceedings are still pending and what is done at this stage by the Executing Court is to merely allow the application preferred by the Respondent at Exhibit 20 by framing the issues and by granting liberty to the parties to lead evidence. The operative part of the impugned order dated 3 October 2022 reads thus :

1] Application Exh.20 stands allowed.

2] Following issues are framed for adjudication under Sec. 13 r/w Sec. 44A and 47 of Code of Civil Procedure.

- a] Does the J.D. prove that the D.Hs suppressed various facts and documents from the Fujairah Court ?
- b] Does the J.D. proves that the Judgment was obtained is opposed to principles of natural justice ?
- c] Does J.D proves that the DHs obtained decree by practicing fraud upon the Fujairah Court, U.A.E ?
- d] Whether the judgment is executable in view of objections raised in Exh. 10 ?
- e] Whether the Execution Petition is maintainable?
- f] Whether the execution petition is within limitation ?
- g] Does JD prove that the judgment and decree comes under purview of Sec. 13(b) and (f)?

h] What order ?

3] Liberty is given to the J.D and D.H. to avail Order 11, 12, 13 within 30 days from the date of order before adducing evidence.

4] J.D. and D.H are directed to furnish list of witnesses within 15 days from the date of order.

5] They are requested to co-operate to the Court to give finding to the issues within 90 days.

6] It is also directed to both the sides to submit argument on application for injunction.

20) According to the Petitioners, neither issues could be framed nor could evidence be allowed to be led when decree is to be executed under Section 44A of the Code. The distinction between execution of the decree passed by the foreign court in reciprocating territory and non-reciprocating territory is highlighted by the Petitioners and it is contended that conduct of full-fledged trial in execution proceedings by framing of issues and leading of evidence would completely convert the execution proceedings into a suit filed on judgment of foreign court in non-reciprocating territory.

21) Under Section 14 of the Code, there is a presumption as to foreign judgment and unless contrary appears on the record, there is a presumption that the foreign judgment was pronounced by a court of competent jurisdiction. However, the presumption can be displaced by proving want of jurisdiction. Section 14 of the Code provides thus:

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.

22) Under Section 13 of the Code, a foreign judgment is not conclusive when any of the circumstances enumerated in clauses (a) to (f) exist. Section 13 of the Code provides 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 face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of 2[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.

23) Ordinarily, when foreign court passes a judgment and a decree, which is sought to be executed in India, a suit needs to be filed in Indian court, which needs to conduct an inquiry into existence of circumstances under clauses (a) to (f) of Section 13 of the Code. Thus, a decree of a foreign court is not executable in Indian courts unless Indian court makes a decree on the foreign judgment. However, Section 44A of the Code makes an exception where a decree is passed by foreign courts in reciprocating territories. Reciprocating territory means a country or territory outside India which the Central Government declares to be a

reciprocating territory by issuance of a Notification. When a decree is made by Superior Courts of any reciprocating territory, the same can be filed in a District Court and it can be executed by the District Court as if it has been passed by the District Court itself. Section 44A of the Code provides thus :

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 1.— “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 2.— “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 of 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.

24) Thus, there is a vital distinction between the decree passed by the foreign court in non-reciprocating territory and a decree passed by the foreign court in reciprocating territory. In the former case, the decree is not directly executable, and it is necessary to institute a suit on foreign judgment to secure a domestic decree on the foreign judgment. However,

in the latter case, the decree passed by the foreign court in reciprocating territory can be directly executed by the District Court. However, even while executing the decree of a foreign court in reciprocating territory, the exceptions specified in clauses (a) to (f) of Section 13 of the Code continue to apply and the District Court can refuse execution if the decree demonstrably falls in any of the exceptions specified in clauses (a) to (f) of Section 13 of the Code.

25) Thus the onus to prove existence of exceptions specified in clauses (a) to (f) of Section 13 of the Code in a suit filed for decree on foreign judgment passed in non-reciprocating territory is on the Plaintiff filing such suit whereas in execution proceedings filed under Section 44A for execution of decree passed by foreign court in reciprocating territory such onus is on the judgment-debtor.

26) In *Marine Geotechnics* (supra) learned Single Judge of this Court has highlighted the difference between execution of decree passed by the foreign courts in reciprocating territories and non-reciprocating territories and has held in paras-20 and 21 as under:

20. Section 13 enunciates the well-established principle of private international law that a court will not enforce a foreign judgment that is not of a competent court. What that section provides is, therefore, substantive law, not mere procedure (Raj Rajendra Sardar Moloji Nar Singh Rao Shitole v. Shankar Saran, AIR 1962 SC 1737). Now section 13 makes no distinction between judgments of a court in a reciprocating territory and those of courts in non-reciprocating territories. **That distinction comes only in section 44A, an independent provision that says that a decree of a court in a reciprocating state may be put into execution in India (M.V. AL. Quamar v. Tsavliris Salvage (International) Ltd., AIR 2000 SC 2826). A decree from a non-reciprocating state cannot be so executed. The decrees of both reciprocating and non-reciprocating territories must, however, satisfy the tests of section 13. The difference is at what stage, and on whom lies the**

burden. Where a foreign judgment is not on merits, or violates any of the provisions of sub-clauses (a) to (f) of section 13, it is not conclusive, even though it may accord with the domestic procedure of the country in which it was passed and is valid and enforceable in that country. **An ex parte decree is not necessarily one that is always, and ipso facto, not on merits.** If a court has considered and weighed the plaintiffs' case and assessed his evidence, it will be on merits, notwithstanding that it is ex parte. Where however, there is a summary disposal of the case under some special statutory provision that obviates an examination of the merits and the taking of evidence, such a decree is not executable in India. Thus, for instance, if there is an immediate default summary judgment only on account of the defendants' failure to appear and without any examination of the material or the evidence, that judgment is not enforceable in India (International Woollen Mills v. Standard Wool (U.K.) Ltd. (2001) 5 SCC 265). In short, if a foreign judgment falls under any of the clauses (a) to (f) of section 13, it is not conclusive as to any matter thereby adjudicated upon. The judgment is open to collateral attack on the grounds mentioned in the clauses of section 13 (Smt. Satya v. Teja Singh (1975) 1 SCC 120). The elaborate discussion by the Supreme Court in International Woollen Mills v. Standard Wool (U.K.) Ltd., AIR 2001 SC 2134 ; (2001) 5 SCC 265, cited in China Shipping Development Co. Ltd. v. Lanyard Foods Ltd. (2007) 5 Bom. CR 684 ; [2008] 142 Comp Cas 647 (Bom) and Intesa Sanpaolo S.P.A. v. Videocon Industries Ltd. [2014] 183 Comp Cas 395 (Bom)) ultimately leads to one pithy conclusion : a decree that follows a judgment that is not on merits cannot be enforced in India (page 2143 of AIR 2001 SC):

“Even where the defendant chooses to remain ex parte and to keep out, it is possible for the plaintiff to adduce evidence in support of his claim (and such evidence is generally insisted on by the courts in India), so that the court may give a decision on the merits of his case after a due consideration of such evidence instead of dispensing with such consideration and giving a decree merely on account of the default of appearance of the defendant.

In the former case the judgment will be one on the merits of the case, while in the latter the judgment will be one not on the merits of the case. Thus, it is obvious that the non-appearance of the defendant will not by itself determine the nature of the judgment one way or the other. That appears to be the reason why section 13 does not refer to ex parte judgments falling under a separate category by themselves.” (emphasis supplied)

21. Armed with a decree of a court in a non-reciprocating foreign territory, what must a party do in India ? His option is to file, in a domestic Indian court of competent jurisdiction, a suit on that foreign decree, or on the original, underlying cause of action, or both (Badat and Co. v. East India Trading Co., AIR 1964 SC 538 ; (1964) 66 BLR 402). He cannot simply execute such a foreign decree. He can only execute the resultant domestic decree. To obtain that decree, he must show that the foreign decree, if he sues on it, satisfies the tests of section 13. If the decree is, on the other hand,

of a court in a reciprocating territory, then he can straightaway put it into execution, following the procedure under section 44A and Order 21, rule 22 of the CPC. At that time, the judgment-debtor can resist the decree holder by raising any of the grounds under section 13. If he does not, or fails in his attempt, the decree will be executed as if it were a decree passed by a competent court in India.

(emphasis added)

27) The legislative intent behind incorporation of Section 44A in the Code is to ensure swift execution of decrees when they are made by courts in reciprocating territories. The provision obviates filing of a suit and provides for remedy directly of execution. Thus, when a decree is made by a foreign court in reciprocating territory, it is not necessary to institute a separate suit and the same can be executed as if it is a domestic decree under Section 47 of the Code.

28) Section 44A (3) of the Code provides that the provisions of Section 47 apply to the proceedings before the District Court executing the decree under Section 44A. Under Section 47 of the Code, all questions arising between the parties to the suit in which the decree was passed and which relate to execution, discharge or satisfaction of the decree can be determined by the Executing Court. Section 47 of the Code provides thus:

47. Questions to be determined by the Court executing decree.

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation I.—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.—(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.

29) However, the only distinction between execution of a domestic decree and a decree of foreign court passed in reciprocating territory (*which is treated on par with domestic decree*) is that the District Court can refuse to execute the decree if it is satisfied that the decree falls within any of the exceptions specified under clauses (a) to (f) of Section 13 of the Code. Thus, in addition to an inquiry under Section 47 of the Code, the District Court, while exercising powers under section 44A, needs to conduct additional inquiry as to whether the decree falls under any of the exceptions specified under clauses (a) to (f) of Section 13 of the Code. Thus, while domestic decree can be executed by conduct of inquiry under Section 47 of the Code, decree passed by the foreign court in reciprocating territory can be executed under section 44A by conducting twin inquiries viz (i) inquiry under Section 47 of the Code, and ii) inquiry into existence of circumstances enumerated under clauses (a) to (f) of Section 13 of the Code.

30) Ordinarily, it is not necessary in every case that issues are framed and evidence is led for conduct of inquiry into circumstances enumerated under clauses (a) to (f) of Section 13 of the Code. This is because the legislative object is to ensure swifter and faster execution of

the decree passed by the foreign court in reciprocating territory. If in every case, framing of issues and leading of evidence is made mandatory for District Court exercising execution powers under Section 44A of the Code, the same would bring the decree passed by the foreign court in reciprocating territory as if it is a decree passed by foreign court in non-reciprocating territory. When a suit is filed on a judgment passed by the foreign court in a non-reciprocating territory, such suit would entail framing of issues and leading of evidence while conducting inquiry into existence of circumstances specified in clauses (a) to (f) of Section 13 of the Code. However, since the Legislature has carved out an exception by treating the decree made by foreign court in reciprocating territory as a domestic decree executable under Section 47 of the Code, the rigours of inquiry into circumstances enumerated under clauses (a) to (f) of Section 13 would not be the same as in a suit based on judgment by foreign court in non-reciprocating territory. Therefore, it will have to be necessarily presumed that the second inquiry under Section 44A (3) of the Code into existence of circumstances enumerated under clauses (a) to (f) of Section 13 will have to be necessarily a summary inquiry and not a full-fledged trial. Therefore, in every case, it is not mandatory that the issues are framed and evidence is directed to be led for conducting a full-fledged trial into existence of circumstances enumerated under clauses (a) to (f) of Section 13 of the Code when District Court executes a decree made by foreign court in reciprocating territory under Section 44A of the Code.

31) It would therefore be necessary to examine the manner in which the inquiry is to be conducted about existence of circumstances

specified in clauses (a) to (f) of Section 13 of the Code when decree is taken up by the District Court for execution under Section 44A. In *Alcon Electronics* (supra), the Apex Court while considering a slightly different issue of execution of an interlocutory order made by an English Court in India, has dealt with contours of inquiry under Section 13 of the Code in paras-14 to 19 of the judgment as under:

14. A plain reading of Section 13 CPC would show that to be conclusive an order or decree must have been obtained after following the due judicial process by giving reasonable notice and opportunity to all the proper and necessary parties to put forth their case. When once these requirements are fulfilled, the executing court cannot enquire into the validity, legality or otherwise of the judgment.

15. A glance on the enforcement of the foreign judgment, the position at common law is very clear that a foreign judgment which has become final and conclusive between the parties is not impeachable either on facts or law except on limited grounds enunciated under Section 13 CPC. In construing Section 13 CPC we have to look at the plain meaning of the words and expressions used therein and need not look at any other factors. Further, under Section 14 CPC there is a presumption that the foreign court which passed the order is a court of competent jurisdiction which of course is a rebuttable presumption. In the present case, the appellant does not dispute the jurisdiction of the English Court but its grievance is, it is not executable on other grounds which are canvassed before us.

16. The appellant contends that the order of the English Court is not given on merits and that it falls under Section 13(c) CPC as a result of which it is not conclusive and therefore unexecutable. We cannot accept such submission. A judgment can be considered as a judgment passed on merits when the court deciding the case gives opportunity to the parties to the case to put forth their case and after considering the rival submissions, gives its decision in the form of an order or judgment, it is certainly an order on merits of the case in the context of interpretation of Section 13(c) CPC.

17. Applying the same analogy to the facts of the case on hand, we have no hesitation to hold that the order passed by the English Court is an order on merits. The appellant who has submitted itself to the jurisdiction of the Court and on its own requested the Court to assess the costs summarily. While passing a reasoned order by dismissing the application filed by the appellant, English Court granted the costs against the appellant. Had it been the case where

appellant's application was allowed and costs were awarded to it, it would have as well filed a petition for the execution of the order. Be that as it is, the appellant did not prefer any appeal and indeed sought time to pay the costs. The appellant, therefore, cannot be permitted to object the execution. It cannot be permitted to blow hot and cold at the same time. In our opinion, it is a pure abuse of process of law and the courts should be very cautious in entertaining such petitions.

18. In *International Woollen Mills v. Standard Wool (UK) Ltd.* [International Woollen Mills v. Standard Wool (UK) Ltd., (2001) 5 SCC 265 : AIR 2001 SC 2134], this Court observed : (SCC p. 280, para 29)

“29. ... ‘17. ... Even where the defendant chooses to remain ex parte and to keep out, it is possible for the plaintiff to adduce evidence in support of his claim (and such evidence is generally insisted on by the courts in India), so that the Court may give a decision on the merits of his case after a due consideration of such evidence instead of dispensing with such consideration and giving a decree merely on account of the default of appearance of the defendant.

18. In the former case the judgment will be one on the merits of the case, while in the latter the judgment will be one not on the merits of the case. Thus it is obvious that the non-appearance of the defendant will not by itself determine the nature of the judgment one way or the other. That appears to be the reason why Section 13 does not refer to ex parte judgments falling under a separate category by themselves.’ [Ed. : As observed in *Govindan Asari Kesavan Asari v. Sankaran Asari Balakrishnan Asari*, 1957 SCC OnLine Ker 151, paras 17-18.] ”

19. The principles of comity of nation demand us to respect the order of English Court. Even in regard to an interlocutory order, Indian Courts have to give due weight to such order unless it falls under any of the exceptions under Section 13 CPC. Hence we feel that the order in the present case passed by the English Court does not fall under any of the exceptions to Section 13 CPC and it is a conclusive one. The contention of the appellant that the order is the one not on merits deserves no consideration and therefore liable to be rejected. Accordingly, Issue (i) is answered.

(*emphasis added*)

32) In *Arvind Kotecha* (supra), the Division Bench of this Court has dealt with the scope of inquiry into existence of circumstances specified in clauses (a) to (f) of Section 13. This Court has referred to the judgment of the Apex Court in *Alcon Electronics* and has held in paras-14 and 15 as under:

14. The first exception in section 13, contained in clause (a), is want of pronouncement by a Court of competent jurisdiction. The decree could never reflect, on the face of it, competence or otherwise of the Court pronouncing it; that would have to be gathered from the circumstances surrounding a case and the adjudication called for by it. Even clause (b) does not suggest the mere text of a foreign decree or judgment as the basis of assessment. A decree or judgment, for example, may contain reasons and yet these may have absolutely nothing to do with the merits of the case; if at all, these merits can only be noticed from the pleadings of the parties, and not from the mere text of the decree or judgment. Clause (c) of section 13, on its very face, makes it clear that one must have regard to the proceedings before the foreign Court to assess whether, on the face of such proceedings, the decree appears 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. One cannot simply have recourse to a decree to consider whether circumstances provided under clause (c) are satisfied; one must necessarily have regard to the proceedings. Ditto for clause (d) of section 13. By its very nature, it requires the executing Court to have regard to the proceedings in which the judgment was obtained to see whether such proceedings were opposed to natural justice. Clause (e), which is invoked in a case of fraud, almost by definition, could not imply exclusive reference to the text of a decree or judgment for its assessment. Even for assessing a case under clause (f), one must have regard to the claim and the defence to come to any conclusion on founding of the claim on breach of any law in force in India. **Circumstances provided in Clauses (a) to (f) of section 13 are, thus, deducible from pleadings, circumstances or proceedings of a case and there is nothing intrinsic in the text of a decree so as to treat it as the sole basis for assessing existence or otherwise of the exceptions provided therein. The text of the decree, indicating inter alia whether or not it contains reasons, is but one circumstance; the Court must have regard to all circumstances to assess whether any of the exceptions provided in Clauses (a) to (f) of section 13 is made out. The Court cannot refuse to execute a foreign decree or judgment merely because it is not apparent from such decree or judgment whether or not it falls within any of the exceptions contained in Clauses (a) to (f) of section 13.**

15. **Clauses (a) to (f) of section 13, being exceptions to the rule, the onus to show that the foreign judgment falls within any of these exceptions is on the objector to the execution applied for. The objector must positively show existence of the circumstances referred to in either of these clauses.** In the present case, the judgment debtor, who objects to the execution, invokes clause (b), submitting that the judgment has not been given on the merits of the case. As explained by the Supreme Court in *Alcon Electronics Pvt. Ltd. v. Celem S.A.*, (2017) 3 Mah LJ (SC) 734 : (2017) 2 SCC 253, "when the Court deciding the case gives opportunity to the parties to the case to put forth their case and after considering the rival submissions, gives its decision in the form of an order or judgment, it is certainly an order on merits of the case In the case of Alcon

Electronics the appellant, after submitting itself to the jurisdiction of the Court, had agreed to go for a summary adjudication of costs. The order of costs did not have reasons. The appellant contended before the Court that the order of costs was not a judgment on merits. The Supreme Court negatived the contention. This is what the Supreme Court held was the purport of section 13 generally with its exceptions to conclusiveness of a foreign judgment:

“A plain reading of section 13, Civil Procedure Code would show that to be conclusive an order or decree must have been obtained after following the due judicial process by giving reasonable notice and opportunity to all the proper and necessary parties to put forth their case. When once these requirements are fulfilled, the executing Court cannot enquire into the validity, legality or otherwise of the judgment.”

(emphasis and underlining added)

33) Thus, the judgments of the Apex Court in ***Alcon Electronics*** and of Division Bench of this Court in ***Arvind Kotecha*** broadly discuss the contours of inquiry under Section 13 of the Code and it has been held that the circumstances provided in clauses (a) to (f) of Section 13 of the Code need to be deduced from the pleadings, circumstances or proceedings of the case and the court cannot refuse to execute foreign decree merely because it is not apparent from such decree whether or not it falls in any of the exceptions contained in clauses (a) to (f) of Section 13 of the Code. The Division Bench of this Court has held that existence of circumstances enumerated in Section 13 clauses (a) to (f) of the Code need to be gathered from pleadings, circumstances and proceedings of the case.

34) Coming to the inquiry under Section 47 of the Code, the Execution Court can decide “*all questions arising between the parties which relate to execution, discharge or satisfaction of the decree*”. A separate suit for deciding such questions is not maintainable. In ***C.V. Joshi*** (supra), a Single Judge of this Court has decided the issue as to whether Executing

Court is under an obligation to frame issues. The question which arose before the Court is captured in para-2 of the judgment as under:

2. The short question which arises for consideration in this case is whether it is mandatory for the executing Court to frame an issue on the basis of the stand taken by the rival parties for deciding the question raised before it. Secondly, whether the Court below was justified in *suo motu* recalling the issue, which was already framed earlier, by the impugned order.

35) This Court has answered the issue by holding in paras-6 and 7 of the judgment as under:

6.Framing of issue would only enable the Court to focus its attention on the question raised before it between the parties and nothing more. Since no provision is made in the Code regarding the necessity of framing issues by the Executing Court, the Court would act with prudence. Procedure is evolved only to achieve the main object of dispensation of justice. It is only a means and not an end in itself. It may not be forgotten that it is on the Courts that citizens primarily repose trust. If they have respect for the work of the Courts, their respect for law will survive, but if they lose their respect for the work of the Courts, their respect for law and order will vanish with it to the great detriment of society. The approach of the Executing Court in the present case is bound to shatter the faith in the working of the Courts. There is no reason why the Courts should show any concession with regard to such technical plea at the instance of a party who seeks to ineffect resile from the consent decree and has disobeyed the undertaking given to the Court.

7. Be that as it may, I shall now examine the merits of the contention advanced on behalf of the petitioner, lest the Courts do not get embroiled in such unstatable matters in future. Reliance has been placed by the petitioner on the provisions of Order 14, Civil Procedure Code which are inapplicable to the present case. We are concerned with the execution proceedings which are governed by the provisions of Order 21, Civil Procedure Code. In my view, Order 14 would apply only to the procedure regarding determination of the suit and not to the execution proceedings. Reference is also made to Order XXI, Rule 101 and Rule 105. On plain reading of the said provisions it would appear that the Executing Court is not under any obligation to frame issue regarding the question which has been raised before it. **Framing of issue by the Executing Court would at best be a matter of prudence but not a rule.** The Court below has rightly relied upon the decision reported in AIR 1956 Raj 1 (para 6) *Ramjivan Ramnath v. Roopchand* to hold that issues are not necessarily framed when objections in execution proceedings are decided. In the light of the said decision no further investigation on this question would survive. Instead of

spending its precious time on adjudicating such trivial matters, the Executing Court would be well advised to decide the main execution proceedings with utmost dispatch.

(*emphasis added*)

36) Thus, it is held by this Court in **C.V. Joshi** (supra) that framing of issues by Executing Court would at best be a matter of prudence but not a rule.

37) In **Rahul S. Shah** (supra), the Apex Court has held that leading of evidence during execution proceedings would only be in exceptional circumstances and in rare cases where the question of fact cannot be decided by resorting to any other expeditious methods. The Apex Court has mandated the directions to be followed by the Executing Court in para-42 and one of the directions in para-42.9 reads thus:

42.9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

38) Thus, even while deciding execution proceedings in respect of the domestic decree under Section 47 of the Code, there is no allergy to framing of issues and leading of evidence, though it is not a matter of prudence and must be resorted to in exceptional circumstances. As observed above, the execution proceedings under Section 44A of the Code in respect of the decree of foreign court in reciprocating territory entails further inquiry in respect of the enumerated clauses (a) to (f) of Section 13 of the Code. It is therefore necessary to consider whether any exceptional circumstances exist in the present case for framing of issues

and for granting liberty to the parties to lead evidence. The Executing Court has conducted *prima facie* scrutiny of the foreign decree and the proceedings of Fujairah Civil Court and has recorded certain findings thereon. It would be apposite to reproduce observations of the Executing Court in that regard as recorded in para-120 to 147 of the Impugned Order:

120] Section 13 of the C.P.C provides exception in the nature of Clauses “a to f”. If the D.H satisfies to the Executing Court that a foreign judgment has passed the tests laid down in these clauses then it becomes conclusive in respect of any matter which has been directly adjudicated between the parties. Thus, the conclusiveness does not extend to the reasons of the judgment. The Executing Court is not suppose to touch the reasons or core of the foreign judgment i.e., an adjudication by foreign Court by foreign Judge. The Executing Court is suppose to take into consideration which have been provided in Section 13 of the C.P.C.

121] Along with Exh. 3, the Order of Fujairah Court (Exh. 3/1) is filed. At Exh. 3/2 there is ‘certificate’ which is issued by U.A.E Ministry of Justice, Fujairah Civil Court. On perusal, it appears that in ‘open Session’ Judgment is delivered. The second defendant is the J.D. whereas the defendant is Candica Industries FZ. D.H were plaintiffs.

122] The plaintiff /D.H had produced photocopy of M.O.U., photocopy of notice and statement from the Reconciliation and Settlement Committee.

123] It is mentioned in the judgment that, “whereas the First and Second Defendants didn’t attend the sessions even though they were notified; so the Court ruling that is issued in today’s session is a default judgment i.e., as if issued in the presence of all parties, pursuant to the provisions of article (53) of the Federal Law of Civil Procedures”.

124] There is use of words, ‘notified’ ‘default judgment’ shows in absentism of the J.D., it is delivered.

125] There is whisper of Expert Report. It is observed that 2nd defendant i.e., J.D breached his obligation towards the plaintiff by receiving and taking the above mentioned amount unlawfully therefore, he became liable this amount and owes to them. It is observed in above expert report that’ “Accordingly, the Second Defendant breached his obligation towards the First Defendant Company when he singed the above mentioned Memorandum of Understanding

without having an authorisation or power to do so. Moreover the Second Defendant breached his obligation towards the plaintiffs by receiving and taking the above mentioned amount of money in an unlawful way. Therefore, becomes liable and owes this amount to them. In addition the expert found out that the First Defendant Company is not liable and doesn't owe any amounts to the Plaintiff's because there is no contractual obligation between them.

126] The above judgment shows that it is default judgment. In other words it is ex parte judgement. There is list of documents at Exh. 3A. Internal page 55 is relevant. It is a document titled as "Notice to attend before Fujairah Civil Court in the Civil Case No. 241/2011 – Commercial Overall with the amended requests and the report arrival".

127] There is mention of the defendant, Naveen Kumar address as 'Fujairah, free zone'.

128] On internal page 56, it is mentioned by process server notifier as [I went to the defendant's company and gave the notice to an employee of the company but he refused receiving and signing, so I could not notify.]

129] Above this, there is endorsement of the Notifier, "I do hereby certify that I delivered a copy of this notice and the case declaration to ... at 1.30 p.m on Tuesday 18/12/2012".

130] It is necessary to refer the say/pleading of the DH (Exh. 13). This say is filed to Exh. 10. On internal page 19 of it, paragraph no. 5.2(v) it is mentioned that 'various notices' were issued by the Fujairah Civil Court which were served by Fujairah Civil Court and JD's representative in U.A.E including pasting notices on the JD's Company in U.A.E".

131] Here word 'notices' is used, it is plural. There is specific mention of, " JD's representative" without mentioning his name. I have reproduced the report of Fujairah Court and if this pleading is considered, then in my view it is contentious issue. It is because burden is on the shoulder of the D.H to show that JD had a representative in U.A.E. This fact is exclusively within his knowledge.

132] In other words, this shows that the JD was not living in UAE as he was having representative according to the D.H. The endorsement shows that attempt had done to serve on employee. The word 'notices' is used and it is for the D.H to show those notices and same were served because there is specific mention that this is judgment in default i.e., ex parte judgment. It is cause of disagreement.

133] In respect of address of the J.D and knowledge of the D.H I would like to refer here internal page no. 39 from list of documents dt. 17.10.20 Exh. 3A.

134] The name of J.D. is present along with his nationality and address as '138, Madhuban "B" Worli Hill Road, Worli, Mumbai 400018'. His passport number is also mentioned. Address of his son is present in the bottom. Their address is of Mumbai.

135] This document is a copy of agreement copy of memorandum of understanding running page 2 to 43 Page 39.

136] This address is specifically mentioned in M.O.U.

137] This is one fact showing knowledge on the part of the D.H in respect of address of the J.D. There are emails which were exchanged between the D.H and the J.D. which are reproduced as "Annexure A to I". These e-mails were after resignation of J.D. from the company. Thus, email address was and is also within the exclusive knowledge of D.H. Same are relied by the J.D.

138] These documents are significant, having its own sanctity. It is not proper to convene towards the same and jump to accept the submission of the D.H, that there was proper service. There is substance in the assertion of the J.D on this point which give rise substantial question of law and fact, required to be addressed in depth and detail in view of Section 44A read with Section 13 and 47 of C.P.C.

139] Regarding evidence adduced in that suit the Judgment is sufficient to observe that only on the basis of expert report filed along with Exh. 3, other documents which have mentioned in paragraph were relied. It is necessary to have a consideration in good sense to this procedural aspect about the production of evidence and proof of it. This is also mixed question of law and fact covered by the above Sections goes to the root of the matter required to be dealt in detail. This production of evidence embodies proof.

140] The J.D has come with specific allegation regarding suppression of emails and other correspondence i.e., material fact from Fujairah Court and he took this aspect within the sphere of fraud. Emails have also produced on record Exh. 12. There is suppression of address, according to J.D even after knowledge of both the addresses i.e., postal address and email address of the J.D. Moreover, according to J.D. there is suppression of the fact of resignation. This act of suppression and allegation regarding to it certainly holds water, required to ponder over, on this aspect, it also goes to the root.

141] The J.D as assailed judgment and decree by raising doubt about the authority to sign the judgment. He has dealt with. It is for the J.D. to substantiate it. Opportunity is required as it is already embossed in the Judgment.

142] The principle assertion of the J.D. is that this execution proceeding is barred by limitation. It is not maintainable. It is pointed out that this question is question of law, can be addressed without evidence. I do agree. This is not a stage to deal with this issue question of limitation at threshold while dealing with this application only. The D.H and J.D would get an opportunity to address this question as it is also goes to the root and can ravage.

143] The D.H has filed this execution proceeding when the notification regarding reciprocating territory has been issued, where this notification is prospective or retrospective in application is also question of law and interpretation of law. At this initial stage, while dealing with this application, now this point is not within periphery of the Court to address it and give finding. Thorough argument is required on this question of law.

144] It is assertion of the D.H that decree was passed in mechanical and summary manner without any independent appraisal of the claim of the D.H. This aspect does not satisfy the standard or criteria prescribed by the law.

145] There is substance. It is necessary to give an opportunity to J.D. to show that fact and the D.H to get opportunity to refute it.

146] J.D has alleged that there is violation of principle of natural justice and in detail in application Exh. 10 it is harped upon. This question is also pivotal one and opportunity required to the J.D. to establish this fact. The D.H can confute it.

147] It is *prima facie* appears that the executability of the decree is challenged under Section 13 of the C.P.C. read with Section 44A and Section 47 of the C.P.C. Thus application is maintainable.

39) The Executing Court has thus held that leading of evidence on the issue of limitation is not necessary as the same can be decided in absence of evidence. However, *qua* the issue of following the principles of natural justice, the Executing Court has felt need for evidence considering the position that the address of the Respondent of Worli, Mumbai was

reflected in the MOU. The Executing Court therefore wants to inquire as to why the said address of Respondent of Worli, Mumbai was not disclosed in the court proceedings and why attempts were made to serve him in UAE. According to the Respondent, the foreign decree is an outcome of fraud *inter alia* because the same is secured by deliberately suppressing the address of the Respondent of Worli, Mumbai.

40) The Executing Court has therefore noted exceptional circumstances for adopting the route of framing of issues. It has held in para-150 of the order as under:

150] I am of the view that in execution proceeding, in exceptional cases like this execution petition, the Court can frame issues and adjudicate it for above reasons. Thus, I disagree with Adv. Shri. Kanade and agree with Adv. Shri. P. Narayan.

41) In the present case, the judgment-debtor has created some doubts in the mind of the Executing Court about existence of exceptions specified in clauses (b), (d) and (e) of Section 13 of the Code about the decree not being made on merits, violation of principles of natural justice and decree being obtained by fraud. On account of such doubts being created, the Executing Court, in the present case, has felt the need to examine the objections more thoroughly. It has recorded existence of exceptional circumstances in the present case in the impugned order for taking the exceptional measures of framing of issues and leading of evidence. The decision appears to be prudent.

42) The main apprehension of the Petitioner is that the Respondent is delaying execution of the decree. This apprehension is

taken care of by the learned Judge by requesting the parties to cooperate with the Court for delivering findings on the issue within 90 days. Instead of acting in terms of the order dated 3 November 2022, Petitioners were advised to challenge the said order by filing the present Petition. In the result, execution proceedings are delayed by more than 3 years. The apprehension expressed by the Petitioners can still be taken care of by directing the Executing Court to record evidence and render findings on the issues in a time-bound manner.

43) I therefore do not find any valid reason to interfere in the impugned order. The Writ Petition is accordingly **dismissed**. However, the learned District Judge is requested to render findings on the issue framed in an expeditious manner preferably within a period of 3 months. Both the sides to cooperate with the Learned District Judge by leading evidence in a timely manner. All rights and contentions of the parties are expressly kept open to be decided by the Executing Court. Rule is discharged. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

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