HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

(1) S. B. Civil Revision Petition No. 12/2023

1. M/s Anondita Healthcare through its Proprietor Anupam Ghosh S/o Shri S.k. Ghosh, R/o A-33-A, Sector -8, Noida, District Gautam Budh Nagar (Uttar Pradesh)
2. Anupam Ghosh S/o Shri S.k. Ghosh, Proprietor M/s Anondita Healthcare R/o A-33-A, Sector-8, Noida, District Gautam Budh Nagar, (Uttar Pradesh)

----Petitioners/Plaintiffs

Versus

1. Faiz Mohammad S/o Abdul Rahim,
2. Mohammad Imran S/o Abdul Rahim,
   Both are resident of Village Thana Bhawan District Muzaffarnagar, U.P.

----Respondents/Judgment Debtors

3. SWEAR Healthcare through its Director Sanjeev Gaur S/o Shri Ramjilal, R/o F-374, RIICO Growth Centre, Extension, Dholpur.
4. Sanjeev Gaur S/o Shri Ramji Lal, Director SWEAR Healthcare R/o F-374, RIICO Growth Centre, Extension, Dholpur.

----Respondents/Applicant/Judgment Debtors

5. Harish Gupta (Harsh) S/o Unknown, R/o House No.24, West Arjun Nagar, Agra (Uttar Pradesh).
6. Ashutosh Tiwari S/o Unknown, R/o House No.24, West Arjun Nagar, Agra (Uttar Pradesh).
7. Manish Pachori S/o Unknown, R/o House No.24, West Arjun Nagar, Agra (Uttar Pradesh).

----Respondents/Judgment Debtors

Connected With

(2) S. B. Civil Revision Petition No. 273/2022

1. Sware Health Care Pvt. Ltd. through its Director Sanjeev Goud S/o Shri Ramjilal R/o F-374, RIICO Growth Center, Extention, Dholpur.
2. Sanjeev Goud S/o Shri Ramjilal, Director Sware Health Care Pvt. Ltd., R/o F-374, RIICO Growth Center Extention, Dholpur.

----Petitioners/Applicants

Versus

1. M/s Anondita Healthcare, through Proprietor Anupam Ghosh S/o Shri S.K. Ghosh, R/o A-33- A. Sector-8, Noida, District Gautam Buddha Nagar (UP).
2. Anupam Ghosh S/o Shri S.K. Ghosh, Proprietor M/s Anondita Healthcare, R/o A-33-A. Sector-8, Noida, District Gautam Buddha Nagar (UP).

Respondent/Non-Applicant/Decree Holder

3. Faiz Muhammad S/o Abdul Rahim,
4. Mohammad Imran S/o Abdul Rahim,
   All Resident Village Police Station Building District Muzaffar Nagar (Uttar Pradesh).
5. Harish Gupta (Harsh) S/o Naamaloom,
6. Ashutosh Tiwari S/o Naamaloon,
7. Manish Pachauri S/o Naamaloom,
   All Resident R/o House No. 24, West Arjun Nagar Agra (Uttar Pradesh).

----Respondents/Non Applicant

For Petitioners	:	Mr. R.D. Rastogi, Senior Advocate assisted by Mr. Devesh Yadav Advocate, Mr. Kunal Sharma Advocate, Ms. Manasvi Tyagi Advocate, Mr. Tushar Kumar Advocate, Mr. Rajat Sharma Advocate and Mr. Sarthak Rastogi Advocate.
For Respondents	:	Mr. Kamlakar Sharma, Senior Advocate assisted by Mr. Madhusudan Purohit Advocate.

HON'BLE MR. JUSTICE ANAND SHARMA

Judgment

REPORTABLE

Date of conclusion of arguments	**::**	**16.01.2026**
Date on which judgment was reserved	**::**	**16.01.2026**
Whether the full judgment or only the operative part is pronounced	**::**	**Full Judgment**
Date of pronouncement	**::**	**24.01.2026**

1. Both the aforesaid revision petitions, one filed by the decree-holder (S. B. Civil Revision Petition No. 12/2023) and the other filed by the Objector-Judgment debtors (S. B. Civil Revision Petition No. 273/2022), have arisen out of the common order dated 11.11.2022 passed by the District Judge, Dholpur, acting as the Executing Court (hereinafter to be referred as 'the Executing Court'), while deciding Applications No. 15/2021 and 16/2021 filed under Sections 47 and 151 of the Code of Civil Procedure, 1908. By the said order, the attachment of one machine was maintained, whereas the other machine was directed to be released from attachment. In view of the common origin and interrelated issues involved, both the revision petitions were heard analogously and are being disposed of by this common judgment.

2. The aforesaid revision petitions were earlier decided by co-ordinate Bench of this Court vide order dated 21.04.2025. Feeling aggrieved by the aforesaid order dated 21.04.2025, Decree Holders-M/s Anondita Healthcare & Another filed Civil Appeal Nos. 11733-11734 of 2025 arising out of SLP (Civil) Nos. 23254-23255 of 2025 before the Hon’ble Supreme Court, wherein vide order dated 03.09.2025, while setting aside order dated 21.04.2025, the Hon'ble Apex Court remitted the matter back to this Court for fresh consideration.

3. In the light of directions given by the Hon’ble Supreme Court, the above revision petitions were listed on priority basis and learned Senior Counsels appearing for the parties have been heard at length for fresh consideration by this court.

Brief facts:

4. For the purpose of convenience, facts stated in S. B. Civil Revision Petition No. 12/2023 have been taken into consideration. The revision petition filed by the Decree-holders under Section 115 of the Code of Civil Procedure, 1908 (hereinafter to be referred as 'CPC') is directed against orders dated 11.11.2022 for releasing one machine from attachment during execution proceedings and order dated 07.12.2021 passed by the Executing Court, whereby Decree-holder’s application seeking permission to lead additional evidence was rejected.

5. It is stated that the Decree holder-Petitioner No.1 is a proprietorship concern engaged in the manufacture and supply of non-drug surgical items and Petitioner No.2 is its proprietor. The Decree holders claim to have developed and owned the design, technology and specifications of machines used for manufacturing surgical gloves around the year 2009. For fabrication, Abdul Rahman and his sons, Faiz Mohd. and Mohd. Imran, were engaged. One MOU dated 20.12.2013 was executed by the petitioners-decree holders with Mr. A.K. Salwan, then General Manager of the petitioner firm, to ensure confidentiality.

6. Fabrication was commenced and two machines were completed by November, 2015. Apprehending unauthorised use of the design of machines, the petitioners executed another agreement dated 18.10.2015 with Respondent No.1, Faiz Mohd, the fabricator. Despite confidentiality agreement and in violation of the agreement, the design of machine was shared by the Respondent no. 1 to Respondent No.3, Swear Healthcare and on the basis of

such design in quite unauthorised manner, Respondent No. 1 fabricated machines for the Respondent No. 3.

7. Thereupon, petitioners/decree-holders instituted Civil Suit No.101/2016 before the Court of Civil Judge (Senior Division), Gautam Budh Nagar, Noida (U.P.), seeking permanent injunction impleading Faiz Mohd. as Defendant No.1, his brother Mohd. Imran as Defendant No. 2, Swear Health Care as Defendant No. 3, Ashutosh Tiwari, an employee of Swear Health Care, as Defendant No. 4 and Manish Pachori, Director of Swear Health Care as Defendant No. 5 and also lodged FIR No.115/2016 at Police Station Sector-20, District Gautam Budh Nagar, Nodia under Sections 420, 467, 468, 471 and 406 of the Indian Penal Code. The defendants did not appear in Civil Suit despite service of summons, hence, the trial court proceeded ex-parte against the defendants. By judgment and decree dated 09.02.2017, an Ex-parte decree of permanent injunction was passed against the defendants. Thereafter, application filed by the judgment-debtors under Order IX Rule 13 CPC was dismissed in default and even restoration application was dismissed for non-prosecution. Thus, the judgment and decree dated 09.02.2017 has attained finality.

8. Alleging violation of the decree, the petitioners filed Execution Case No.65/2019 before the Civil Judge (Senior Division), Gautam Budh Nagar, Noida (U.P.). Vide order dated 20.03.2021, attachment of surgical gloves manufacturing machines installed at the factory of Respondent No.3 at Dholpur was ordered by the Court at Gautam Budh Nagar. However, as the factory and machines of Respondent No. 3 was beyond the territorial jurisdiction of Gautam Budh Nagar Court, a certificate of non-

satisfaction of decree was issued on 23.07.2021 and the execution petition was transferred to the District Court, Dholpur, where it was registered as Execution Case No.34/2021 (Civil Misc. Case No.15/2021). Executing Court at Dholpur proceeded further and issued warrants of attachment, which were executed on 07.08.2021, for attaching two machines lying in the factory premises of the Respondent No. 3.

9. Respondent No.3 being one of the judgment debtor filed objections under Section 47 CPC questioning maintainability of the execution petition as well as executability of the decree, and also filed an application under Section 151 CPC seeking release of the machines, relying upon alleged agreements dated 29.01.2015 and 20.06.2020. Only photocopy of the agreement dated 29.01.2015 was produced by the Objector-judgment-debtor to show a separate agreement of Respondent No. 2 & 3 for fabrication of the machines. The petitioners/decree holders opposed the objections contending that the documents were inadmissible and that the objections were beyond the scope of Section 47 CPC.

10. Vide order dated 14.09.2021, the learned District Judge directed to release one machine. The said order was challenged by the petitioners-decree holders before this Court in Civil Revision No.114/2021, which was allowed vide order dated 20.10.2021 with a direction to decide the matter afresh after granting opportunity to both the parties to lead evidence.

11. Upon remand, Respondent No.3/objector-judgment-debtor examined Sanjeev Gaur and Ashutosh Tiwari in support his objections under Section 47 CPC and application under Section 151 CPC. That apart, an application under Section 65 of the Indian

Evidence Act, 1872 was filed seeking permission to lead secondary evidence of the agreement dated 29.01.2015. Vide order dated 30.10.2021, the learned Executing Court observed that the conditions for leading secondary evidence were not satisfied, but application under Section 65 of the Indian Evidence Act, 1872 filed by the objector-judgment debtor was not finally decided by the Executing Court. Whereas, while opposing the objections and application filed by the objector-Judgment-debtor, the petitioners-decree holders examined Chandrapal Singh and Manoj Singh in support of their case.

12. The petitioners/decree-holders also filed an application dated 04.12.2021 for seeking permission to lead additional evidence and to examine Mr. A.K. Salwan as an additional witness, which was rejected vide order dated 07.12.2021.

13. After conclusion of evidence, the learned District Judge, vide impugned order dated 11.11.2022, again directed release of one machine from attachment allegedly manufactured on the basis of agreement dated 29.01.2015 and maintained the attachment in respect of machined fabricated pursuant to subsequent agreement dated 20.06.2020.

14. Aggrieved by the aforesaid order dated 11.11.2022, the petitioner/decree-holders have preferred the revision petition challenging the aforesaid order to the extent to which directions for releasing one of the machine has been issued by the Executing Court and the objector-judgment debtor has also filed another revision petition questioning the aforesaid order insofar as the attachment of one the machine has been maintained by the Executing Court.

I.A. No. 01/2025 and I.A. No. 02/2025

15. During the pendency of the present revision petitions, the decree-holders moved two interim applications, being I.A. No. 01/2025 and I.A. No. 02/2025, seeking permission to place certain additional documents on record. The documents sought to be introduced primarily pertain to an attempt on the part of the decree-holders to question the veracity, genuineness and even the existence of the agreement dated 21.09.2015. In addition thereto, the decree-holders also sought to place on record a certificate issued under the Designs Act, evidencing registration of the design of the machine in question, which certificate was admittedly issued after the judgment and decree dated 09.02.2017. Learned Senior Counsel appearing for the decree-holders submitted that the said documents are relevant and necessary for a just and proper adjudication of the issues involved in the present revision petitions and, therefore, ought to be taken on record in the interest of justice.

16. The aforesaid applications were vehemently opposed by learned Senior Counsel appearing for the objector-judgment-debtor, who contended that the applications are wholly misconceived and not maintainable in law. It was argued that there is no provision under Section 115 CPC permitting the production of additional evidence or documents at the stage of a revision petition. It was further submitted that in the earlier Revision Petition No. 114/2021 filed by the decree-holders, while remanding the matter vide order dated 20.10.2021, this Court had specifically granted opportunity to both the parties to adduce evidence in support of their respective cases before the Executing Court. The decree-

holders had availed such opportunity and were never prevented from placing any document on record at that stage. Having failed to do so, they cannot now be permitted to fill up the lacunae by seeking to introduce additional material at the revisional stage.

17. It was also pointed out that the efforts to procure the documents now sought to be brought on record were admittedly undertaken by the decree-holders only after the passing of the impugned order by the Executing Court. Such documents, therefore, were neither before the Executing Court, nor formed part of the record on the basis of which the impugned order was passed. Learned counsel submitted that the present revision petitions are required to be decided strictly on the basis of the material that was available before the Executing Court and that any subsequent material cannot be taken into consideration. On these grounds, it was urged that I.A. No. 01/2025 and I.A. No. 02/2025 deserve to be dismissed.

18. Having heard arguments on the above interim applications and considered the record, this Court is also of the considered view that the applications seeking to place additional documents on record in the present civil revision petitions are wholly misconceived and not maintainable. The revisional jurisdiction under Section 115 CPC is confined to examining the legality, jurisdictional error, or material irregularity in the impugned order passed on the basis of material available before the court below, and does not permit enlargement of the evidentiary record or introduction of fresh material which was not before the court below. This limitation assumes greater significance where the revision itself arises out of an order passed under Section 47 CPC,

inasmuch as proceedings under Section 47 are circumscribed to questions relating strictly to the execution, discharge, or satisfaction of the decree. Permitting additional documents at the revisional stage would not only amount to allowing the revisional court to travel beyond the scope of Section 115 CPC, but would also indirectly enable supplementation of the execution record, which is impermissible in law. Such a course would defeat the finality of adjudication and convert a limited revisional scrutiny into a de facto appellate exercise, which is totally impermissible under law. Accordingly, I.A. No. 01/2025 and 02/2025 filed by the decree holders for taking additional documents on record are hereby dismissed.

Rival Submissions on Revision Petitions :

Arguments on behalf of Decree-holders:

19. Mr. Rajdeepak Rastogi, Learned Senior Counsel appearing for the decree holder submits that the impugned order dated 11.11.2022, containing directions to release one of the machine suffers from patent illegality, material irregularity and jurisdictional error. It is contended that the learned Executing Court has passed the order to that extent against the settled principles governing execution proceedings.

20. Learned Senior Counsel contended that the scope of objections maintainable under Section 47 CPC is extremely limited. It was submitted that once a decree has been passed in clear, explicit, and unambiguous terms and has attained finality, the Executing Court is not entitled to entertain objections which, in substance, seek to reopen or challenge the correctness, legality, or propriety of the decree. The only exception carved out by law,

according to learned counsel, is where the decree is shown to have been passed by a court lacking inherent jurisdiction or where the decree is otherwise a nullity in the eyes of law. In all other circumstances, the Executing Court has no authority to go behind the decree or to travel beyond its terms. It is under a statutory obligation to execute the decree strictly in accordance with its tenor and to give effect to it as it stands, without adding to, subtracting from, or modifying the same.

21. It was further submitted that an Executing Court does not possess the jurisdiction to record fresh evidence and is required to confine itself to the pleadings and evidence already adduced before the Trial Court while passing the decree. The Executing Court is duty-bound to execute the decree as it stands and cannot assume the role of a court of first instance by undertaking an exercise to take fresh evidence to enlarge the scope of objections under Section 47 CPC. Learned Senior Counsel contended that even the High Court, while exercising revisional jurisdiction in the earlier Revision Petition No. 114/2021 filed by the petitioners-decree holders challenging the order of the Executing Court, could not have directed the Executing Court to record fresh evidence upon remand, and even if directed, such directions of this court were without jurisdiction, as such a course of action is patently contrary to the settled principles governing execution proceedings. Any direction permitting the Executing Court to take additional evidence would, according to learned Senior Counsel, amount to enlarging the scope of execution proceedings beyond what is permissible under law and would defeat the finality attached to the decree.

22. It was further argued by learned Senior Counsel that photocopy of the alleged agreement dated 29.01.2015 could not have been read in evidence in the absence of the original document, as mandated by Sections 62 and 64 of the Indian Evidence Act, 1872. No notice under Section 66 of the Indian Evidence Act, 1872 was ever issued to any of the former directors or alleged custodians of the original agreement. Learned Senior Counsel emphasises that the impugned order does not record any finding that either the existence or the contents of the alleged agreement dated 29.01.2015 were proved in accordance with Section 65 of the Indian Evidence Act, 1872. In the absence of any such finding and without allowing application for permitting secondary evidence, the Executing Court could not have relied upon the alleged agreement to release one machine from attachment. Moreso, when the aforesaid document was not marked as an exhibit by the Executing Court during evidence.

23. It was further contended that the respondents deliberately suppressed the fact that they were never in possession of the original agreement. They maintained complete silence on this aspect and created an impression that the original existed and was available. Only after the decree holder objected to admissibility of the photocopy on 26.10.2021, the respondents filed an application dated 27.10.2021 seeking permission to lead secondary evidence. It is submitted that such conduct disentitled the respondents from any indulgence under Section 65 of the Indian Evidence Act, 1872 as foundational facts were neither pleaded nor established.

24. Learned Senior Counsel pointed out that the learned Executing Court itself, by order dated 30.10.2021, had categorically

held that the respondents had not satisfied the conditions for leading secondary evidence and that a mere statement of non-availability of the original was insufficient. However, without recording any subsequent finding that such deficiency was cured, the learned District Judge proceeded to pass the impugned order dated 11.11.2022 releasing one machine solely on the basis of the same inadmissible document. This, it is submitted, amounts to a clear contradiction of the court's own earlier order.

25. It is argued that none of the contingencies contemplated under Section 65 of the Indian Evidence Act, 1872 were fulfilled. No effort whatsoever was made to summon the original agreement, nor was any notice under Section 66 of the Indian Evidence Act, 1872 issued. Such omission, according to learned Senior Counsel, itself gives rise to an inference that the alleged agreement never existed.

26. Learned Senior Counsel further submits that the alleged agreement dated 29.01.2015 is a single-page document containing no specifications, design, dimensions or technical details of the surgical gloves machine. This, by itself, establishes that no design was ever provided by Swear Healthcare and that the machines in question were manufactured using the design acquired by Mohd. Imran during his employment with the decree holder.

27. Heavy reliance is placed on the testimony of AW-1, who admitted that he never demanded the original agreement dated 29.01.2015 from former directors, nor did he issue any notice for its production, and was unaware of even the names of the executants or witnesses to the alleged agreement. His admission that Swear Healthcare was not carrying on any production at the

time of its acquisition in January 2019 is stated to conclusively establish that no machines existed prior to the decree dated 09.02.2017 and that the machines were fabricated thereafter in violation of the decree.

28. It is further argued that AW-1 deliberately withheld documents executed at the time of acquisition of Swear Healthcare, as those documents did not reflect purchase of any machine or reference to the alleged agreement dated 29.01.2015. His admission that the photocopy of the agreement was not even received from former directors is relied upon to submit that the document is fabricated and non-genuine.

29. Learned Senior Counsel submitted that testimony of AW-2 also demolishes the respondents' case. AW-2 admitted that he did not see Mohd. Imran making any machine and that he merely made a telephonic enquiry about the agreement, without even disclosing the name of the person contacted. No attempt was made to summon such person. It is argued that AW-2 is a wholly interested witness, being a defendant in the original suit, an accused in the criminal case, a former employee of the decree holder, a present employee of Swear Healthcare, and an alleged witness to the agreement itself. His testimony, riddled with contradictions, could not have been relied upon.

30. Learned Senior Counsel further submits that even assuming the agreement dated 29.01.2015 existed, there is no evidence of any payment made thereunder, no bank statement, no cash receipt, and no record of procurement of raw materials for fabrication of any machine. In contrast, the testimony of NAW-1 and NAW-2, supported by Exhibits NA/1 to NA/139, conclusively

establishes that the design belonged to the decree holder and was illegally used by Mohd. Imran after acquiring knowledge of such design during his employment with the decree holder.

31. It is contended that the Executing Court exceeded its jurisdiction under Section 47 CPC by virtually conducting a retrial of the original suit and by adjudicating issues which stood concluded by the decree dated 09.02.2017. The impugned order is stated to be a mere reiteration of the earlier order dated 14.09.2021, which had already been set aside by this Court.

32. Learned Senior Counsel also assailed order dated 07.12.2021, submitting that rejection of the decree holder's application dated 04.12.2021 to examine Mr. A.K. Salwan caused grave prejudice. The testimony of the said witness would have conclusively established the source of the design and the manner in which it was illegally transferred.

33. In conclusion, it is submitted that the impugned order insofar as it relates to releasing one of the machine is considered, has been passed mechanically, without application of mind, in excess of jurisdiction, and in complete disregard of statutory provisions and evidence on record, and therefore warrant interference by this Hon'ble Court under Section 115 CPC. Learned Senior Counsel, in support of his arguments, has relied upon the decisions in the cases of **Municipal Corporation of Delhi vs. Gurnam Kaur, (1989) 1 SCC 101**; **State of U.P. & Another vs. Synthetics & Chemicals Ltd. & Another, (1991) 4 SCC 139**; **Brakewel Automotive Components (India) Private Limited vs. P.R. Selvam Alagappan, (2017) 5 SCC 371; R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P.**

Temple & Another, (2003) 8 SCC 752; Life Insurance Corporation of India & Another vs. Ram Pal Singh Bisen, (2010) 4 SCC 491; State of Punjab & Others vs. Mohinder Singh Randhawa & Another, 1993 Supp (1) SCC 49; Sunder Dass vs. Ram Prakash, (1977) 2 SCC 662; Rahul S. Shah vs. Jinendra Kumar Gandhi & Others, (2021) 6 SCC 418; Kaliya vs. State of Madhya Pradesh, (2013) 10 SCC 758; A.V. Papayya Sastry & Others vs. Govt. of A.P. & Others, (2007) 4 SCC 221; decision of Andhra Pradesh High Court in the case of **Pothuri Thulasidas vs. Portu Nageswara Rao, 2004 SCC OnLine AP 673**; decision of Madhya Pradesh High Court at Indore in the cases of **Kalabai & Others vs. Durgabai & Others, (Misc. Petition No. 1799 of 2024 decided on 19.07.2024)**; **Ratanlal s/o Bagdu vs. Kishanlal s/o Mangilal & Others, 2012 (1) M.P.L.J. 120**; decision of Delhi High Court in the case of **S. Gurbachan Singh & Others vs. Geeta Issar (CM(M) 576/2023 decided on 12.04.2023)**.

Arguments on behalf of Objector/ Judgment-debor:

34. Per Contra, Mr. Kamlakar Sharma, learned Senior Counsel appearing for the judgment debtor submitted that the impugned order, to the extent of maintaining attachment on one of the machine, suffers from serious errors of law, fact and jurisdiction and therefore warrants interference. It is contended that the learned Executing Court erred in not releasing the second machine and, to that extent, the impugned order is unsustainable.

35. It is argued that the Executing Court acted without jurisdiction in ordering attachment of the machines installed at the factory premises of the petitioner company, as the decree dated

09.02.2017 does not direct attachment of any machine. The decree is limited in scope and merely restrains Defendant No.1 from disclosing designs to third parties in violation of the agreement dated 18.10.2015. In the absence of any specific direction in the decree regarding attachment, seizure or restraint on use of machines, the Executing Court could not have exercised jurisdiction to attach the machines and such exercise of power is contrary to law.

36. Learned Senior Counsel further contended that the Executing Court at Gautam Budh Nagar, UP, lacked territorial jurisdiction to proceed with the execution proceedings insofar as they related to the machine admittedly lying outside its territorial jurisdiction at Dholpur. It was submitted that in terms of Section 39 CPC, where the Court which passed the decree does not have territorial jurisdiction over the property against which execution is sought, the only course open to it is to transmit the decree for execution to the Court within whose territorial jurisdiction such property is situated. Learned Senior Counsel argued that while exercising such power of transfer, the Court passing the decree is not empowered to pass any order of attachment in respect of property situated beyond its territorial limits. In the present case, however, while transferring the decree for execution, the Court at Gautam Budh Nagar simultaneously passed an order of attachment in respect of the machine located at Dholpur, which, according to learned Senior Counsel, was wholly without jurisdiction and a nullity in the eyes of law. It was urged that once the foundational order itself is void for want of jurisdiction, all subsequent proceedings and

orders founded thereon are equally vitiated and lack authority of law.

37. Learned counsel further submits that the Executing Court has travelled beyond the decree, which is impermissible in execution proceedings. It is a settled principle that an executing court cannot go behind the decree or enlarge its scope. The attachment of machines, which are not the subject matter of the decree, amounts to adding new terms to the decree, rendering the impugned order without jurisdiction and perverse.

38. It is further contended that the impugned order does not disclose any reasons as to why the second machine, which is stated to have been manufactured pursuant to an agreement dated 20.06.2020, was directed to remain under attachment. The learned Executing Court has merely recorded that there was justification to attach the said machine, without assigning any reasons or discussing the material on record. Such a non-speaking order, based on bald conclusions, is liable to be set aside.

39. Learned Senior Counsel submits that the finding of the Executing Court that it could not examine whether the machines installed at the factory premises were in violation of the agreement dated 18.10.2015 is erroneous. It is argued that since the decree itself flows from the said agreement, the executing court was required to determine whether the machines in question were in fact manufactured in violation of the agreement. Without such adjudication, attachment of the machines could not have been ordered merely on the basis of the decree.

40. It is urged that the decree does not record any finding that the machines installed in the factory of the petitioner company

are based on or similar to the machines of the decree holder in design, nor does it restrain the petitioner company from manufacturing, using or operating any machine. Therefore, attachment of the machines is clearly beyond the decree and unsustainable in law.

41. Learned Senior Counsel further submits that the decree dated 09.02.2017 is executable only against Defendant No.1 and not against Objectors-Judgment debtors. There is no decree restraining the petitioner company from using or operating any machine. Consequently, execution by attachment of machines belonging to the petitioner company is wholly illegal and without authority of law.

42. It is contended that even if the decree is taken at face value, it could not have been executed by attachment of machines. At best, the decree holder could have sought damages in a separate proceeding for alleged violation of the agreement dated 18.10.2015. The Executing Court cannot convert an injunction decree into one of attachment or seizure.

43. Learned Senior Counsel also raised an objection that for getting execution of the vague and unspecific decree dated 09.02.2017, execution petition was filed by the decree-holders after delay of more than two and a half year, that too without disclosing a valid and definite cause of action for filing such objections.

44. Learned counsel submits that unless there is a clear adjudication that the machines of the petitioner company are identical to or based upon the design, specifications or model of the decree holder, the machines cannot be subjected to attachment. No

such adjudication despite specific objection raised by the objector-judgment-debtor, has been made by the Executing Court.

45. It was further argued that in the absence of any exclusive right established under the intellectual property laws, merely claiming ownership over design or specifications cannot result in restrictions on lawful manufacturing activity. Unless the decree holder obtains appropriate relief under the relevant intellectual property statutes, no embargo can be placed on the business activities of the petitioner company.

46. Learned Senior Counsel urged that once questions were put by the Decree holders to the witnesses during cross examination in respect of contents, effect and existence of agreement dated 29.01.2015, now at this stage Decree holders are estopped from raising any objection with regard to existence, veracity and admissibility of agreement dated 29.01.2015.

47. Learned Senior Counsel also submitted that even if, for the sake of arguments, it is assumed that the objector-judgment-debtor could not place primary evidence to prove agreement dated 29.01.2015, yet it cannot be ignored that the application for submitting secondary evidence of such agreement filed by the objector was not decided by the Executing Court and even otherwise ample evidence was placed on record by the objector-juddgment-debtor of making payment to the fabricator in pursuance of such agreement, hence, the court below rightly held that machines were fabricated for the objector by the fabricator prior to execution of agreement dated 18.10.2015 with the decree holders.

48. In view of the aforesaid submissions, learned Senior Counsel appearing for the judgment debtors prays that the impugned order be set aside to the extent it directs continuance of attachment of one of the machines and remaining portion of the order directing for releasing another machine be maintained. Learned Senior Counsel appearing for the Objectors-Judgment debtors has relied upon the decisions in the cases of **Mohit Bhargava vs. Bharat Bhushan Bharvava & Others, (2007) 4 SCC 795; Jagmittar Sain Bhagat & Others vs. Director, Health Services, Haryana & Others, (2013) 10 SCC 136; Machhindranath s/o Kundlik Tarade deceased through legal representatives vs. Ramchandra Gangadhar Dhamne & Others, (2025) 7 SCC 456; Chief Engineer, Hydel Project & Others vs. Ravinder Nath & Others, (2008) 2 SCC 350; Jai Narain Ram Lundia vs. Kedar Nath Khetan & Others, (1956) 1 SCC 75; Sanwarlal Agrawal & Others vs. Ashok Kumar Kothari & Others, (2023) 7 SCC 307; Ramesh vs. Harbans Nagpal & Others, (2015) 8 SCC 716**; decision of Patna High Court in the case of **Mukhi Ram vs. Firm Kamta Prasad-Balam Das, 1936 SCC OnLine Pat 197**; decision of Allahabad High Court in the case of **Guni Ram & Another vs. Kodai & Others, 1971 SCC OnLine All 307**; decision of Himachal Pradesh High Court in the cases of **Shiv Ram vs. Thakar Dutt, 1972 SCC OnLine HP 33**; **Navneet Kumar vs. Meena Kumari, 2001 SCC OnLine HP 16**; decision of Punjab & Haryana High Court in the case of **Sucha Singh vs. Guman Singh & Another, 1972 SCC OnLine P&H 110**; decision of this Court in the case of **Ratanlal vs. Daudas, AIR 1954 Rajashtan 173.**

Analysis of facts, legal position, Reasons and Findings on Revisions petitions:

49. I have heard and considered the rival submissions advanced by learned Senior Counsels appearing for the parties and carefully perused the material available on record as well as the impugned orders.

50. Before analysing the rival arguments, it would be apposite to consider relevant agreement dated 18.10.2015, contents of the plaint, relevant part of judgment and decree, and material contents of execution application filed by the decree holders. Relevant part of agreement dated 18.10.2015 is quoted as below:

> **फैब्रिकेशन अनुबन्ध**
>
> **यह अनुबन्ध आज दिनांक 18 OCT 2015 माह अक्टूबर वर्ष 2015 को मध्य श्री अनुपम घोष स्वामी मै0 अनोन्दिता हेल्थ केयर, ए–33ए, सेक्टर–8, नौएडा–20301** के स्थान पर निर्माण कार्य की सुविधा है जिसे आगे चलकर सेवा प्राप्त निर्माण कर्ता कहा जायेगा।
>
> **और**
>
> **फैज मोहम्मद पुत्र अब्दुल रहीम निवासी ग्राम थाना भवन, जिला मुजफ्फर नगर उ0 प्र0**
>
> **मुजफ्फरनगर, उ0 प्र0** जिसे आगे चलकर फैब्रिकेटर कहा जायेगा।
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> 2. यह कि सेवाप्राप्त कर्ता (प्रथम पक्ष) अपना गल्प्स मशीन और कण्डोम मशीन का डिजाइन, मॉडल, अनुपात का विवरण, द्वितीय पक्ष को प्रदान करेगा। तद्नुसार द्वितीय पक्ष एक वर्ष के अन्दर उसका निर्माण करके सेवाकर्ता (प्रथम पक्ष) को सौंप देगा। प्रथम पक्ष अगर समय पर रॉ मैटेरियल नहीं देगा तो उसका द्वितीय पक्ष की समय सीमा में लेट होने की जिम्मेदारी प्रथम पक्ष की होगी।
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> 5. समय सीमा इस अनुबन्ध की विशेष निश्चित समयावधि है अन्यथा द्वितीय पक्ष हर्जाने या अग्रिम भुगतान राशि का दोगुनी राशि द्वितीय पक्ष प्रथम पक्ष को लौटायेगा। सिर्फ किसी आकस्मिक घटना जिस पर द्वितीय पक्ष का कोई कंट्रोल नहीं है, को छोड़कर अन्यथा सभी परिस्थितियों में उपरोक्त वर्णित मशीनों का निर्माण करके प्रथम पक्ष की संतुष्टि और समय सारणी के अनुसार निर्माण करके द्वितीय पक्ष प्रथम पक्ष को अवश्य सौंपेगा।
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> 8. प्रथम पक्ष द्वारा प्रदत्त सभी डिजाइन व मॉडल तथा अन्य कोई जानकारी उपरोक्त कार्य हेतु दी गयी है। उसे प्रथम पक्ष के अलावा किसी अन्य से साझा नहीं करेगा और ना ही किसी को बतायेगा। उत्पादन की गुणवत्ता के जानकारी द्वितीय पक्ष की रहेगी।"

Relevant contents of the plaint read as under:

"2. यह कि वादी फर्म द्वारा कन्डोम्स व सर्जिकल ग्लब्स बनाने की मैनुफैक्चरिंग व विक्रय करने का कारोबार मैसर्स अनोन्दिता हेल्थ केयर के नाम से पिछले काफी अर्से से किया जा रहा है। इसके अतिरिक्त वादी सं. 1 फर्म द्वारा सर्जिकल ग्लब्स बनाये जाने की मशीन व कन्डोम के निर्माण के मशीनों का कार्य किया जा रहा है, जिसके डिजाईन व टैक्नोलोजी को स्वयं वादी सं. 1 द्वारा विकसित किया गया है।

6. यह कि वादीगण व प्रतिवादी नं. 1 के मध्य हुए अनुबन्ध दिनांकित 18.10.2015 की शर्तो के अनुसार यह भी तय पाया गया था कि वादीगण द्वारा प्रतिवादी नं.1 को जो डिजाईन व मॉडल व अन्य जानकारी बावत निर्माण किये जाने कन्डोम मशीन व ग्लब्स मशीन प्रदान की जायेगी, उक्त जानकारी को प्रतिवादी नं.1 किसी अन्य व्यक्ति से न तो साझा करेगा और न ही किसी अन्य व्यक्ति को बतलायेगा।

7. यह कि प्रतिवादी नं.1 द्वारा वादीगण व प्रतिवादी नं. 1 के मध्य निष्पादित अनुबन्ध दिनांकित 18.10.2015 की शर्तों का उल्लंघन करते हुए, वादीगण को, वादीगण की सन्तुष्टि में न तो उपरोक्त मशीनें समय अवधि के अन्दर प्रदान की गयी बल्कि प्रतिवादी नं.1 द्वारा, वादी द्वारा उपलब्ध करायी गयी डिजाईन व मॉडल का दुरुपयोग करते हुए, कन्डोम व ग्लब्स बनाने की मशीनों के डिजाईन व मॉडल की जानकारी को प्रतिवादीगण 2 ता 5 को उपलब्ध कराया जो वादीगण व प्रतिवादी नं.1 के मध्य हुए अनुबन्ध दिनांकित 18.10.2015 की शर्तों का खुल्लम खुल्ला उल्लंघन है।

8. यह कि वादीगण द्वारा जो डिजाईन व मॉडल व जानकारी बावत निर्माण करने मशीन कन्डोम व ग्लब्स प्रतिवादी नं.1 को उपलब्ध करायी गयी थी, उक्त जानकारी का दुरुपयोग करते हुए प्रतिवादी नं.1 द्वारा कन्डोम व ग्लब्स की मशीनों को निर्मित कर बैसाज प्रतिवादी नं.2, प्रतिवादी नं.3 को सप्लाई किया गया जो प्रतिवादी नं.1 द्वारा किये गये उक्त अवैधानिक कार्य में अन्य प्रतिवादीगण 2 ता 5 शामिल रहे हैं तथा प्रतिवादीगण के उपरोक्त अवैधानिक कार्य से वादी फर्म का अत्याधिक नुकसान हुआ है।

9. यह कि प्रतिवादी नं.1 को कोई कानूनी अधिकार अनुबन्ध दिनांकित 18.10.2015 की शर्तों का उल्लंघन करते हुए वादीगण द्वारा उपलब्ध करायी गयी डिजाईन, मॉडल व अन्य जानकारी जो कन्डोम मशीन, ग्लब्स मशीन के सम्बन्ध में वादीगण द्वारा उपलब्ध करायी गयी थी, किसी अन्य व्यक्ति को उपलब्ध कराने व हस्तान्तरित करने का नहीं था।

11. यह कि प्रतिवादी नं.1 बैसाज प्रतिवादीगण 2 ता 5 अनुबन्ध दिनांकित 18.10.2015 की शर्तों का उल्लंघन करते हुए बदस्तूर वादीगण द्वारा उपलब्ध करायी गयी डिजाईन व मॉडल के साथ कन्डोम व सर्जिकल ग्लब्स की मशीनों का निर्माण कर, प्रतिवादी नं.3 को हस्तान्तरित कर रहा है और अन्य व्यक्तियों को भी हस्तान्तरित कर रहा है। जिसका कोई कानूनी अधिकार प्रतिवादी नं.1 को प्राप्त नहीं है।

13. यह कि वाद का कारण दिनांक 18.10.2015 को जब वादीगण व प्रतिवादी नं.1 के मध्य अनुबन्ध निष्पादित हुआ बादहू जब प्रतिवादी नं. 1 द्वारा, वादीगण द्वारा उपलब्ध कराये गये डिजाईन, मॉडल व मशीन निर्माण की अन्य जानकारी को अनुबन्ध की शर्तों का उल्लंघन करते हुए प्रतिवादीगण 2 ता 5 को उपलब्ध कराया बादहू प्रतिवादी नं.1 द्वारा अनुबन्ध दिनांकित 18.10.2015 की शर्तों का उल्लंघन करते हुए कन्डोम व सर्जिकल ग्लब्स की मशीनों को वादी को हस्तान्तरित न करके दीगर व्यक्तियों को हस्तान्तरित किया गया, नौएडा, जिला गौतम बुद्ध नगर में

न्यायालय के न्यायक्षेत्र के अन्तर्गत उत्पन्न हुआ तथा न्यायालय को वाद को सुनने व तय करने का क्षेत्राधिकार प्राप्त है।

15. यह कि वादीगण निम्नलिखित अनुतोष की मांग करते हैं :–

अ. यह कि प्रतिवादी नं.1 को द्वारा सर्वकालीन स्थाई निषेधाज्ञा निषेधित किया जावे कि प्रतिवादी नं. 1 बैसाज प्रतिवादीगण 2 ता 5, वादीगण व प्रतिवादी नं.1 के मध्य निष्पादित अनुबन्ध दिनांकित 18.10.2015 की शर्तों के अनुसार वादीगण द्वारा उपलब्ध कराये गये डिजाईन व मॉडल के आधार पर निर्मित मशीन सर्जिकल ग्लब्स व मशीन कन्डोम को किसी अन्य व्यक्ति को किसी भी प्रकार हस्तान्तरित करने से बाज रहे।"

Relevant part of judgment dated 09.02.2017 passed by the Court of Civil Judge (Senior Division), Gautam Budh Nagar reads as under:

"वादीगण का कथन है कि वह कंडोम व सर्जिकल ग्लब्स के निर्माण एवं विक्रय का कार्य करती है व इन्हे बनाने हेतु मशीन का कार्य भी करती है। वादी व प्रतिवादी सं0 1 के मध्य दिनांक 18.10.2015 को एक अनुबंध हुआ, जिसके अन्तर्गत वादीगण द्वारा प्रतिवादीगण को कंडोम व ग्लब्स के निर्माण हेतु मशीन के डिजाईन, मॉडल व अनुपात की जानकारी देगा और प्रतिवादी सं0 1 उसे 6 माह के अन्दर मशीन देगा और डिजाईन, मॉडल व अनुपात की जानकारी किसी अन्य व्यक्ति से साझा नहीं करेगा, किन्तु प्रतिवादी सं0 1 द्वारा उक्त जानकारी प्रतिवादीगण 2 ता 5 को साझा की गयी, जिससे वादीगण को नुकसान कारित हुआ है। वादीगण द्वारा अपने कथन के समर्थन में कतिपय प्रपत्र दाखिल किये गये हैं, जिसके अवलोकन से विदित है कि वादीगण व प्रतिवादी सं0 1 के मध्य फैब्रीकेशन अनुबन्ध निष्पादित किया गया। प्रतिवादीगण द्वारा न्यायालय में उपस्थित आकर वादीगण के कथनों के विपरीत कोई साक्ष्य दाखिल नहीं किया गया, जिससे वादीगण के कथनों पर अविश्वास कारित हो। इसके विपरीत वादीगण द्वारा अपने वादपत्र के कथनों को मौखिक एवं दस्तावेजी साक्ष्यों से साबित किया गया है। अतः उपरोक्त समस्त तथ्यों एवं परिस्थितियों को दृष्टिगत रखते हुए वादीगण का वाद एक पक्षीय रूप से आज्ञप्त किये जाने योग्य है।

<u>आदेश</u>

वादीगण का वाद एक पक्षीय रूप से स्वीकार किया जाता है और प्रतिवादी सं0 1 को आदेशित किया जाता है कि वह बैसाज प्रतिवादीगण 2 ता 5, वादीगण एवं प्रतिवादी सं0 1 के मध्य निष्पादित फैब्रिकेशन अनुबन्ध दिनांक 18.10.2015 की शर्तों के अनुसार वादीगण द्वारा उपलब्ध कराये गये डिजाईन व मॉडल के आधार पर निर्मित मशीन सर्जिकल ग्ल्ब्स व मशीन कंडोम को किसी अन्य व्यक्ति को किसी प्रकार से हस्तांतरित न करें।"

Relevant part of execution application filed by the decree holder reads as under:

10.	तारीख जिसमें अदालत की अमानत मतलूब है।	श्रीमान जी, मदयूनान द्वारा बमुजिव निर्णय व डिक्री दिनांकित 09.02.2017 की जानबूझकर अवहेलना करते हुए अनुबन्ध दिनांकित 18.10.2015 की शर्तों का उल्लंघन करते हुए लगातार सर्जिकल ग्लब्स व मशीन कंडोम को बनाकर दीगर व्यक्तियों को हस्तान्तरित किया जा रहा है जो न्यायालय द्वारा पारित निर्णय व डिक्री दिनांकित 09.02.2017 की जानबूझकर की गयी अवहेलना व अमानना है, जिसके लिए

		मदयूनान को सिविल कारागार भेजा जाकर, मदयूनान की चल व अचल सम्पत्ति को कुर्क किया जाना आवश्यक है।

51. At the outset, it is necessary to delineate the scope of interference under Section 115 of the Code of Civil Procedure, 1908. Jurisdiction under Section 115 CPC is extremely limited. Interference is warranted only where the subordinate court has exercised jurisdiction not vested in it by law, failed to exercise jurisdiction so vested, or acted in the exercise of its jurisdiction illegally or with material irregularity. The revisional court does not act as a court of appeal and cannot reappreciate evidence or substitute its own conclusions merely because another view is possible.

52. The Hon'ble Supreme Court in the case of **Sunder Dass (supra)**, while dealing with scope of Section 47 CPC held as under:

> *"3. Now, the law is well settled that an executing court cannot go behind the decree nor can it question its legality or correctness. But there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence of the court to try the case and a decree which is a nullity is void and can be declared to be void by any court in which it is presented. Its nullity can be set up whenever and wherever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings. The executing court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree. By doing so, the executing court would not incur the reproach that it is going behind the decree, because the decree being null and void, there would really be no decree at all. Vide Kiran Singh v. Chaman Paswan AIR 1954 SC 340 and Seth Hiralal Patni v. Sri Kali Nath AIR 1962 SC 199. It is, therefore, obvious that in the present case, it was competent to the executing court to examine whether the decree for eviction was a nullity on the ground that the civil court had no inherent jurisdiction to entertain the suit in which the decree for eviction was passed. If the decree for eviction was a nullity, the executing court could declare it to be such and decline to execute it against the respondent."*

53. The Hon'ble Supreme Court in the case of **Rahul S. Shah (supra)** held as under:

> "***24.*** *In respect of execution of a decree, Section 47 CPC contemplates adjudication of limited nature of issues relating to execution i.e. discharge or satisfaction of the decree and is aligned with the consequential provisions of Order 21 CPC. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.*
>
> ***25.*** *These provisions contemplate that for execution of decrees, executing court must not go beyond the decree. However, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the executing court and the decree-holder is deprived of the fruits of the litigation and the judgment-debtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to.*
>
> ***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."*

54. In the case of **Kaliya (supra)**, dealing with a case relating to the provisions of the Indian Evidence Act, 1872, the Hon'ble Apex Court held as under:

> "***13.*** *Section 65(c) of the 1872 Act provides that secondary evidence can be adduced relating to a document when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason, not arising from his own default, or neglect, produce it in reasonable time. The court is obliged to examine the probative value of documents produced in the court or their contents and decide the question of admissibility of a document in secondary evidence. (Vide H. Siddiqui v. A. Ramalingam (2011) 4 SCC 240 and Rasiklal Manikchand Dhariwal v. M.S.S. Food Products (2012) 2 SCC 196.) However, the secondary evidence of an ordinary document is admissible only and only when the party desirous of admitting it has proved before the court that it was not in his possession or control of it and further, that he has done what could be done to procure the production of it. Thus, the party has to account for the non-production in one of the ways indicated in the section. The party further has to lay down the factual foundation to establish the right to give secondary evidence where the original document cannot be produced. When the party gives in evidence a certified copy/secondary evidence without proving the circumstances entitling him to give secondary evidence, the opposite party must raise an*

objection at the time of admission. In case, an objection is not raised at that point of time, it is precluded from being raised at a belated stage. Further, mere admission of a document in evidence does not amount to its proof. Nor mere marking of exhibit on a document does not dispense with its proof, which is otherwise required to be done in accordance with law. (Vide Roman Catholic Mission v. State of Madras AIR 1966 SC 1457, Marwari Kumhar v. Bhagwanpuri Guru Ganeshpuri (2000) 6 SCC 735, R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple (2003) 8 SCC 752, Dayamathi Bai v. K.M. Shaffi (2004) 7 SCC 107 and LIC v. Ram Pal Singh Bisen (2010) 4 SCC 491)"

55. In the case of **A.V. Papayya Sastry & Others (supra)**, it was held by the Hon'ble Supreme Court as under:

*"**22.** It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.*

***23.** In the leading case of Lazarus Estates Ltd. v. Beasley (1956) 1 All ER 341 Lord Denning observed: (All ER p. 345 C)*

> *"No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud."*

***24.** In Duchess of Kingstone, Smith's Leading Cases, 13th Edn., p. 644, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was "mistaken", it might be shown that it was "misled". There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.*

***26.** Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of "finality of litigation" cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants."*

56. The Hon'ble Supreme Court in the case of **Jai Narain Ram Lundia (supra)** held as under:

*"**21.** The learned counsel for the appellant-defendant contended that even if the Marwari Brothers had ceased to exist as a firm the plaintiff was still entitled to a five annas share in its assets on dissolution. But a five annas share in the assets of a dissolved firm which has ceased to exist is a*

very different thing from a five annas share in a going partnership concern; and to permit this substitution in the decree would be to alter it in a very material particular. The defendant may or may not have the right to ask the court which passed the decree to vary it in that way but he can certainly not ask the executing court to do so. The decree must either be executed as it stands in one of the ways allowed by law or not at all.

24. *The next point urged by the appellant was that as the plaintiff did not raise the present objection before the Federal Court when it passed its decree he is precluded from doing so now. It is true this would have been a good ground for resisting a decree for specific performance but is no answer to the objection to execution. The defendant undertook to perform his part when the decree was passed and he must make good that undertaking before he can seek execution because the decree, in view of its language and intendment, must either be executed as a whole or not at all; it cannot be split up into different and uncorrelated parts and be executed unilaterally. It may be observed in passing that it was as much the duty of the defendant to seek modification of the contract by the court which passed the decree, or modification of the terms of the decree later if he did not know these facts at the time, as he says it was of the plaintiff. The fact remains that the decree was passed in these terms and it must either be executed as it stands or not at all unless the court which passed it alters or modifies it.*

25. *Then it was argued that this objection to execution should have been taken by the plaintiff in the Calcutta High Court when the defendant asked for transfer of the decree to Motihari and that as that was not done it is too late now. But here also the answer is the same. The only question before the Calcutta High Court on the application made to it was whether the decree should be transferred or not. Whether the plaintiff might or could have taken the objection in the High Court is beside the point because it is evident that he need not have done so on the only issue which the application for transfer raised, namely, whether the decree should be transferred or not; at best it could only be said that the plaintiff had a choice of two forums. But normally this sort of question which involves an enquiry into fact would not be tried by an appellate court. It would be more appropriate for an original court to which the decree is transferred for execution to enquire into it. In any case, if the appellant's contention is pushed to its logical conclusion it would mean that whenever a decree is transferred all objection to execution must cease unless the order of the court directing the transfer expressly enumerates the issues that the transferring court is at liberty to determine. In our opinion Section 42 of the Civil Procedure Code is a complete answer to this contention."*

57. In the case of **Sanwarlal Agrawal & Others (supra)**, the Hon'ble Supreme Court held as under:

*"**16.**This Court has time and again cautioned against the Execution Court adopting such an approach. In Topanmal Chhotamal v. Kundomal Gangaram, AIR 1960 SC 388, a three-Judge Bench held as follows : (AIR p. 390, para 5)*

> *"5. … It is a well-settled principle that a court executing a decree cannot go behind the decree : it must take the decree as it stands, for the decree is binding and conclusive between the parties to the suit".*

17. *Yet again, in Meenakshi Saxena v. ECGC Ltd., (2018) 7 SCC 479 it was reiterated that : (SCC p. 486, para 17)*

> *"17. The whole purpose of execution proceedings is to enforce the verdict of the court. Executing court while executing the decree is only concerned with the execution part of it but nothing else. The court has to take the judgment in its face value. It is settled law that executing court cannot go beyond the decree. But the difficulty arises when there is ambiguity in the decree with regard to the material aspects. Then it becomes the bounden duty of the court to interpret the decree in the process of giving a true effect to the decree. At that juncture the executing court has to be very cautious in supplementing its interpretation and conscious of the fact that it cannot draw a new decree. The executing court shall strike a fine balance between the two while exercising this jurisdiction in the process of giving effect to the decree."*

18. *As is commonly known, the stream cannot rise above its source. Both Courts have, by selectively perusing the emails, altered the terms of the decree to include the loan amount into the agreement consideration. It is also imperative to note that such a reading was despite the clauses in the joint venture agreement entered into between the parties in 2017, which provided for a separate mechanism of settling all outstanding loans:*

> *"Clause 4: In case of a deadlock, there will be bidding between the groups for sale of shares to each other, and the group offering higher valuation for shares (successful bidder/buyer) will retain the company, preferably by making one-time payment or as per terms agreed by both groups, but not exceeding 180 days from the date of bidding/agreement in any case.*
>
> *Clause 5: Whatever consideration and payment time line is decided mutually between the groups for share transfer, will be adhered strictly by buyer for smooth exit of seller, payable directly to the seller account, and in case of any delay in payment, compounding interest @ 18% p.a. will be payable by buyer. There will be a lien of the seller group on their shares till payment is completed with interest, if any. The loans and advances of the seller will have to be repaid by the buyer separately within 15 days of bidding/agreement, failing which compounding interest @ 18% p.a. from date of bidding/agreement both principal and interest being routed through company account. Upon completion of both payments, the shares of seller group will be deemed to be transferred to buyer group, and seller cannot delay the transfer on any pretext."*
>
> *(emphasis supplied)"*

58. The Hon'ble Apex Court in the case of **Ramesh (supra)**, held as under:

> *"**9.** We have gone through the record and considered the rival submissions. In our view, no dimensions were given in the plaint nor did the plaint refer to any sketch. The judgment and decree also did not refer to any dimensions of the chhajja in question nor did it incorporate or refer to any sketch from which dimensions could be gathered. In the premises the view taken by the trial court was absolutely correct, in that any exercise would amount to going behind the decree. The application preferred under Section 151 CPC was also vague and lacking in any particulars. The High Court was, therefore, not justified in passing the instant directions. We, therefore, allow the appeal and set aside both the orders under appeal. It is open to Respondent 1-plaintiff to take such steps as are open to him in law. We may also observe that the application for setting aside the ex parte decree preferred by the appellant shall be considered on its own merits."*

59. In the light of the above principles of law laid down by the Hon'ble Supreme Court, when this Court examined the scope, extent, nature and executability of the decree in the present case, it found that the decree dated 09.02.2017 is a decree of permanent injunction restraining the defendants from unauthorised use and disclosure of the design claimed by the decree holder, thus it was basically prohibitory in nature. The execution proceedings were initiated alleging continued violation of the decree and alleging personal disobedience. In such circumstances, the executing court was required to examine whether the property subjected to attachment was liable to execution and whether the objections raised by the judgment debtor fell within the ambit of Section 47 CPC.

60. It is well settled that while an executing court cannot go behind the decree, it is nevertheless competent to interpret the decree and examine questions relating to its execution, discharge or satisfaction as held by the Hon'ble Supreme Court in the case of **Rahul S. Shah (supra)**. The contention that the executing court lacked jurisdiction to examine whether the machines in question,

which are in possession of objector/Judgment-debtor, were connected with the alleged violation of the decree is totally misconceived and is against the settled preposition of law.

61. The contention advanced on behalf of the decree-holder that the Executing Court has committed jurisdictional error in recording evidence, does not merit acceptance. At the outset, it is to be noted that the stand now sought to be taken by the decree-holders is wholly self-contradictory. It was on Revision Petition No. 114/2021 filed by the decree-holder themselves that this Court, by its earlier order dated 20.10.2021, remanded the matter to the Executing Court for fresh consideration after affording due opportunity of hearing to both the parties. The said order of remand was never assailed by the decree-holder before any higher forum and, therefore, attained finality. Pursuant to the remand, the decree-holder not only participated in the proceedings before the Executing Court without any demur or protest but, on the contrary, voluntarily led evidence in support of their case. They even raised a grievance before the Executing Court that they were not permitted to examine an additional witness. Further, during the pendency of the present revision petitions, the decree-holder has filed I.A. No. 1/2025 and I.A. No. 2/2025 seeking permission to place additional documents on record. Having themselves invited the remand, participated in the evidentiary proceedings, and sought further opportunity to adduce additional material, the decree-holder cannot now be permitted to contend that the Executing Court lacked jurisdiction to record evidence. A party cannot be allowed to approbate and reprobate or to blow hot and cold at the same time. Even otherwise, the contention that an Executing Court is

absolutely barred from taking evidence is not a correct statement of law. In the case of **Rahul S. Shah (supra)**, while laying down exhaustive guidelines for deciding execution petitions, the Hon'ble Supreme Court has also permitted leading of evidence before the executing court in appropriate cases. It is well settled that where the circumstances so warrant and where recording of evidence becomes necessary for the effective and proper execution of the decree, the Executing Court is competent to take evidence within the limited scope of execution proceedings. In the present case, the Executing Court has recorded evidence strictly in compliance with the directions issued by this Court while remanding the matter. No error of jurisdiction, illegality, or material irregularity can, therefore, be attributed to the Executing Court on this count. In view of the above, the objection raised by the decree-holders is devoid of substance and is accordingly rejected.

62. So far as contention of learned counsel for the objector-judgment-debtor that the Executing Court at Gautam Budh Nagar lacked territorial jurisdiction to pass order of attachment at the time of transfer of decree for execution relating to the machine admittedly lying outside its territorial jurisdiction at Dholpur, it is sufficient to observe that in the obtaining facts and circumstances of the case, such argument lacks merit and force. The aforesaid contention regarding lack of territorial jurisdiction at this stage is also liable to be rejected. It is not in dispute that the order passed by the Court at Gautam Budh Nagar, while transferring the decree along with the order of attachment, was never challenged by the objector–judgment-debtor at the relevant point of time. On the contrary, the judgment-debtor participated in the execution

proceedings before the Executing Court at Dholpur without raising any objection or protest as to the territorial jurisdiction of the Court at Gautam Budh Nagar or the legality of the order of transfer and attachment. Having acquiesced in the proceedings and submitted to the jurisdiction of the Executing Court, the judgment-debtor cannot now be permitted to turn around and question the validity of the earlier order. Moreover, it is to be noted that the earlier order passed by the Executing Court at Dholpur was itself challenged by the decree-holders by filing Revision Petition No. 114/2021 before this Court. While allowing the said revision, this Court remanded the matter to the Executing Court at Dholpur with a specific direction to decide the execution afresh after affording opportunity to both the parties to lead evidence. Pursuant thereto, a fresh and independent order dated 11.11.2022 has been passed by the Executing Court. In view of the passing of the fresh order upon remand, any alleged illegality or irregularity in the earlier order does not survive, nor can it be pressed into service to assail the impugned order. The execution proceedings now stand governed by the order dated 11.11.2022, which has been passed after due compliance with the directions issued by this Court.

63. It is trite law that not every erroneous decision amounts to an illegal exercise of jurisdiction. The revisional jurisdiction cannot be invoked to correct mere errors of law or fact unless they go to the root of jurisdiction.

64. As regards order dated 07.12.2021 rejecting the decree-holders' application to lead additional evidence, it is found that the Executing Court exercised its discretion judiciously. The application was filed by the decree-holders, when evidence had already been

concluded, and the application was filed at a belated stage. No sufficient cause was shown to justify reopening of evidence. The order does not disclose any arbitrariness or failure to exercise jurisdiction.

65. This court finds that decree dated 09.02.2017, passed in Suit No. 101/2016, is a decree of permanent injunction restraining Defendant No.1 from disclosing or sharing the design of a surgical gloves manufacturing machine in violation of the agreement dated 18.10.2015. The decree does not contain any direction for delivery, seizure, attachment, or restraint on operation of any machine.

66. In execution of the said decree, the decree holder sought attachment of two machines installed in the premises of the petitioner company, alleging that the machines were manufactured in violation of the decree. By the impugned order dated 11.11.2022, the Executing Court released one machine taking into consideration alleged agreement dated 29.01.2015, but maintained attachment of the second machine, purportedly on the ground that the said machine was fabricated pursuant to an agreement dated 20.06.2020.

67. This court finds valid force in the submission of learned Senior Counsel for the decree holders that the photocopy of the agreement dated 29.01.2015 could not have been taken into consideration by the Executing Court while adjudicating objections under Section 47 CPC, as the said document was never proved in accordance with law. It is undisputed that the agreement was not marked as an exhibit during the trial or even during execution proceedings and, therefore, did not form part of the evidentiary record on the basis of which the decree was passed. An executing

court cannot rely upon documents which were neither proved nor judicially accepted. Further, although an application seeking permission to lead secondary evidence under Section 65 of the Indian Evidence Act, 1872 was filed, the same was neither allowed nor adjudicated upon by the Executing Court. In the absence of a judicial determination permitting secondary evidence, the photocopy of the agreement continued to remain legally inadmissible and devoid of evidentiary value. Mere filing of an application under Section 65 of the Indian Evidence Act, 1872 does not, by itself, confer admissibility upon a document unless the foundational facts are established and permission is expressly granted by the court. This view is guided by the judgment of the Hon'ble Supreme Court in the case of **Life Insurance Corporation of India & Another vs. Ram Pal Singh Bisen (supra).**

68. It is also well settled that merely putting questions in cross-examination with reference to a document which is otherwise inadmissible or unproved does not clothe such document with legality or render it admissible in evidence. Cross-examination cannot be used as a device to indirectly introduce or validate material which has not been proved in accordance with law. An unexhibited document does not acquire evidentiary status merely because it is referred to or confronted to a witness during cross-examination, in the absence of its formal proof and admissibility being judicially determined. Similar view has been taken by Delhi High Court in the case of **S. Gurbachan Singh & Others vs. Geeta Issar (supra)**. Consequently, the impugned order, insofar as it proceeds on reliance upon an unexhibited document and an undecided application for secondary evidence, suffers from a patent

jurisdictional error and material irregularity. Such an approach undermines the principles of leading documentary evidence and is not tenable under law.

69. Be that as it may, notwithstanding the issue that the photocopy of agreement dated 29.01.2015 was erroneously considered by the Executing Court or not; nevertheless the core and fundamental question before this court is as to whether even if the aforesaid agreement dated 29.01.2015 as well as other evidence of judgment debtor is ignored and not taken into consideration, even then whether the decree dated 09.02.2017, if taken as it is, can be held to be executable under law, or not?

70. Burden to prove that the decree was executable in its form and substance, as it stands, solely rests upon the decree-holder, who has come before the executing court for getting the decree executed. This Court finds that on a plain reading of decree dated 09.02.2017, it is evident that the decree is one of injunction simpliciter. It restrains Defendant No.1 from disclosing the design covered under the agreement dated 18.10.2015 to third parties. The decree does not identify any machine, does not declare any machine to be infringing, nor does it restrain the use, operation, or possession of any machine by the petitioner company.

71. It is can be deduced from the judgments relied upon by both the sides that it is a settled principle of law that an executing court cannot travel beyond the decree, nor can it grant reliefs which were neither claimed nor granted in the original suit. The decree must be executed as it stands and not as it ought to have been passed.

72. The decree in question is prohibitory in nature and purports to restrain the judgment debtor from manufacturing a machine embodying the same design as that prepared by the decree holder. However, a careful examination of the agreement between the parties, the plaint, the judgment and decree, as well as the execution petition, reveals complete silence with regard to the specifications, contours, or technical particulars of the allegedly protected design. No drawings, dimensions, distinguishing features, or identifying parameters have been specified at any stage.

73. It is significant that a prohibitory decree, to be executable, must define with precision the act or conduct that is intended to be prohibited by the decree. Where the decree is vague and leaves the scope of restraint indeterminate, the executing court cannot enforce it without engaging in speculation, which is impermissible in execution proceedings. Accordingly, the decree, as framed, lacks the essential certainty required for enforcement and is rendered inexecutable. In the case of **Brakewel Automotive Components (India) Private Limited (supra)**, the Hon'ble Supreme Court has clearly held that the executing court while deciding objections under Section 47 CPC can also examine as to whether the decree is capable of execution under law or not? In the case of **Sanwarlal Agrawal & Others (supra)**, while referring the earlier judgment of **Meenakshi Saxena v. ECGC Ltd., (2018) 7 SCC 479**, it has been held by the Hon'ble Supreme Court that when there is ambiguity in the decree with regard to material aspects, then it becomes the bounden duty of the executing court to interpret the decree in the process of giving a true effect to the

decree. The objection raised by the judgment debtors, therefore, deserves to be sustained.

74. Under Section 47 CPC, all questions arising between the decree-holder and the judgment debtor relating to execution, discharge, or satisfaction of the decree must be decided by the executing court. This includes objections that the decree is inherently vague or incapable of execution. Although while an executing court cannot go behind the decree, yet it can examine whether the decree is a nullity or incapable of execution due to inherent defects or even vagueness.

75. It is also noteworthy that Order XXI Rule 32 CPC, which governs execution of injunction decrees, presupposes that the injunction is capable of precise ascertainment. Execution for disobedience can arise only when the prohibited act is clearly identifiable; otherwise, no objective breach can be established.

76. It is a settled principle that a decree must be clear, definite, and specific to be executable. Although an executing court may construe a decree by reference to the judgment and, if necessary, the pleadings, such construction is permissible only where sufficient guidance exists. Where the decree and the foundational pleadings are themselves silent on essential particulars, the defect is incurable at the execution stage. The execution cannot be founded on conjecture or assumptions regarding what the decree-holder intended to restrain, as the executing court must enforce the decree as it stands and not as it ought to have been framed. However, a vague injunction decree magnifies enforcement difficulties and risks arbitrariness. Similarly, it is also settled preposition of law where the subject matter of

restraint is not distinctly identifiable, the decree becomes inexecutable.

77. In the present case, this Court finds that the prohibitory decree dated 09.02.2017 is entirely silent on the specifications and identifying features of the machine design sought to be protected, not only in the decree, but also in the agreement, pleadings, and execution petition. Such foundational vagueness deprives the decree of enforceable content. Applying the settled principles under Section 47 CPC and the authoritative pronouncements of the Supreme Court, the decree lacks the requisite clarity and certainty for execution and is inexecutable in law.

78. In the present case, the Executing Court has maintained attachment of one machine on the premise that it was fabricated pursuant to an agreement dated 20.06.2020. This reasoning, in the considered opinion of this Court, suffers from a fundamental jurisdictional error. It is a matter of record that the agreement dated 20.06.2020 was not the subject matter of the decree. The decree emanates from the agreement dated 18.10.2015 and restrains only disclosure of design by Defendant No.1. Whether any subsequent agreement violates the earlier agreement is a matter requiring independent adjudication and cannot be presumed in execution proceedings.

79. Following findings given recorded the Executing Court in order dated 11.11.2022 are relevant for examining its legality, validity and jurisdictional propriety:

> "13. आपत्तिकर्ता की ओर से यह दलील रखी गई कि, इस न्यायालय को पहले यह निर्णित करना आवश्यक होगा कि जो मशीनें दौराने इजराय कार्यवाही कुर्क की गंई हैं, वह डिक्रीदार द्वारा बताए गए डिजाइन तथा मॉडल की मशीन है, और यदि न्यायालय इस निष्कर्ष पर पहुंचती है, तभी इन मशीनों की कुर्की की जा सकती है। अपने तर्क की पुष्टि हेतु आपत्तिकर्ता की ओर से विद्वान अधिवक्ता की दलील है कि स्वेअर हैल्थ

केयर के पूर्व डायरेक्टर हरीश उर्फ हर्ष गुप्ता ने फैज मौहम्मद के साथ दिनांक 29.01.2015 को अनुबंध किया जिसके अनुसार एक मशीन तैयार हुई। वाद में वादीगण यह कहकर आए कि दिनांक 18.10.2015 को वादीगण का फैज मोहम्मद (मद्यून) के साथ अनुबंध निष्पादित हुआ और इस अनुबंध के अनुसार वादी के बताए गए डिजाइन व मॉडल और अनुपात अनुसार मशीन निर्मित की जानी थी। आपत्तिकर्ता के पसिर में स्थित दो मशीनों में से जिस मशीन को पुरानी मशीन कहा गया है, मौहम्मद इमरार द्वारा बनायी गयी। यह मशीन मौहम्मद इमरान और स्वेअर हैल्थ केयर के पूर्व डायरेकटर हरीश उर्फ हर्ष गुप्ता के बीच हुए अनुबन्ध दिनांकित 29.01.2015 के अनुसरण में तैयार की गयी इसलिए जब यह पुरानी मशीन निर्मित की गयी, तब तक वादीगण ने मौहम्मद इमरान के साथ कोई डिजाईन, मॉडल या अनुपात साझा नहीं किया था इसलिए यह मशीन वादीगण के बताये डिजाइन को प्रतिवादीगण द्वारा व–साज साझा करके मशीन बनाने का कोई न तो प्रश्न है, और न ही अवसर हो सकता है।

14. आपत्तिकर्ता के इस तर्क के खण्डन में डिक्रीदार ने दस्तावेज प्रदर्श एन.ए.1, अनुबन्ध प्रदर्श ए–3, ए–4, ए–5, ए–6, ए–7 लगायत ए–12 पर बल दिया और यह तर्क रखा कि यह वही डिजाइन हैं जो मौहम्मद फैज के साथ किये गये अनुबन्ध दिनांकित 18.10.15 के अनुसरण में बतायी गयीं थीं।

15. दोनों ओर से उपस्थित दोनों अधिवक्तागण ने अपनी पुरजोर बहस में दोनों पक्षों द्वारा बताये गये एग्रीमेंट एवं एग्रीमेन्ट के संदर्भ में प्रस्तुत की गयी साक्ष्य पर विस्तृत बहस की जिसमें मुख्यतः बिन्दु यह रखा कि आपत्तिकर्ता पूर्व डायरेक्टर हर्ष गुप्ता के एग्रीमेन्ट दिनांकित 29.01.2015 को प्रमाणित नहीं कर सका और इस एग्रीमेन्ट के लिए बनायी गयी किसी मशीन के लिए अदा की गयी राशि को भी प्रमाणित नहीं कर सका। इसी प्रकार से आपत्तिकर्ता ने वादीगण/डिक्रीदार के द्वारा अनुबन्ध, मशीन डिजाइन, अदा राशि के संबंध में विवाद उठाते हुए तर्क रखे।

16. इस न्यायालय के आदेश दिनांक 14.09.2021 के द्वारा आपत्तिकर्ता के परिसर में संचालित दो कुर्क की गयी मशीनों में से एक को कुर्की से बागुजार करने के आदेश को डिक्रीदार ने माननीय उच्च न्यायालय के समक्ष चुनौती दी जिस पर माननीय उच्च न्यायालय ने आदेश दिनांकित 20.10.2021 के द्वारा दोनों पक्षों की साक्ष्य लेखबद्ध करने के आदेश पारित किये। उक्त आदेश की पालना में दोनों पक्षों की ओर से मौखिक व दस्तावेजीय साक्ष्य पेश की गयी।

18. दोनों पक्षों की ओर से प्रस्तुत साक्ष्य का अवलोकन किया गया। यह साक्ष्य मुख्यतः फैक्ट्री में निर्मित मशीन, डिजाइन, उसके संबंध में अनुबन्ध, खरीदे गये माल और अदा की गयी राशि के संबंध में है। साक्ष्य के बावत् दोनों पक्षों के तर्क–वितर्कों को सुनने के उपरांत मेरा यह मत है कि यह न्यायालय न तो इस विषय पर मत व्यक्त कर सकती है कि क्या मद्यूनान् ने विद्वान न्यायालय द्वारा जारी निषेधाज्ञा का कोई उल्लंघन किया? न ही यह मत व्यक्त करने के लिए सक्षम है कि वादीगण ने प्रतिवादी संख्या 1 व 2 के साथ कौन सा डिजाइन, मॉडल व अनुपात साझा किया और प्रतिवादी संख्या 1 व 2 (मौहम्मद फैज और मौहम्मद इमरान) किसी डिजाईन के आधार पर आपत्तिकर्ता या मद्यूनान 3 लगायत 5 को मशीनें निर्मित करके दीं। मेरा यह मत इस तथ्य पर आधारित है कि मूल वाद में पारित एकपक्षीय डिक्री के विरूद्ध कार्यवाही विद्वान अधीनस्थ न्यायालय के समक्ष लम्बित हैं। डिक्री से किसी भी प्रकार की कोई आपत्ति या चुनौती प्रस्तुत करने के लिए कानून में निर्धारित उपचार है, आज यदि यह न्यायालय प्रकरण में प्रस्तुत साक्ष्य के आधार पर यह मत व्यक्त करती है कि मैसर्स अनोन्दिता हैल्थ केयर और उसके डायरेक्टर का मौहम्मद फैज

के साथ अनुबन्ध और उसकी परिणीति क्या रही तथा उस अनुबन्ध का कोई उल्लंघन किया गया या नहीं, तो यह न्यायालय अपने क्षेत्राधिकार से बाहर जाकर मत व्यक्त करेगी जो किसी भी प्रकार से कानून सम्मत् नहीं है।

धारा 47 दी.प्र.सं. निम्न प्रकार हैं :–

प्रश्न जिनका अवधारण डिक्री का निष्पादन करने वाला न्यायालय करेगा :– (1) वे सभी प्रश्न, जो उस वाद के पक्षकारों के या उनके प्रतिनिधियों के बीच पैदा होते हैं, जिसमें डिक्री पारित की गयी थी और जो डिक्री के निष्पादन, उन्मोचन या तुष्टि से संबंधित हैं, डिक्री का निष्पादन करने वाले न्यायालय द्वारा, न कि पृथक वाद द्वारा, अवधारित किये जायेंगे।
(2) .....
(3) जहां यह प्रश्न पैदा होता है कि कोई व्यक्ति किसी पक्षकार का प्रतिनिधि है या नहीं है वहां ऐसा प्रश्न उस न्यायालय द्वारा इस धारा के प्रयोजनों के लिए अवधारित किया जाएगा।

21. डिक्रीदार के विद्वान अधिवक्ता का तर्क है कि आपत्तिकर्ता के परिसर में संचालित दोनों मशीनें कुर्क की गयी जिसमें से एक मशीन को इस न्यायालय ने कुर्की से बागुजार किया तो डिक्रीदार ही माननीय उच्च न्यायालय के समक्ष इस आदेश को चुनौती देने हेतु गया था। इसका यह अर्थ माने जाना चाहिए कि आपत्तिकर्ता को यह स्वीकार था कि उसकी एक मशीन कुर्क किये जाने योग्य है और इसलिए वह कभी भी कुर्की के विरूद्ध आपत्ति लेकर नहीं आया, परन्तु मैं डिक्रीदार की ओर से उठाये गये इस तर्क को स्वीकार करना उचित नहीं समझती, क्योंकि दोनों मशीनें कुर्क किये जाने के विरूद्ध ही प्रस्तुत आपत्तियां आपत्तिकर्ता ने इस न्यायालय में पेश की हैं। यह सही है कि कुर्की से केवल एक मशीन को बागुजार करने के आदेश के विरूद्ध आपत्तिकर्ता माननीय उच्च न्यायालय के समक्ष गया, दोनों मशीनों को कुर्की से बागुजार करने की प्रार्थना लेकर माननीय उच्च न्यायालय के समक्ष नहीं गया, लेकिन इससे यह अर्थ नहीं रखा जा सकता कि आपत्तिकर्ता दोनों मशीनों की कुर्की को स्वीकार करता है।

22. यह न्यायालय इस बाध्यता के प्रति सजग है कि धारा 47 जाब्ता दीवानी की शक्तियां अपील के मुकाबले कम व तंग हैं और निष्पादन कार्यवाही में कोई नया केस निर्मित नहीं किया जा सकता। विद्वान विचारण न्यायालय द्वारा इस न्यायालय को इजराय अन्तरित करते हुए यह अपेक्षा नहीं की गयी कि यह न्यायालय निर्धारित करे कि कौन सी मशीन वाद संख्या 101/2016 उनवानी मैसर्स अनोन्दिता हैल्थ केयर बनाम फैज मौहम्मद वगैरह, न्यायालय सिविल जज् सीनियर डिवीजन गौतम बुद्ध नगर के निर्णय दिनांकित 09.02.2017 की अवहेलना में निर्मित की गयी है और उस मशीन की पहचान की जार उसे कुर्क किया जाये, परन्तु यह भी अवधारित नहीं किया जा सकता कि डिक्री के निष्पादन हेतु किसी परिसर या संस्थान में जितनी मशीनें संचालित हों, सभी को कुर्क कर दिया जाये। इसलिए निष्पादन की अन्तरिति न्यायालय के रूप में यह देखना इस न्यायालय के अधिकार सीमा क्षेत्र में है कि अन्तरिति न्यायालय की डिक्री का निष्पादन किस मशीन से तात्पर्यित है। विद्वान विचारण न्यायालय के समक्ष प्रस्तुत वाद पत्र संख्या 101/2016 (जिसकी प्रमाणित प्रति पत्रावली पर प्रस्तुत है) में, वादी डिक्रीदार ने यह अभिवचन किया कि प्रतिवादी संख्या 1 (मौहम्मद फैज) के साथ वादी का दिनांक 18.10.2015 को अनुबन्ध हुआ और इसी अनुबन्ध में यह तय किया गया कि वादी मौहम्मद फैज को ग्लब्स और कन्डॉम मशीन का डिजाइन, मॉडल, अनुपात का विवरण देगा और प्रतिवादी (मौहम्मद फैज) बताये अनुसार मशीन निर्माण

> करेगा। वाद पत्र के इस अभिवचन से ही यह स्पष्ट है कि दिनांक 18.10.2015 के अनुबन्ध से पहले न तो वादी ने मौहम्मद फैज को कोई मशीन का डिजाइन, मॉडल या अनुपात बताया न ही मौहम्मद फैज को वादी के मस्तिष्क के मॉडल, डिजाइन या अनुपात की जानकारी हो सकती थी। अत : वादी और प्रतिवादी संख्या 1 के अनुबन्ध दिनांकित 18.10.2015 की तिथि से बहुत पहले दिनांक 29.01.2015 की जो हर्ष गुप्ता व प्रतिवादी संख्या 1 के अनुबन्ध के अनुसार मशीन निर्मित की गयी है, इस इजराय की अनुपालना में कुर्की योग्य नहीं हो सकती है। इसलिए मेरे निश्चित मतानुसार जिस पुरानी मशीन को इस न्यायालय के आदेश दिनांक 14.09.2021 के द्वारा कुर्की से बागुजार किया गया वह कुर्की से बागुजार रखने योग्य है जबकि दिनांक 20.06.2020 के अनुबन्ध के आधार पर निर्मित मशीन को कुर्क किये जाने का न्यायसंगत कारण है। अतः आपत्तिकर्ता का प्रार्थना पत्र अंतर्गत धारा 47 दी.प्र.सं. आंशिक रूप से स्वीकार किये जाने योग्य है।
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> 24. अतः आपत्तिकर्ता का प्रार्थना पत्र अंतर्गत धारा 47 दी.प्र.सं. आंशिक रूप से स्वीकार किया जाकर उक्त इजराय संख्या 34/2021 के निष्पादन में दिनांक 07.08.2021 द्वारा की गयी मशीन की कुर्की बरकरार रहेगी जबकि आदेश दिनांकित 14.09.2021 के द्वारा जिस मशीन को कुर्की से बागुजार किया गया है (जो डिक्रीदार/वादी के मद्यून संख्या 1 के साथ अनुबन्ध की तिथि से पूर्व में निर्मित की गयी, मशीन है) को कुर्की से बागुजार किया जाता है।"

80. Bare perusal of the entire order passed by the Executing Court would make it clear that the Executing Court nowhere considered that the decree does not contain any finding that the machines installed at the petitioner's premises are based on or derived from the protected design. In the absence of such adjudication, attachment of a machine amounts to enforcement of a right which is not crystallised by the decree.

81. A careful perusal of the impugned order dated 11.11.2022 reveals that the Executing Court has not assigned cogent reasons as to how the second machine falls within the mischief of the decree. The order merely records that there is justification to maintain attachment of the machine fabricated under the agreement dated 20.06.2020, without examining how such fabrication, by itself, constitutes violation of the injunction decree.

82. The impugned order, to that extent, is non-speaking and rests on conjectural findings. Such an order cannot be sustained in law, particularly when it results in deprivation of property without a clear adjudicatory foundation.

83. While an executing court is empowered to decide questions relating to execution, discharge or satisfaction of the decree, it cannot undertake an inquiry which effectively amounts to determination of fresh substantive rights. The question whether the machine in question embodies the protected design, or whether its manufacture violates contractual or intellectual property rights, cannot be adjudicated in execution proceedings in the absence of a clear finding in the decree. Permitting such inquiry would amount to converting execution proceedings into a retrial, which is impermissible.

84. In view of the aforesaid discussion, this Court is of the considered opinion that the executing court, while maintaining attachment of one machine, has exercised jurisdiction not vested in it by law and has travelled beyond the scope of the decree dated 09.02.2017. The impugned order, to the extent it maintains attachment of one machine, suffers from material irregularity and cannot be sustained.

85. In the light of foregoing discussions, analysis of the facts, material on record, findings recorded by the Executing Court and the prevailing law, the objections raised by the Objectors-Judgment debtors under Section 47 CPC are sustained and hereby allowed. The impugned order dated 11.11.2022 is set aside to the extent it maintains attachment of one machine installed at the premises of the Objectors-Judgment debtors. The Executing Court

is directed to release both the said machines forthwith in favour of the Objectors-Judgment debtors.

86. Accordingly, S. B. Civil Revision Petition No. 12/2023 filed by the Decree-holders is hereby dismissed and S. B. Civil Revision Petition No. 273/2022 filed by the Objectors-Judgment debtors is allowed with the aforesaid directions.

87. Pending applications, if any, stands disposed of.

88. Office is directed to place a copy of this judgment on record of connected revision petition.

(ANAND SHARMA),J

MANOJ NARWANI /**