* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 11.05.2026

% ***Judgment Delivered on: 15.06.2026***

\+ **CM(M) 1181/2022 & CM Nos. 47354/2022, 47355/2022, 42813/2025 & 60377/2025**

NBCC INDIA LIMITED .....Petitioner

versus

GNC INFRA LLP & ANR. .....Respondents

Advocates who appeared in this case

For the Petitioner : Mr. Mohit Arora, Advocate

For the Respondents : Mr. Alok Bhachawat, Mr. Ishan Jain & Mr. Vishnu Dhangal, Advocates.

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

INTRODUCTION

1. The present Petition assails the Order dated 27.09.2022 ("**Impugned Order**") passed by the Court of Ms. Nirja Bhatia, District Judge (Commercial Court-06), South-East District, Saket District Courts ("**Trial Court**"), in CS (Comm) No. 350/2020 ("**Suit**"), instituted by Respondent No. 1 against Respondent No. 2 and the Petitioner, who were arrayed as Defendant Nos. 1 and 2, respectively.

FACTUAL MATRIX

2. In the Suit, it is the case of Respondent No. 1 / the Plaintiff that:

2.1. On 02.09.2015, the Petitioner awarded a contract to Respondent No. 2, *vide* a Letter of Award, for the construction of the National Investigation Agency ("**NIA**") Branch Office, Residential Building, and allied works at HI-Tech City, Hyderabad, Telangana ("**Project**"). Pursuant thereto, an agreement was executed between the Petitioner and Respondent No. 2 on 26.10.2015.

2.2. After the award of the work to Respondent No. 2, Respondent No. 2 further sub-contracted the same to Respondent No. 1. Owing to payment disputes, the sub-contract was mutually terminated. Thereafter, on 10.11.2018, Respondent No. 1 and Respondent No. 2 arrived at an understanding that the payment disputes would be evaluated on the basis of the work executed by Respondent No. 1 from October 2017 to April 2018, along with the evaluation and reconciliation of RA Bill Nos. 14 to 17.

2.3. Thereafter, the work executed by Respondent No. 1 was evaluated and, on the basis of such evaluation, a Settlement Agreement dated 20.11.2018 was executed between Respondent No. 1 and Respondent No. 2. In terms of the said Settlement Agreement, Respondent No. 2 agreed to pay Respondent No. 1 a sum of Rs. 1,00,00,000/- towards full and final settlement of all dues payable to Respondent No. 1 up to 20.11.2018.

2.4. In discharge of the aforesaid liability, Respondent No. 2 issued two cheques in favour of Respondent No. 1 aggregating to Rs.

60,00,000/- and further assured that the balance amount of Rs. 40,00,000/- would be paid on or before 30.11.2019. Subsequently, both the cheques issued by Respondent No. 2 in favour of Respondent No. 1 were allegedly dishonoured on the grounds of "*Funds Insufficient*" and "*Payment Stopped by Drawer*".

2.5. In respect of the aforesaid dishonour of cheques, Respondent No. 1 instituted two complaints against Respondent No. 2, which are stated to be pending adjudication before the Court of the Metropolitan Magistrate, Saket Courts, Delhi.

2.6. Respondent No. 1 further issued a legal notice to the Petitioner, requesting that any outstanding amount payable to Respondent No. 2 in relation to the Project not be released in favour of Respondent No. 2 from the bank guarantee furnished by Respondent No. 2.

2.7. Thereafter, another notice was issued to the Petitioner, whereby Respondent No. 1 claimed release of an amount of Rs. 1,00,00,000/- in its favour.

3. As Respondent No. 2 allegedly failed to make the payment of the settlement amount in terms of the Settlement Agreement dated 20.11.2018, Respondent No. 1 filed the Suit against both Respondent No. 2 and the Petitioner, *inter alia*, praying for the following relief:

> "*It is therefore, most respectfully prayed that this Court may be pleased to pass a decree:*
>
> a) *In favor of the Plaintiff firm and against the defendant No.1 for a sum of Rs.1,48,73,337/- (Rupees One Crore Forty-Eight Lakh Seventy-Three Thousand Three Hundred Thirty Seven Only) along with future and pendente lite interest@ 24% p.a. on the above said sum till realization of the same*;

b) *In favor of the Plaintiff against the defendant No. 2 for a permanent injunction restraining defendant No. 2 from realizing to the defendant No. 1 a sum of Rs. 114873,337/- (Rupees One Crore Forty-Eight Lakh Seventy-Three Thousand Three Hundred Thirty Seven Only) or any part thereof, till the amount of Rs. 1,48,73,337/- (Rupees One Crore Forty-Eight Lakh Seventy Three Thousand Three Hundred Thirty Seven Only) is paid by defendant No. 1 to the Plaintiff.*

c) *In favor of Plaintiff against defendant No. 2 for mandatory injunction directing the defendant No. 2 to deposit before this Court a sum of Rs. Rs. 1,48,73,337/- (Rupees One Crore Forty-Eight Lakh Seventy Three Thousand Three Hundred Thirty Seven Only) or any other sum, if any, payable by the defendant No. 2 to defendant No. 1 including the bank guarantee of the defendant No. 1 which was given by the defendant No. 1 to the defendant No. 2 at the time of entering into the contract dated 2.09.2015."*

4. The Trial Court *vide* order dated 04.01.2021 directed the Parties to maintain *status quo* in respect of the payment to be made.

5. The Trial Court *vide* the Impugned Order modified the order dated 04.01.2021 thereby directing the Petitioner to deposit by way of Fixed Deposit Receipt ("**FDR**") an amount equivalent to the suit claim i.e., Rs. 1,48,73,337/- ("**Suit Amount**") within 1 week of passing of the Impugned Order.

6. Aggrieved by the Impugned Order, the Petitioner has approached this Court by way of the present Petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

7. The learned Counsel for the Petitioner made the following submissions:

7.1. The Impugned Order has been passed despite the Petitioner neither being a proper nor a necessary party to the Suit. The Petitioner was

impleaded in the Suit only as a *pro forma* party, and Respondent No. 1 has neither sought any substantive relief against the Petitioner nor asserted any independent cause of action against it. The principal grievance of Respondent No. 1 is directed solely against Respondent No. 2.

7.2. The learned Trial Court failed to appreciate that there exists no privity of contract between the Petitioner and Respondent No. 1. It further failed to appreciate that neither has Respondent No. 1 claimed any amount from the Petitioner, nor has Respondent No. 2 asserted any claim against the Petitioner.

7.3. In the absence of any claim or application against the Petitioner, and without any adjudication as to whether the Suit Amount was payable by Respondent No. 2 to Respondent No. 1, the direction requiring the Petitioner to deposit the Suit Amount is wholly misconceived, unsustainable in law, and liable to be set aside.

7.4. In the Suit, the Petitioner had entered appearance upon advance notice. However, without affording the Petitioner an opportunity of being heard, the learned Trial Court passed an order dated 04.01.2021 directing the parties to maintain *status quo* with respect to the payment in question.

7.5. On the date on which the aforesaid *status quo* order was passed, i.e., 04.01.2021, Respondent No. 1 had not even deposited the requisite *ad valorem* court fees in respect of the Suit; the said court fees came to be filed only in September 2022.

7.6. Subsequently, the Petitioner filed its written statement as well as its reply to the application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 ("**CPC**"), both of which were taken on record. The principal stand taken by the Petitioner in its written statement and reply was that there exists no privity of contract between Respondent No. 1 and the Petitioner; that the Petitioner does not recognise Respondent No. 1; that the dispute is solely between Respondent Nos. 1 and 2; and, accordingly, that the Suit was liable to be dismissed *qua* the Petitioner.

7.7. On 05.09.2022, Respondent No. 2 filed an application under Order XXXIX Rule 4 read with Section 151 CPC seeking vacation of the stay granted *vide* order dated 04.01.2021, as well as an application under Order VIII Rule 1 CPC praying that Respondent No. 1 be directed to furnish a copy of the plaint along with its annexures. The application under Order XXXIX Rule 4 read with Section 151 CPC was taken up on 12.09.2022 and was, thereafter, adjourned to 15.09.2022.

7.8. On 15.09.2022, the learned Trial Court directed Respondent No. 1 to file a reply to the said application and further directed it to furnish a copy of the plaint to Respondent No. 2.

7.9. Although Respondent No. 2 eventually filed its written statement, the same has not, to date, been taken on record, as Respondent No. 1 has moved an application under Order VIII Rule 10 CPC seeking that the defence of Respondent No. 2 be struck off.

7.10. On 26.09.2022, all parties appeared before the learned Trial Court. Arguments were addressed by Respondent No. 2 on its application under Order XXXIX Rule 4 CPC, and by Respondent No. 2 and the Petitioner on the application under Order XXXIX Rules 1 and 2 CPC filed by Respondent No. 1. Respondent No. 2 contended that the agreement between Respondent Nos. 1 and 2 contained an arbitration clause governing dispute resolution and that, therefore, the learned Trial Court lacked jurisdiction to entertain the matter. However, since the main counsel for Respondent No. 1 was unavailable on 26.09.2022, the matter was adjourned to 27.09.2022.

7.11. After hearing the parties, the learned Trial Court adjourned the matter to 01.10.2022 for orders on the applications moved by Respondent No. 1. However, without properly appreciating the material on record, the learned Trial Court proceeded to pass the Impugned Order.

7.12. A statement was recorded by Respondent No. 2, in person and in the presence of counsel, to the effect that it had no objection if the Suit Amount were withheld by the Petitioner until the learned Trial Court rendered a decision on the merits.

7.13. In the meantime, the learned Trial Court passed a further order dated 15.10.2022 whereby the right of Respondent No. 2 to file its written statement was closed. The learned Trial Court incorrectly recorded that no reply to the application under Order XXXIX Rules 1 and 2 CPC had been filed by the Petitioner, and it failed to

notice or record the submissions contained therein in the Impugned Order.

7.14. In fact, the Petitioner had already filed its reply to the application under Order XXXIX Rules 1 and 2 CPC along with its written statement, and the Impugned Order was passed without due consideration of the said reply on record.

7.15. The learned Trial Court further erred in recording that the Authorised Representative ("**AR**") of the Petitioner had made a statement to the effect that the Suit Amount be released while simultaneously seeking deletion of the Petitioner from the array of parties. No such statement was ever made by the AR of the Petitioner before the learned Trial Court, and the said observation is wholly misconceived. There is no such statement on record upon which the learned Trial Court could have legitimately relied. From the inception of the Suit, the consistent stand of the Petitioner has been that it has no concern with the disputes between Respondent Nos. 1 and 2 and that, there being no privity of contract whatsoever between the Petitioner and Respondent No. 1, the Petitioner is not a necessary party to the Suit.

7.16. The learned Trial Court failed to appreciate that the Petitioner is not privy to the alleged Settlement Agreement dated 20.11.2018 entered into between Respondent Nos. 1 and 2 and, therefore, cannot be directed to deposit any amount purportedly agreed between those parties thereunder.

7.17. In the absence of any claim whatsoever against the Petitioner, and without any adjudication of the disputes between Respondent Nos. 1 and 2, the learned Trial Court could not have directed the Petitioner to deposit the Suit Amount in a fixed deposit before the Court.

7.18. The learned Trial Court further failed to appreciate that, under the contract between the Petitioner and Respondent No. 2, the latter becomes eligible to receive payment only upon corresponding payments being received by the Petitioner from the client / owner of the Project, namely the NIA. At this stage, in the absence of release of the final bill by the NIA, it is premature and not possible to ascertain the exact amount, if any, payable by the Petitioner to Respondent No. 2. Consequently, the direction requiring the Petitioner to deposit the Suit Amount without any liability having been fastened upon it is baseless and liable to be set aside.

7.19. The learned Trial Court, merely on the basis of a statement made by Respondent No. 2, directed the Petitioner to deposit the Suit Amount along with interest before the learned Trial Court, despite there being no claim by Respondent No. 2 against the Petitioner in the Suit.

7.20. By passing the Impugned Order, the learned Trial Court has, in effect, decreed the Suit in favour of Respondent No. 1 and against the Petitioner without completion of pleadings and without appreciating or recording any evidence whatsoever, despite the fact that the application under Order VIII Rule 10 CPC filed on

behalf of Respondent No. 1 and the application under Order VIII Rule 1 CPC filed on behalf of Respondent No. 2 were still pending adjudication before the Court.

7.21. Without first deciding whether the written statement filed by Respondent No. 2 was to be taken on record, the learned Trial Court ought not to have passed the Impugned Order directing the Petitioner to deposit the Suit Amount.

7.22. It is well settled that every judicial order must disclose the reasons which led to the conclusions recorded therein as the absence of reasons renders such order vulnerable to challenge. The learned Trial Court was required to exercise its discretion judiciously and could not have permitted itself to be guided merely by the changing positions adopted by the parties to the *lis*.

7.23. While directing the Petitioner to deposit the Suit Amount, the learned Trial Court recorded no reasons whatsoever, nor does the Impugned Order contain any findings explaining how such conclusion was arrived at. The Impugned Order is thus an unreasoned and non-speaking order and is liable to be set aside.

7.24. The Petitioner has, in any event, been deleted from the array of parties by order dated 01.08.2024. Consequent upon such deletion, neither the *status quo* order dated 04.01.2021 nor the Impugned Order dated 27.09.2022 could continue to operate against the Petitioner.

7.25. The reliance placed by Respondent No. 1 on ***Value Advisory Services v. ZTE Corporation***, 2009 SCC OnLine Del 1961, is

misconceived, as the petition in the said case was dismissed by this Court.

7.26. Accordingly, the Impugned Order suffers from manifest errors of law and fact apparent on the face of the record and is, therefore, liable to be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

8. The learned Counsel for Respondent No. 1 made the following submissions:

8.1. The Suit was instituted against Respondent No. 2 for recovery of the Suit Amount. The Petitioner was impleaded as Defendant No. 2 before the learned Trial Court on the ground that it was liable to make payments to Respondent No. 2 in respect of the same Project.

8.2. On the first date of hearing, *vide* order dated 04.01.2021, the learned Trial Court directed maintenance of *status quo* in respect of the payments to be made by the Petitioner to Respondent No. 2. Subsequently, while disposing of the application under Order XXXIX Rules 1 and 2 CPC, the learned Trial Court *vide* Impugned Order modified the earlier *status quo* order dated 04.01.2021 and directed the Petitioner to deposit the Suit Amount in the form of an FDR before the learned Trial Court.

8.3. Respondent No. 1 had no objection, provided the Suit Amount remained withheld by the Petitioner and was not released to Respondent No. 2. The learned counsel for Respondent No. 2 had

also consented to the said course of action before the learned Trial Court.

8.4. Reliance was placed on the Impugned Order, wherein the learned Trial Court recorded that Respondent No. 2 had stated that it had no objection to the Petitioner withholding the Suit Amount pending a decision on the merits of the Suit. It was further recorded that the Petitioner had, on an earlier occasion, expressed no objection to withholding the Suit Amount while seeking deletion from the array of parties.

8.5. Respondent No. 1 is not insisting upon deposit of the Suit Amount in the form of an FDR. Respondent No. 1 has no objection to the deletion of the Petitioner from the array of parties and does not assert any direct claim against the Petitioner. The limited grievance of Respondent No. 1 is that the Suit Amount ought not to be released to Respondent No. 2 pending adjudication of the Suit.

8.6. Even if the Petitioner were not a necessary party to the Suit, the learned Trial Court was justified in directing the Petitioner to withhold the Suit Amount. Reliance was placed on ***Value Advisory Services*** (*supra*) to contend that there is no absolute bar against the issuance of interim directions affecting third parties where such directions are necessary to secure the amount in dispute.

8.7. Reliance was further placed on ***VR Wonder Electricals and Electronics v. C-Quest Capital Green Ventures Pvt. Ltd.***, 2012

SCC OnLine Del 3708, to submit that a garnishee ordinarily comes into the picture only after a decree has been passed against the debtor, or, if at all during the pendency of the suit, only in the context of interim proceedings under Order XXXVIII or Order XXXIX of CPC. Such a garnishee has no part in the cause of action in the suit; that a party to interim proceedings cannot, on that basis alone, be regarded as a necessary party to the suit; that such garnishee need not even be impleaded as a party to the suit; and that all that is required is that it be heard on the question of interim directions *qua* it.

8.8. In view of the above submissions, the preset Petition be dismissed as there is no infirmity with the Impugned Order.

ANALYSIS AND FINDINGS

9. In the present Petition, the principal question that arises for consideration is whether, in the absence of any crystallised liability and in the absence of any direct claim against the Petitioner, whether the learned Trial Court was justified in directing the Petitioner to deposit the Suit Amount in the form of an FDR before the learned Trial Court.

10. *Vide* order dated 04.01.2021, the Trial Court directed the Parties to maintain *status quo* in respect of the payments to be made. The said order was subsequently modified by the Impugned Order. The relevant portion of the Impugned Order is extracted below:

> *" It is reported that settlement could not be reached, despite efforts. In view of which Ld. Counsels appearing for parties have made submissions to support their respective applications. However, during the process of argument Ld. Sh. Yogesh Sharma for D1 has*

stated no objection to NBCC (D2) withholding an amount of INR Rs. 1,48,73,337 of D1 till the decision on merits.

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The AR of the defendant no. 2 has already expressed no objection qua release of suit amount during earlier proceedings with request of their deletion, qua which the rebuttal have been addressed by Ld. councel for plaintiff who has fairly conceaded that D2 cannot be directed to withhold the amounts beyond the claim made in the plaint and has stated no objection to release of remaining amounts of BG beyond the claim amount to D1.

In view of the statement recorded seperately, applications of plaintiff under order 39 rule 1 and 2 and under 38 Rule 5 and application of D1 under order 39 Rule 4 are all disposed of. Parties are directed to remain bound by their statements. In terms of the statement of D1 the amount shall be kept in FDR in the name of the Court which shall be deposited within one week before this court. The previous status quo order dated 04.01.2021 is accordingly modified. The D2 may release remaining any payments to D1.

Now at this stage, counsel for D2 submits that defendant no 2 may be given the direction to retain the suit amount by withholding in place of the directions for FDR and they may release the remaining amount. Now, he again states that the defendant no. 1 may not be entitled to the suit amount which is being claimed by plaintiff. It appears that the defendant no. 2 is moving 'back and forth'.

While it is now averred that defendant no. 1 may not even be entitled to the suit quantum in terms of inter se liabilities to be determined between defendant no. 2 and defendant no. 1, however no such objection till date of this nature has been raised. In previous proceedings no such claim is furthered and no application of whatsoever nature is filed or moved by D2 who has even failed to reply application u/o 39 Rule l and 2 of the plaintiff the reply of which is tendered by D 1 along with applicaiton u/0 39 Rule 4.

The above statements at this stage is contrary and in juxtaposition / to its own intent, as on one side the defendant no. 2 is offering to withhold the amounts in its own account and release the remaining, without explaining that if the defendant no. 1 is not entitled even to the suit amount, then how, the suit amount qua which the statement is made in presence of D2, which at all stages up till now has been also strengthened with the voice of defendant no. 2, will be paid to the plaintiff. Furthermore inter-se dispute between defendant no. 2

and defendant no. 1 are not suggested subject matters of the present suit and hence are beyond the scope of any orders. Having regard to the above the objection does not stand on merit.

11. Accordingly, the order dated 04.01.2021 cannot be considered in isolation, as the said order stood merged with the Impugned Order subsequently passed by the learned Trial Court on the application under Order XXXIX Rules 1 and 2 CPC.

12. It was submitted on behalf of Respondent No. 1 that Respondent No. 1 is not insisting upon deposit of the Suit Amount in the form of an FDR and that its limited case is that the Suit Amount ought to remain protected pending adjudication of the Suit.

13. It was further submitted on behalf of Respondent No. 1 that the order dated 26.09.2022 records that the Petitioner had expressed its willingness to make a garnishee statement, coupled with an undertaking to withhold the Suit Amount and release the remaining amount to Respondent No. 2. The relevant extract of the order dated 26.09.2022 is reproduced below:

"As per previous report, settlement failed, due to non-appearance of D2. Ld counsel for D2 states that dispute is inter-se D1 and Plaintiff and — D2 has no role. He states that D2 is willing to make a "garnishi" statement with undertaking to withhold suit amount and release remaining to D1 who only they recognise in terms of contract and that D-2 is an un-necessary party and if they are permitted to deposit the suit amount nothing stands upon which D-2 may also be deleted from array of defendants. However as now all the counsels have participated in the discussion in presence of parties to bring about some amicability towards resolution and an element of settlement through negotiation is suggested, request of referral is renewed. At request, put up before judge incharge mediation cell for today at 12:00 PM."

14. A garnishee is, in law, a debtor of the judgment-debtor. A decree-holder may proceed against a garnishee only where the judgment-debtor has a presently enforceable right to recover the debt from such garnishee. It is well settled that, while considering an order against a garnishee, the Court must first ascertain whether the debt is in fact due and payable by the garnishee to the judgment-debtor. Where the garnishee has not admitted the debt, the Court cannot compel the garnishee to deposit any amount on account of the judgment-debtor.

15. Thus, a garnishee order, which enables a judgment-creditor to obtain satisfaction of its claim, may be invoked by a decree-holder only where the debt is either undisputed or where the dispute appears to the Court to be frivolous and devoid of substance. Such a remedy is unavailable where there exists a substantial and *bona fide* dispute in respect of the debt sought to be attached.

16. Therefore, a garnishee order can be passed only once the Suit is decreed and once the Court is satisfied that a garnishee has a crystalised liability towards the judgment-debtor.

17. In the present case, the Suit is yet to be adjudicated and there is no adjudication or determination of liability by Respondent No. 2. Further, the Impugned Order does not record the crystalized liability of the Petitioner to make payment of the Suit Amount to Respondent No. 2. In absence of both the conditions having been satisfied, the Impugned Order directing the Petitioner to deposit the Suit Amount with the learned Trial Court could not have been passed.

18. The statement made by the Petitioner before the learned Trial Court as recorded in order dated 26.09.2022 regarding withholding of the Suit Amount cannot be construed as an admission of liability by the Petitioner. A willingness to preserve an amount pending adjudication cannot be equated with an acknowledgment that the amount is due and payable.

19. Consequently, the liability, if any, of the Petitioner towards Respondent No. 2 is not admitted or crystallised. The present Suit has also not been framed as a garnishee action. Therefoe, there is no legal basis for asserting any enforceable right against the Petitioner.

20. In any event, the learned Trial Court, *vide* order dated 01.08.2024, has deleted the Petitioner from the array of parties of the Suit. The relevant portion of the said order is extracted below:

> *"4. From the submissions made by the plaintiff, it is clear that there was no privity of contract between the plaintiff and defendant no. 2. Mr. Gaurav Chopra submits that under the GCC, there is provision that defendant no. 2 would safeguard the amounts payable to the sub contractors. The GCC is not part of the documents filed by the plaintiff. The reliance on any such clause of GCC is not valid in view of the submission made by Mr. Gaurav that there could not be a sub contract and due to which power of attorney was given to him by defendant no. 1.*
> *5. Ld. Counsel for the plaintiff has been asked the basis on which the plaintiff seeks an injunction against defendant no. 2. Ld. Counsel submits that this issue is also under consideration before Hon'ble High court in CM(M)1181/2022 which has been filed by defendant no. 2 to challenge the order dt. 27.09.2022 passed by my Ld. Predecessor under Order XXXIX Rule 1 & 2 CPC 1/w Order XXXVHI Rule 5 CPC directing defendant no. 2 to deposit the suit amount in the court. Ld. Counsel for defendant no. 2 submits that the issue whether defendant no. 2 is a necessary or proper party is not under consideration before Hon'ble High Court.*
> *6. In view of the submissions of Mr. Gaurav Chopra recorded above, it is clear that the plaintiff cannot seek a decree of injunction against*

defendant no. 2. At the most, direction under Order XXI Rule 46 and 46A CPC could be given to defendant no. 2 and for this the principal order has to be against defendant no. 1. Defendant no. 2 does not need to the party to the suit to secure any amount payable to the plaintiff by defendant no. 1. The plaintiff can seek the garnishee order not only against defendant no. 2 but against any other debtor of defendant no. 1 and for this such debtor does not need to be a party to the suit.

7. Plaintiff has come to this court on the basis of an alleged settlement agreement dt. 20.11.2018 between him and defendant no. 1 whereby the defendant no. 1 agreed to pay %1 crore to the plaintiff. This agreement is disputed and claimed to be forged by defendant no. 1.

8. The dispute is between the plaintiff and the defendant no. 1. Clearly defendant no. 2 is not a necessary party. Need may arise for production of documents by defendant no. 2 and this can be done by them as witness. Therefore, defendant no. 2 is also not a proper party.

9. In view of the above discussion, it is held that the objection of defendant no. 2 that they have been improperly impleaded as defendant, is valid. The court can delete defendant no. 2 under Order I Rule 10 (2) CPC. Defendant no. 2 is deleted from the array of defendants."

21. The order dated 01.08.2024 has not been assailed by Respondent No. 1 and has, therefore, attained finality. Consequently, by virtue of the said order, the Petitioner no longer remains a party to the Suit.

22. There is no cavil that a garnishee need not necessarily be impleaded as a party to the Suit. However, such legal position cannot be construed to mean that a garnishee order may be passed even in the absence of a crystallised or admitted liability to pay by garnishee to the judgment-debtor. In the present case, the Suit is still pending and the liability of Respondent No. 2 towards Respondent No. 1 is yet to be adjudicated. Further, there is no

admitted or crystallised liability of the Petitioner to make payment of the Suit Amount to Respondent No. 2.

23. The reliance placed by Respondent No. 1 on ***Value Advisory Services*** (*supra*) and ***VR Wonder Electricals*** (*supra*) is misplaced. In ***Value Advisory Services*** (*supra*), where there was no decree in favour of the petitioner therein and the alleged debt was disputed by the garnishee, this Court did not consider it appropriate to direct the garnishee to deposit the amount before the Court. Likewise, in ***VR Wonder Electricals*** (*supra*), this Court held that the garnishee was not a necessary party to the suit and that the suit was not maintainable against garnishee.

24. In the facts of the present case, there is no decree in favour of Respondent No. 1, and the claim of Respondent No. 1 remains disputed and unadjudicated. In the absence of any finding that the Suit Amount is due and payable by the Petitioner to Respondent No. 2, the Impugned Order directing the Petitioner to deposit the Suit Amount in the form of an FDR before the learned Trial Court cannot be sustained as there is no crystallised liability based on which such direction could have been passed. Further, the Petitioner having since been deleted from the array of parties in the Suit, the direction requiring the Petitioner to deposit the entire Suit Amount before the learned Trial Court cannot survive.

25. In view of the above analysis, the present Petition is allowed, and the Impugned Order is, accordingly, set aside. Pending application(s), if any, stand disposed of. There shall be no order as to costs.

TEJAS KARIA, J

JUNE 15, 2026/*hk*