

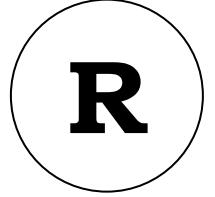
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CIVIL REVISION PETITION NO.453/2017



BETWEEN:

THE KARNATAKA STATE ROAD
TRANSPORT CORPORATION,
TRANSPORT HOUSE,
SHANTHINAGAR,
BENGLAURU-560 027.
REPRESENTED BY THE
MANAGING DIRECTOR,
THROUGH ITS CHIEF LAW OFFICER
KSRTC, CENTRAL OFFICES,
SARIGE BHAVANA, SHANTHINAGAR,
BENGALURU-560 027.

... PETITIONER

(BY SRI P.D. SURANA, ADVOCATE)

AND:

MR. NIGEL RODERICK LLOYD HARRADINE AND
MRS. CAROL ANN HARRADINE,
53, TAUNTON LANE,
OLD COULSDON, SURVEY
CRS ISJ.

... RESPONDENT

(BY SRI VIJAY B.K., ADVOCATE)

THIS CRP IS FILED UNDER SECTION 115 OF CPC,
AGAINST THE ORDER DATED 17.8.2017 PASSED ON IA NO.4 IN
EX.NO.1860/2011 ON THE FILE OF THE XXV ADDL. CITY CIVIL
AND SESSIONS JUDGE, BANGALORE, DISMISSING THE IA NO.4
FILED UNDER SECTION 151 OF CPC.

THIS CRP HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 10.07.2023, THIS DAY THE COURT PRONOUNCED THE FOLLOWING:

ORDER

This petition is filed challenging the order dated 17.08.2017, passed on I.A.No.4 in Ex.No.1860/2011, on the file of the XXV Additional City Civil and Sessions Judge, Bangalore, dismissing the said application.

2. The factual matrix of the case of the petitioner is that the decree holders claim that on 18.03.2002 they were traveling in a car bearing registration No.KA-04-A-1937 driven by a driver by name one Sri Ravi. The said car was heading from Mysuru to Gundlupet. A KSRTC bus bearing registration No. KA-01-F-7028 was moving from Gundlupet to Nanjangud. When both the vehicles were moving in the opposite direction, the accident was taken place. It is alleged that the said car was engaged for transportation by M/s. Somak Travels Limited. Hence, they have preferred the claim in respect of alleged accident before the Exeter Country Court, United Kingdom. The foreign Court allowed the claim petition and directed to pay the compensation. The decree holders on account of non-payment of compensation, filed the execution petition in

Ex.No.1860/2011. The judgment debtor i.e., the revision petitioner herein, filed an application under Section 47 of CPC praying the Court to hold the decree (under execution) is not executable in law.

3. In support of the said application, an affidavit is sworn to that the driver of the car had hit the bus which was coming from the opposite direction of the road which was traveling towards Mysuru. The decree holders admit that the driver of the car Sri Ravi was negligent in driving the car and the said car was engaged for transportation by Mr. Somak Travels Limited. The driver of the bus was not negligent in driving the bus and the accident was on account of negligence on the part of the said Ravi. It is contended that the decree holders have to make the claim under the Motor Vehicles Act and the Tribunal constituted i.e., before the Accident Claims Tribunal. The claim made before the foreign Court has no jurisdiction to grant compensation and when the accident was occurred in India, it is bound by the Motor Vehicles Act. It is contended that the Exeter Country Court, United Kingdom was not a competent Court to take cognizance of a claim arising out of an accident which has taken place within the territory of India and the said Court has

not passed a decree by appreciating the merits of the case. Hence, the decree passed by the foreign Court is not sustainable in India. The foreign Court cannot assume jurisdiction in the manner in which it is sought to be done. It is contended that to deprive the fair opportunity to KSRTC and to obtain a usurious decree against the principles of natural justice, the decree holders have filed a claim petition before the foreign country by alleging that the travel arrangements were made by M/s. Somak Travels. Merely because KSRTC bus was involved in the accident, the same does not bind KSRTC with the contract stated to be entered with M/s. Somak Travels by the decree holders.

4. The said application was resisted by the decree holders by filing the objection statement contending that the very application is not maintainable. The decree holder in his statement of truth dated 14.04.2003 and on the spot inspection report dated 18.03.2002 states that the bus of the judgment debtor caused the accident. It is contended that they have filed the case in Ashford Country Court and obtained the judgment and decree in their favour. It is further contended that the said Court which passed the judgment and decree has got the jurisdiction to pass the judgment and the same is conclusive and

binding insofar as the judgment and decree is concerned. It is contended that according to Section 20 of the CPC, when there are more than one defendant to a suit, suit can be filed at the place of business of any of the defendants. Since the judgment debtor was a necessary party in the proceedings before the United Kingdom Court, the jurisdiction assumed by the Court was in accordance with Indian law. So they contended that this Court has jurisdiction to execute the judgment and order passed by the Ashford Country Court. It is contended that the Ashford Country Court took cognizance of the facts and upon due presentation of certain evidences, passed a decree in favour of the aggrieved claimants. When that would be the case, again going into the merits of this case at this later stage in the current execution proceedings would defeat the very purpose of the proceedings and it is against the well settled legal proposition that the Executing Court does not have the power to go beyond the decree.

5. It is also contended that the judgment debtor willfully submitted to the jurisdiction of Ashford Country Court by filing its objections therein, but failed to pursue the matter. It is contended that objections to the judgment debtor were

considered and the same were dismissed by Ashford Country Court in its order dated 19.01.2006 and also imposed cost. Hence, the decree passed by Ashford Country Court is executable against the judgment debtor on the principles of reciprocity. It is contended that all the principles of natural justice were complied with by the United Kingdom Court while passing the decree as the judgment debtor was sent a notice by the United Kingdom Court to appear and file their defence. However, the judgment debtor failed to appear and further refused to acknowledge any adherence to the United Kingdom Court. It is contended that similar grounds urged by the judgment debtor before the Court was dismissed by its order 19.01.2016 and as such, the present application is barred by the general principles of res-judicata.

6. Having considered the grounds urged in the application and the statement of objection, the Executing Court formulated the point "Whether I.A.No.4 filed by the judgment debtor under Section 47 of CPC deserves to be allowed or not?"

7. Having considered both the rival contentions, in paragraph Nos.14 and 15, the Executing Court comes to the

conclusion that it is an undisputed fact that in respect of the accident taken place in between Mysuru and Gundlapet, the claim petition was filed by the decree holders herein before the Ashford Country Court and the judgment and order was passed in favour of the decree holders and comes to the conclusion that admittedly the judgment and decree passed by the foreign Court till this date remains unchallenged. The material on record does not disclose whether the judgment debtor herein being assailed by the judgment and decree passed by the foreign Court had taken any steps. The Trial Court having considered the rival contentions and considering Section 44A of CPC comes to the conclusion that if the judgment and decree passed by the foreign Court till date remains unchallenged and in view of the said provision, the question of holding the decree under execution does not arise at all. The Court also taken note of the earlier order passed by the Court on I.A.No.3, wherein also similar contention was taken and the said application was dismissed vide order dated 12.01.2016. Again the judgment debtor has come up with the present application and rejected the application and hence the present revision petition is filed before this Court.

8. The main contention of the learned counsel for the petitioner is that the Executing Court has issued the warrant of attachment by order dated 18.08.2012. On coming to know of the same, the petitioner had filed I.A.No.3 to recall the said order of attachment. The said application was not filed to contest the proceedings on merits. The Executing Court has taken the view that I.A. filed by the judgment debtor to hold that the decree is not executable is liable to be rejected for the reason that it had made an order dated 12.01.2016 dismissing I.A.No.3, which was filed for recalling the order of attachment dated 18.08.2012. The said reasoning of the Executing Court is unsustainable in law and the Executing Court failed to take note of the fact that I.A.No.3 was filed requesting the Trial Court to recall the exparte order of attachment, which was made on 18.08.2012. It is contended that the applicant shall be taking suitable steps to raise objection to the judgment passed by the foreign Court and detailed objections shall be filed against the maintainability of the above execution case. The Executing Court has proceeded to hold that the judgment debtor had not taken any steps to challenge the judgment and decree made by the foreign Court and therefore the Executing Court has

proceeded to dismiss the said I.A.No.3 and the said reasoning cannot come in the way of considering the objections raised to the executable of the decree under execution.

9. The judgment and decree passed by the foreign Court is without jurisdiction and it has not followed the recognized law of our nation or international law. The learned counsel would contend that the very order impugned is erroneous and suffers from its legality and I.A.No.4 filed by the judgment debtor is sustainable in law. The Executing Court erroneously invoked Section 44 of CPC and on reading of Section 44A(1) and (2) of CPC, a certificate should be accompanied with the certified copy of the judgment and the Executing Court on the basis of the xerox of a judgment has proceeded to entertain the execution petition and has issued the exparte order of attachment. The Executing Court could not have entertained the execution petition when the certified copy of the decree was not produced by the decree holders. The reasoning of the Executing Court that the judgment debtor has not taken any steps to get over the decree under execution and therefore the decree is binding on the judgment debtor is a erroneous reason adopted by the Executing Court. The Executing Court has powers to

consider the question as to whether the decree is a nullity and as to whether the decree is made by a Court of competent jurisdiction. It is always not necessary that the judgment debtor has to approach the Appellate Court to get over the decree made by the Court inferior to the Appellate Court. The Executing Court has the power to consider as to whether the decree is executable or not.

10. The learned counsel would contend that Section 13 of CPC specifically enumerates that a foreign judgment is not conclusive and the same is not executable under the circumstances set out in the said Section. The Executing Court before entertaining the execution ought to have taken note of Section 13 of CPC to find out as to whether the decree is executable or not. The Executing Court has failed to take note of the fact that accident was occurred in between Gundlupet and Mysore. The compensation payable is only for negligence on the part of the driver of the offending vehicle and the same has not been considered and hence the very award is in conflict with the law applicable in India. The learned counsel would contend that jurisdiction to award compensation to the victims of the accident claim is governed by the provisions of the Motor Vehicles Act. A

Court located in the foreign country is not empowered to exercise the jurisdiction in respect of the cause of action which arises within the Indian territory. The Executing Court failed to take note of the fact and the judgment passed by the foreign country cannot operate in another country when the cause of action arisen in Indian territory. The certified copy of the decree is not produced before the Executing Court and xerox judgment is produced before the Executing Court is not a speaking judgment and therefore opposed to the principles of natural justice and therefore the same is null and void and not enforceable in Indian territory. The xerox copy of the purported judgment produced before the Executing Court do not indicate that the adjudication is made on merits of the case and therefore the judgment is unsustainable and not executable in law. The judgment is without jurisdiction and no summons was served on the petitioners of the foreign Court. The notice was sent by the advocate and the reply was sent to the advocate. Assuming of jurisdiction by the foreign Court is sought to be made out is opposed to the principles of natural justice. The learned counsel would contend that the judgment passed by the foreign Court is not on merits. The learned counsel would contend that Section

13(a) and (b) attracts and the judgment debtor not surrendered to jurisdiction and the Court which passed the judgment is not competent to exercise the jurisdiction and the judgment is only one line order and the same is not on merits and the same also not falls under Section 13(a) and (b).

11. The learned counsel of the petitioner in support of his arguments relied upon the judgment of the Apex Court in the case of **R. VISWANATHAN AND OTHERS v. ABDUL WAJID AND OTHERS** reported in **AIR 1963 SC 1** and brought to the notice of this Court the relevant portion of paragraph Nos.136 and 137, which reads as follows:

"136. xxxxxxxxxxxxxxxxxxxxxxxx The competency in the international sense means jurisdiction over subject-matter of the controversy and jurisdiction over the parties as recognised by rules of international law. What is meant by competency in this context was stated by Blackburn, J., speaking for the Judges in answer to the question referred by the House of Lords in (1870) 4 HL 414 Castrique v. Imrie. Relying upon Story's Conflict of Laws, the learned Judge observed:

"xxxxxxxxxxxxx

"In order however to found a proper ground of recognition of any foreign judgment in another country, it is indispensable to establish that the Court pronouncing judgment should have a lawful jurisdiction over the cause, over the thing, and over the parties. If the jurisdiction fails as to either it is... treated as a mere nullity, having no obligation, and entitled to no respect beyond the domestic tribunals. And this equally true, whether the proceedings lie in rem or in personam or in rem and also in personam". The opinion expressed by Story here is, in its turn, based on that of Boullernois in his Traite, et de la Personnalite et de la Realite des Lois Coutumes ou Status, (1766) Vol. I, pp. 618-620.

137. xxxxxxxxxxxxxxxx

There is no doubt that the courts of this country will not enforce the, decisions of foreign courts which have no jurisdiction in the sense above explained- i.e., over the subject-matter or over the persons brought before them: Schibsby v. Westenholz, (1870) 6 Q B 155; Rousillon v. Rousillon, (1880) 14 Ch D 351; Price v. Dewhurst (1838) 4 My & Cr 76; Buchanan v. Rucher, (1808) 9 East 192; Gurdyal Singh v. Rajah of Faridkote, 1984 A C 670. But the jurisdiction which alone is important in these matters is the competence of the Court in an international

sense-i.e., its territorial competence over the subject-matter and over the defendant. Its Competence or jurisdiction in any other sense is not regarded as material by the courts of this country."

12. The learned counsel also relied upon the judgment of the Apex Court in the case of **SMT. SATYA v. TEJA SINGH** reported in **AIR 1975 SC 105** and referring this judgment the learned counsel would contend that the judgment has to be of a "competent Court" that is, a Court having jurisdiction over the parties and subject matter. Hence, this Court would like to extract paragraph No.51 of the judgment which reads as follows:

"51. Learned counsel for the respondent argued that judgments on status are judgments in rem, that such is the character of Nevada judgment and therefore that judgment is binding on the whole world. Section 41 of the Indian Evidence Act provides, to the extent material, that a final judgment of a competent court in the exercise of matrimonial jurisdiction is conclusive proof that the legal character which it confers or takes away accrued or ceased at the time declared in the judgment for that purpose. But the judgment has to be of a "competent Court", that is, a court having jurisdiction over the parties and the subject-matter. Even a judgment in rem is therefore open to attack

on the ground that the court which gave it had no jurisdiction to do so. In R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Majid (1963) 3 SCR 22 at p.42 = (AIR 1963 SC 1 at p.14), this Court held that "a judgment of a foreign court to be conclusive between the parties must be a judgment pronounced by a court of competent jurisdiction and competence contemplated by Section 13 of the Code of Civil Procedure is in an international sense and not merely by the law of foreign State in which the Court delivering judgment functions". In fact Section 44 of the Evidence Act gives to any party to a suit or proceeding the right to show that the judgment which is relevant under section 41 "was delivered by a court not competent to deliver it, or was obtained by fraud or collusion". It is therefore wrong to think that judgments in rem are inviolable. Fraud, in any case bearing on jurisdictional facts, vitiates all judicial acts whether in rem or in personam.

13. The learned counsel also relied upon the judgment of the Punjab and Haryana High Court in the case of **GURDAS MANN AND OTHERS v. MOHINDER SINGH BRAR** reported in **AIR 1993 PUNJAB AND HARYANA 92** and brought to the notice of this Court the Head Note, which reads as follows:

"Civil P.C. (5 of 1908), S.13(b) – Decree of foreign court – Execution – Bar as to, when it is not on merits – Decree passed ex parte merely on pleadings of plaintiff and because defendant chose not to appear – No oral or documentary evidence produced by plaintiff – Decree not on merits, hence cannot be executed. Decree of foreign Court – Execution of – Decree passed ex parte merely on pleadings of plaintiff and in absence of any evidence – Not executable, being passed not on merits. International law – Foreign court's decree-Execution."

14. The learned counsel also relied upon the Full Bench judgment of Goa, Daman and Diu in the case of **SAGOON JAYAIDEE DHOND AND OTHERS v. SOCIEDADE CIVIL E PARTICULAR DOS TARIS OF VOLVOI, PONDA CONCELHE AND OTHERS** reported in **AIR 1996 Goa, Daman and Diu 38** and brought to the notice of this Court paragraph No.8, wherein discussed with regard to it is a well settled principle of international law that owing to the principle of territorial sovereignty a judgment delivered in one country, in the absence of international agreement, cannot have a direct operation of its own in another. It is also well settled that all individuals and all properties within a territory of a State are within its dominion

and sway (Quidquid est in territorio es etiam de territorio). The Municipal Courts are under a constitutional compulsion to give effect to the law of their own sovereign legislature.

15. The learned counsel also relied upon the judgment of the Delhi High Court in the case of **BHARAT NIDHI LTD. v. SHRI MEGH RAJ MAHAJAN** reported in **AIR 1967 DELHI 22**, wherein discussed with regard to from the evidence it must be held that the defendant was neither a national, nor domicile, nor a citizen, nor a resident of Pakistan either on the date of the commencement of the suit or on the date of the decree. He did not submit to the jurisdiction of the Pakistan Courts and he was not served while present in Pakistan. In these circumstance, the decree must be held to be a nullity not enforceable in India under Section 13 of the Civil Procedure Code.

16. The learned counsel also relied upon the judgment of the Bombay High Court in the case of **ALGEMENE BANK NEDERLAND NV v. SATISH DAYALAL CHOKSI** reported in **AIR 1990 BOMBAY 170** and brought to the notice of this Court paragraph No.29, wherein discussed with regard to the ratio laid down by the Privy Council in Keymer's case (AIR 1916 P.C.121).

The decision of the Hong Kong Court is not given on examination of the points at controversy between the parties. It seems to have been given *ex parte* on the basis of the plaintiff's pleadings and documents tendered by the plaintiff without going into the controversy between the parties since the defendant did not appear at the time of the hearing of the suit to defend the claim. The present judgment, therefore, is not a judgment on the merits of the case. Hence, this is not a fit case where leave can be granted under Order 21 Rule 22 of the Code of Civil Procedure for the purpose of executing the decree here.

17. The learned counsel referring this judgment in the sum and substance of his argument would contend that the judgment and decree of the foreign Court is not on merits and also the judgment rendered by the foreign Court is not a competent Court to deliver the judgment and not passed any detailed order with regard to the issue involved between the parties and not having any competent jurisdiction and hence the same cannot be enforced.

18. *Per contra*, the learned counsel for the respondent would contend that the claimant is a citizen of United Kingdom

and defendant No.1 in the said claim was also within the jurisdiction of the said Court, since he had arranged the vehicle to the claimant. The learned counsel would contend that notice was served through an advocate and he appeared and filed the statement and copy of the affidavit as well as statement is produced before the Court. The learned counsel would contend that he was subjected for jurisdiction by filing objections before the foreign Court and now he cannot contend that he was not surrendered to the jurisdiction. The learned counsel submits that no appeal was filed against the judgment and decree of the foreign Court and the very contention that it does not come within Section 13(a) and (b) cannot be accepted. The learned counsel would contend that Section 14 is applicable there is a presumption and he was subjected to jurisdiction and order has been passed and hence the judgment is binding and notice is also served. Though the counsel disputes that no notice was served, in the pleadings of paragraph No.8 of the revision itself, the revision petitioner has stated that the decree holders have filed the claim petition before the Ashford Country Court and that one advocate Sri Aditya Sondhi served the copy of the claim petition on the KSRTC. The KSRTC sent the statement along

with a letter to the said advocate stating that the said Court has no jurisdiction to try a claim for damages in respect of the accident which is occurred in India. It is also pleaded that the decree holder has produced the xerox copy stated to be the judgment made by the said foreign Court. When such pleading was made, he cannot contend that there was no summons issued from the foreign Court. The copy was served on KSRTC is not in dispute and also statement was forwarded along with the claim statement to an advocate is also not in dispute. When such being the case, he cannot contend that no summons was served on the judgment debtor. The learned counsel contend that earlier also similar application was filed and the same was dismissed and the order passed by the Court on I.A.No.3 has also attained its finality and similar grounds are also urged in I.A.No.4 and the same has been considered by the Trial Court and so also taken note of Section 44A of CPC while rejecting the application and there is no merit in the revision petition.

19. Having hearing the respective learned counsel and also on perusal of the material available on record, the points that arise for the consideration of this Court are:

- (i) Whether the order passed by the Trial Court on I.A.No.4 in dismissing the application, suffers from legality and its correctness?
- (ii) What order?

Point No.(i)

20. Having heard the learned counsel appearing for the respective parties it discloses that there is no dispute that the accident was taken place in between Mysuru and Gundlupet road and also it is not in dispute that the vehicle was provided to the claimant by M/s Somak Travels Limited. It is the claim of the Judgment Debtor that claim was made before the Exeter Country Court, United Kingdom. Having perused the material on record it discloses that the revision petitioner himself admitted in paragraph 8 of the petition that notice was served on the petitioner herein through a counsel Sri Aditya Sondhi and also it is stated that the petitioner herein sent the statement of objection along with a letter to the said advocate stating that the said Court has no jurisdiction to try a claim for damages in respect of the accident which has occurred in India. The counsel for the Decree Holders also produced a copy of the letter of service of notice against the Judgment Debtor and also the copy

of reply of the revision petitioner herein which is sent through the counsel according to the revision petitioner and the reply is also signed by one Krishnaiah who is the Chief Law Officer of defendant No.2 dated 06.09.2005. On perusal of the order dated 18.01.2006 wherein ordered defendant No.2 to pay the claimants costs in a sum of £1,702.58 and application is dismissed and also it reveals that the order from Ashford County Court dated 22.02.2007 ordering damages to be paid by defendant No.2 to the first claimant in a sum of £31431.33 plus interest of £1970.42 and £6785.50 plus interest of £421.36 in respect of the second claimant and also ordering defendant No.2 to pay the claimant's costs in a sum of £13,004.76 vide order dated 30th March 2007. The said orders are confirmed by the District Judge vide order dated 12th August 2010 saying that the said orders are not settled in full or in part.

21. This Court secured the Trial Court records after reserving the matter for orders and having perused the same it discloses that no certified copy of the judgment and decree of the Foreign Court is placed before the Trial Court but only a Xerox copy of the same is placed before the Court and nowhere

it is found that claim has been considered on merits except passing the order and even the alleged statement of objections also not considered while passing such an order.

22. The counsel for the petitioner also relied upon the judgment of different High Courts of India i.e., High Court of Punjab and Haryana in a case of **GURDAS MANN AND OTHERS** referred supra wherein also the Court considered Section 13(b) with regard to the decree of Foreign Court and observed that there is a bar when an order is not passed on merits and decree passed *ex parte* merely on pleadings of plaintiff and because defendant did not choose to appear, no oral or documentary evidence produced by the plaintiff, decree not on merits, hence, cannot be executed.

23. Having perused the orders of the Foreign Court also nothing is discussed with regard to whether statement of objections sent through an advocate through whom notice was served was part of the records or not and also not discussed anything about the objection raised with regard to no jurisdiction is concerned and hence, it is clear that the said order is not executable since the same is not on merits.

24. In the judgment of the Goa High Court in the case of **SAGOON JAYAIDEE DHOND** referred supra also discussed with regard to settled principle of international law that owing to the principle of territorial sovereignty a judgment delivered in one country, in the absence of international agreement, cannot have a direct operation of its own in another. But no material is placed on record to show whether there is any international agreement and the said ground is also not urged in the revision petition, but only contended that the order is not by the competent Court.

25. In the case of **ALGEMENE BANK NEDERLAND** referred supra the Bombay High Court while discussing the ratio laid down by the Privy Council in Keymer's case held that it seems to have been given *ex parte* on the basis of the plaintiff's pleadings and documents tendered by the plaintiff without going into the controversy between the parties since the defendant did not appear at the time of hearing of the suit to defend the claim. It is also held that therefore, it is not a judgment on merits and the same cannot be executable.

26. This Court also would like to refer the judgment of the Apex Court reported in **AIR 2001 SC 2134** in the case of **M/S. INTERNATIONAL WOOLLEN MILLS vs M/S. STANDARD WOOL (U.K) LTD.**, wherein the Apex Court considered Section 13(b) of CPC regarding Foreign judgment is concerned. If exparte decree is passed, the same cannot be presumed to be on merits. Section 114 merely raises the presumption, under Illustration (e) of Evidence Act and also held that under Section 44A, if any Foreign judgment enforcement in India, judgment must be on merits and also discussed that exparte judgment, when can be said to be on merits it cannot be said that the expression 'judgment on the merits' implies that it must have been passed after contest and after evidence had been let in by both sides. An exparte judgment in favour of the plaintiff may be deemed to be a judgment given on merits if some evidence is adduced on behalf of the plaintiffs and the judgment, however, brief, is based on a consideration of that evidence. Where however no evidence is adduced on the plaintiff's side and his suit is decreed merely because of the absence of the defendant either by way of penalty or in a formal manner, the judgment may not be one based on the merits of

the case. Having considered the principles laid down in the aforesaid judgment of the Apex Court, it is very clear that if judgment is passed, even it is *ex parte*, not on evidence, the same cannot be held that the order is passed on merits.

27. I have already pointed out that the records of the Trial Court is secured and on perusal of the same, no such order is found and only a Xerox copy of the order is produced before the Trial Court and the same also does not disclose anything about consideration of any documents and whether the merits of the case was considered while passing such an order or not also not found in the record.

28. This Court also would like to refer the judgment of the Apex Court reported in **(2017)2 SCC 253** in the case of **ALCON ELECTRONICS PRIVATE LIMITED vs CELEM S.A. OF FOS 34320 ROUJAN, FRANCE AND ANOTHER** and in this judgment also the Apex Court discussed Section 44A which has been discussed by the Trial Court in this proceedings. The Apex Court discussed with regard to the judgment on merits and also taken note of the decree as per Explanation 2 to Section 44A and held that a judgment is considered as judgment on merits, an

opportunity is extended to the parties to a case to put forth their case and after considering rival submissions Court gives its decision in the form of an order or judgment. It is also important to note that the Apex Court also discussed Section 13 and 44A with regard to execution of foreign judgment/decrees and an enquiry by executing Court when not permissible and held that once an order or decree is obtained after following due judicial process by giving reasonable notice and opportunity to all proper and necessary parties to put forth their case, executing Court cannot enquire into validity, legality or otherwise in the said judgment, scope and purpose of Section 44A is also discussed and execution of decrees passed in reciprocating territories held that Section 44A has been inserted to give effect to the policy contained in Foreign judgments (Reciprocal Enforcement) Act, 1933 by conferring an independent right on a foreign decree-holder who obtained a decree from a Court in reciprocating territory for enforcement of said decree/order in India, for the purpose of Section 44A, England is a reciprocating territory.

29. No doubt, the Trial Court also invoked Section 44A of CPC. The Trial Court while invoking Section 44A comes to the conclusion that the same can be enforced in India for the purpose of Section 44A but fails to take note of the fact that the judgment of the foreign Court is not on merits. No doubt, admittedly, notice was given and the same was served through an advocate and revision petitioner also claims that they sent the reply and the same is not forthcoming in the order of the foreign Court and nothing is discussed in the order even for the objection which has been raised and the same is not on merits as held by this Court.

30. Having perused the principles laid down in the judgments of Bombay High Court, Punjab and Haryana High Court as well as the Apex Court, I have pointed out that the judgment and decree which is sought for enforcement in India is not passed on merits. When such being the circumstances, the same is not enforceable.

31. No doubt, it is clear that a "foreign judgment" is defined under Section 2(6) as judgment of a foreign Court. "Judgment" as per Section 2(9) of CPC means the statement

given by the Judge on the grounds of a decree or order. Order is defined under Section 2(14) of CPC as a formal expression of any decision of the civil Court which is not a "decree". Then Explanation 2 to Section 44A(3) says "decree" with reference to a superior Court means any "decree" or "judgment". As per plain reading of the definition "judgment" means the statement given by the Judge on the grounds of decree or order and order is a formal expression of a Court. Thus, "decree" includes judgment and "judgment" includes "order". On conjoint reading of "decree", "judgment" and "order" from any angle, the order passed by the English Court falls within the definition of "order" and therefore, it is a judgment and thus becomes a "decree" as per Explanation 2 to Section 44A CPC. But in the case on hand, taking into note of the material on record it discloses that the Court has not followed the principles of natural justice while recording the reasons and very importantly, basing on the application of the appellant itself, conclusively decided the issue with regard to jurisdiction and passed the order coupled with costs hence, the order passed by the foreign Court is not conclusive and not on merits and hence, the same cannot be executable. The records also reveals that notice was served

through an advocate and reply was sent and the same was not considered in the order. Hence, I answer point No.(i) as affirmative for the reason that the judgment of the foreign Court is not executable since the same is not on merits and it suffers from its legality and correctness and hence, the revision petition requires to be allowed.

32. The other contention of the counsel for the respondent that the revision petitioner has surrendered his jurisdiction by sending the reply and I have already pointed out that even though reply was sent, the same was not discussed in the order hence, there is no any conclusive judgment on merits. Under such circumstances, the very contention of the counsel for the respondent cannot be accepted. The very contention that the revision petitioner was subjected for jurisdiction by filing objection before the foreign Court and now he cannot contend that he cannot surrendered for the jurisdiction. No doubt, filed an objection statement before the foreign Court through an advocate through whom the notice was served but the same has not been discussed in the order and also no doubt, no appeal was filed against the judgment and decree of the foreign Court.

When the order itself is not on merits, the very contention cannot be accepted and no conclusive order on merits. This Court already considered the material on record and comes to the conclusion that there is no order on merits and also this Court relied upon the judgment of the Apex Court in the case of **M/S INTERNATIONAL WOOLLEN MILLS** wherein the specific finding is given that if an order is passed without considering any evidence and also no evidence is adduced on the plaintiff's side and suit is decreed merely because of the absence of the defendant either by way of penalty or in a formal manner, the judgment may not be one based on the merits of the case and also the material discloses that if judgment is passed, even it is ex parte, not on evidence, the same cannot be held that the order is passed on merits and hence, there is a force in the contention of the argument of the revision petitioner that the decree is not a executable decree and hence, I answer the point as affirmative.

Point No.(ii)

33. In view of the discussions made above, I pass the following:

ORDER

The revision petition is allowed. Consequently, the application filed under Section 47 of CPC before the Trial Court is allowed and the decree under execution is not executable in law as the same is not on merits.

Registry is directed to return the Trial Court records forthwith.

**Sd/-
JUDGE**

MD/SN