

Supreme Court of India

Messer Greisheim Gmbh (Now Called ... vs Goyal Mg Gases Private Limited on 28 January, 2022

Author: Ajay Rastogi

Bench: Ajay Rastogi, Abhay S. Oka

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S) . 521 OF 2022
(Arising out of SLP(Civil) No(s) . 22539 of 2014)

MESSER GRIESHEIM GmbH
(NOW CALLED AIR LIQUIDE
DEUTSCHLAND GmbH)

APPELLANT (S)

VERSUS

GOYAL MG GASES PVT. LTD.

RESPONDENT (S)

JUDGMENT

Rastogi, J.

1. Leave granted.

2. The appellant/decreed holder has challenged the judgment of the Division Bench of the High Court of Delhi dated 1 st July, 2014 Signature Not Verified Digitally signed by Anita Malhotra Date: 2022.01.28 17:06:51 IST Reason: relegating to file a petition for execution of a money decree dated 7 th February, 2006(in excess of Rs. 20 lakhs) of a foreign Court indisputedly notified as a superior Court of a reciprocating territory before the District Court in view of Section 44A of the Code of Civil Procedure, 1908(hereinafter being referred to as the Code).

3. It is an old saying that the difficulties of the litigant in India begin when he has obtained a decree. The evil was noticed as far back in 1872 by the Privy Council in relation to the difficulties faced by the decreed holder in execution of the decree (MIA p.612) 1. After more than a century, there has been no improvement and still the decreed holder faces the same problem what was being faced in the past. A litigant coming to Court seeking relief is not interested in receiving a paper decree when he succeeds in establishing his case. What he primarily wants from the Court of Justice is the relief and if it is a money decree, he wants that money what he is entitled for in terms of the decree, must be satisfied by the judgment debtor at the earliest possible without fail keeping in view the reasonable restrictions/rights which are available to the judgment debtor under the provisions of

the statute or the code, as the case may be. 1 General Manager of the Raj Durbhunga v. Coomar Ramaput Sing, (1871-72) 14 MIA 605 : 20 ER 912

4. Instant case is the live illustration before us where the decree holder was able to get a money decree of a foreign Court which is notified as a superior Court of a reciprocating territory way back on 7th February, 2006 and after 16 years have been rolled by, still the screen is smokey and not clear as to which is the forum where he could approach for execution of a decree.

5. The brief facts culled out from the record are that the appellant initiated proceedings before the High Court of Justice, Queens Bench Division, Commercial Court, United Kingdom(English Court) which is a superior Court of a reciprocating territory(namely, United Kingdom of Great Britain and Northern Island) notified under Section 44A of the Code vide Notification No. SRO 399 dated 1st March, 1953 issued by the Ministry of Law as amended by GSR 201 dated 13 th March, 1958.

6. Earlier, a default decree was passed due to non-appearance of the respondent/judgment debtor in UK Court on 6th February, 2003. The appellant issued a winding up notice to the respondent, who objected the same as the judgment dated 6 th February, 2003 was a default decree. To meet the objection raised by the respondent, the appellant approached the English Court and sought setting aside of the default decree and prayed for passing a decree on merits of the case. At this juncture, the respondent entered appearance and the English Court by a judgment and decree dated 7th February, 2006 granted a money decree for a principal sum of US \$ 5,824,564.74.

7. It is pertinent to note that the respondent did not file any appeal against the judgment and decree dated 7 th February 2006 and that has attained finality.

8. The total decretal amount indisputedly on the date of filing of the execution petition before the Delhi High Court on 27 th April, 2006 was exceeding Rs. 20 lakhs which was the pecuniary limits of the Delhi High Court in terms of Section 5(2) of the Delhi High Court Act, 1966(hereinafter being referred to as Act 1966) which was later enhanced to Rs.2 crores in the year 2015, to entertain the execution petition as the principal Court of original jurisdiction.

9. It has been alleged by the appellant that the decretal amount, if it is taken at the face value as on 20 th January, 2022, may come to approximately Rs. 99 crores.

10. The appellant filed a petition for execution of money decree in the High Court of Delhi on 27th April, 2006. A reply to the execution petition was filed by the respondent on 17 th January 2007, raising several objections which are available at its command as envisaged under Section 13 of the Code. Later a further objection was raised that the High Court of Delhi has no jurisdiction to entertain the execution petition in view of Section 44A of the Code.

11. Learned Single Judge of the High Court overruled the preliminary objections and held that taking value of the execution of the money decree dated 7th February, 2006 of the English Court exceeding Rs. 20 lakhs, at given point of time, i.e., 27 th April, 2006(the day on which the execution petition was filed), High Court of Delhi holds the exclusive jurisdiction of ordinary original civil

jurisdiction and after meeting out other objections on merits decided the execution petition by a judgment dated 29 th November, 2013. The operative part of the judgment are as under:– E.A. No. 653 of 2009

69. This is an application by the DH for a direction to the JD to deposit the original title deeds of Sahibabad property.

70. For the reasons stated therein, the application is allowed and a direction is issued to the JD to deposit the original title deeds of the property, land measuring 18774 sq. yds. At 8/7, Site–IV, Sahibabad, Industrial Area, Sahibabad, District Ghaziabad in the Court within two weeks, and when so deposited, it shall be kept in a sealed cover by the Court. At the time of filing the original title deeds, the JD will deliver to the learned counsel for the DH a photocopy thereof.

EA No. 654 of 2009

71. By this application, the DH seeks a clarification that the order dated 3rd November, 2009 passed by the Court releasing the lien on the property at Ghaziabad, Uttar Pradesh should be made conditional upon the Managing Director (MD) or any other competent director of the JD furnishing a written undertaking that the Ghaziabad property is free from all encumbrances and further than no written consent from the State Bank of India (SBI) under Clause 11 of the agreement for hypothecation of goods and assets dated 24th November, 2008 is required.

72. Despite notice having been served in both these applications way back on 20th November 2009, no reply has been filed to this application.

73. Consequently, the application is allowed and a direction is issued to the MD/authorized Director of the JD to file an affidavit in this Court within two weeks clarifying (a) that the property at Sahibabad, Ghaziabad is free from all encumbrances or charge as on the date of the order dated 3 rd November, 2009; (b) that no written consent from the SBI under Clause 11 of the Agreement for hypothecation of the goods and assets dated 24 th November, 2008 is required for enforcing the said order vis-à-vis the said Sahibabad property in terms of the statement made by the JD to the Court on 27th April, 2006 and (c) that, as on date, there is no lien/charge etc. created on the Sahibabad property.

74. The application is disposed of.

12. The judgment of the learned Single Judge of the High Court of Delhi dated 29th November, 2013 was assailed by the respondent– judgment debtor before the Division Bench of the High Court.

13. The Division Bench of the High Court, in the facts and circumstances, considered it appropriate to examine the singular issue confining it to the jurisdiction of the High Court of Delhi in executing the money decree dated 7 th February, 2006 of the English Court, in exercise of its original jurisdiction in terms of Section 44A of the Code and after the parties being heard, arrived at the conclusion that Section 44A is an independent right conferred on a foreign decree holder for

enforcement of its decree in India. It is a fresh cause of action and has no co-relation with jurisdictional issues. The scheme of Section 44A of the Code is alien to the scheme of domestic execution as provided under Section 39(3) of the Code and finally held that the High Court of Delhi, not being a District Court, in terms of Section 44A of the Code, is not vested with the jurisdiction to entertain execution petition and directed to be transferred to the Court of District Judge within whose jurisdiction the property sought to be attached is situated for being dealt with in accordance with law, which is a subject matter of challenge in appeal before us.

14. Dr. Abhishek Manu Singhvi, learned senior counsel appearing for the appellant submits that the jurisdiction for execution of a foreign Courts decree of a reciprocating territory vests with the High Court of Delhi, provided the value of the money decree exceeds the pecuniary limits as notified under Section 5(2) of the Act 1966.

15. Learned counsel further submits that it is not in dispute that the judgment and decree dated 7th February, 2006 has been passed by a notified superior Court of the reciprocating territory, namely, United Kingdom of Great Britain and Northern Ireland within the meaning of Section 44A of the Code in terms of a notification dated 1st March 1953 issued by the Ministry of Law. The High Court of Delhi also vests with the ordinary original civil jurisdiction, subject to the pecuniary limits as being notified under Section 5(2) of the Act 1966 and it would be impossible to read into Section 44A that even though the pecuniary jurisdiction of a civil Court(which lacks the pecuniary jurisdiction) is restricted, only for the purpose of execution of a foreign decree, it becomes a District Court in respect of the matters which fall within the ordinary civil jurisdiction of the High Court and when there is a split jurisdiction in the cities like Delhi, Kolkata, Chennai and Mumbai, the High Court would have to be considered to be included as a principal civil Court of original jurisdiction where it exceeds its pecuniary jurisdiction as being contemplated in the respective statutes alike Section 5(2) of the Act 1966 in the instant case.

16. Learned counsel further submits that there can be two or more Courts which are concurrently a principal civil Court of original jurisdiction subject to their pecuniary limits as being envisaged under Section 5(2) of the Act 1966. If that being so, if pecuniary jurisdiction exceeds what is prescribed/notified under the Act, it is the High Court of Delhi which will be considered to be the principal Court of original civil jurisdiction as defined under Section 5(2) of the Act 1966 and the execution petition being a continuation of the suit proceedings, the Division Bench of the High Court has committed a manifest error in holding that the High Court of Delhi is not vested with the jurisdiction to entertain an execution petition as being a District Court defined in terms of Section 44A of the Code.

17. Per Contra, Mr. Rakesh Dwivedi, learned senior counsel for the respondent, while supporting the finding recorded in the impugned judgment, submits that Section 44A is an independent right conferred on a foreign decree holder for enforcement of its decree in India and the scheme of Section 44A of the Code is alien to the scheme of domestic execution as provided under Section 39(3) of the Code. The domestic decree can indeed be executed by the Court which passed the decree or Court of competent jurisdiction to which it is transferred for execution. So far as execution of foreign decree is concerned, it is being governed by an independent right conferred under Section

44A of the Code which unequivocally confers exclusive jurisdiction in this regard on a District Court and the words mandating the competence of the executing Court, to try the original cause, in which the decree was passed, are conspicuous by their absence, in this provision.

18. To be more specific, learned counsel submits that Section 44A of the Code is in the nature of an independent, enabling provision which gives the decree holder a fresh and new cause of action irrespective of the original character of the cause in which the decree came to be passed.

19. Learned counsel further submits that so far as the pecuniary competence to try a suit of the decretal amount is concerned, it may be in the context of the domestic decree for execution as referred to under Sections 38 and 39 of the Code and once Section 44A confers exclusive jurisdiction on District Court in which the money decree of a foreign Court has to be filed for execution, no other Court holds competence other than the District Court for execution of a foreign decree.

20. Learned counsel further submits that Section 5(2) of the Act 1966 conferred with a limited ordinary original civil jurisdiction qua suits above a certain pecuniary value and further submits that the expression suit as used in Section 5(2) of the Act 1966 has to be understood in its ordinary, limited sense of a Civil Suit, and will not include execution proceedings. Section 4 of the Delhi High Court(Amendment) Act, 2003 draws a distinction between a suit and other proceedings and submits that it is the District Court alone which holds jurisdiction for executing a foreign decree and no error has been committed by the High Court in the impugned judgment which may call for interference of this Court.

21. We have heard learned counsel for the parties and with their assistance perused the material available on record.

22. The question that emerges for our consideration is whether the High Court of Delhi in exercise of its original jurisdiction is a competent Court to entertain a petition for executing a money decree(in excess of Rs.20 lakhs) of a foreign Court which is notified as a superior Court of reciprocating territory under Section 44A of the Code.

23. It is not disputed that so far as the expression superior Court of any reciprocating territory as defined under Section 44A of the Code is concerned, the judgment and decree dated 7 th February, 2006 has been passed by the notified superior Court of the reciprocating territory, namely, United Kingdom of Great Britain and Northern Ireland within the meaning of Section 44A of the Code vide notification dated 1st March, 1953 issued by the Ministry of Law, thus it leaves no doubt that the decree of the High Court of England would be considered to be a decree of superior Court of a reciprocating territory.

24. In order to appreciate the submissions made, it may be relevant to first take a look at the scheme of the Code and also relevant provisions of the Act 1966 which are reproduced hereunder:– Section 2(4) of the Code District district means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a District Court), and includes the local limits of the ordinary original civil jurisdiction of a High Court;

Section 6 of the Code Pecuniary Jurisdiction Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction. Section 13 of the Code When Foreign Judgement not Conclusive A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except

- (a) where it has not been pronounced by a Court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
- (e) where it has been obtained by fraud;
- (f) where it sustains a claim founded on a breach of any law in force in India.

Section 44A of the Code – Execution of Decrees passed by Courts in reciprocating territory (1) Where a certified copy of a decree of any of the superior courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court.

(2) Together with the certified copy of the decree shall be filed a certificate from such superior court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(3) The provisions of Section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the court that the decree falls within any of the exceptions specified in clauses (a) to (f) of Section 13. Explanation 1. Reciprocating territory means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and superior courts, with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation 2. Decree with reference to a superior court means any decree or Judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or Judgment.]] Section 5 Delhi High Court Act, 1966 Jurisdiction of High Court of Delhi (1) The High Court of Delhi shall have, in

respect of the territories for the time being included in the Union Territory of Delhi, all such original, appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exercisable in respect of the said territories by the High Court of Punjab. (2) Notwithstanding anything contained in any law for the time being in force, the High Court of Delhi shall also have in respect of the said territories ordinary original civil jurisdiction in every suit the value of which exceeds Rupees twenty lakhs.

25. The expression District is defined under Section 2(4) of the Code and the term District Court referred under Section 44A of the Code although not defined, but on conjoint reading of the provision makes it clear that it refers to the local limits of the jurisdiction of a principal civil Court of original jurisdiction (provisions of the Code called a District Court) and it includes the local limits of the ordinary original civil jurisdiction of a High Court and it is not disputed that principal civil Court of original jurisdiction is normally a District Court (with whatever change in the nomenclature) and the High Courts in India exercising ordinary original civil jurisdiction are not too many, but where there is a split jurisdiction based on its pecuniary value, notified from time to time, the District Court or the High Court in its ordinary original civil jurisdiction is competent to exercise power for execution of decree, including money decree of the foreign Court of reciprocating jurisdiction, provided other conditions are complied with as contemplated under Section 44A of the Code.

26. Section 44A of the Code provides for execution of decrees passed by the foreign Courts in reciprocating territories. It, inter alia, stipulates that where a certified copy of a decree of any of the superior Court of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by a District Court. Together with the certified copy of the decree, a certificate from such superior court is to be filed stating the extent, if any, to which the decree has been satisfied or adjusted. Such a certificate is the conclusive proof of the extent of such satisfaction or adjustment. Sub-section 3 of Section 44A of the Code further lays down that provisions of Section 47 of the Code shall apply to such execution proceedings and the Court can refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) in Section 13 of the Code.

27. The ordinary original civil jurisdiction of the High Court is always exercised, based on pecuniary limits. It would be impossible to read into Section 44A of the Code that even though the pecuniary jurisdiction of Civil Court is restricted, still for the purpose of execution of a foreign decree, it becomes the District Court in respect to those matters which fall within the ordinary original civil jurisdiction of the High Court and the expression district defined under Section 2(4) of the Code will have to be given its true effect. To read the expression District Court in Section 44A for execution of foreign decree, it will be construed to be a Court holding ordinary original civil jurisdiction in terms of its pecuniary limits as being notified under Section 5(2) of the Act 1966.

28. It leaves no manner of doubt that once the pecuniary jurisdiction at the given point of time exceeded Rs. 20 lakhs as notified by the High Court under Section 5(2) of the Act 1966 (later vide notification dated 10th August, 2015 (w.e.f. 26th October, 2015) pecuniary limits has been revised to Rs.2 crores), it is the High Court of Delhi which holds its exclusive jurisdiction as ordinary original civil jurisdiction to execute a foreign decree under Section 44A of the Code and it goes without

saying that execution always is in continuation of the proceedings.

29. Section 24 of the Punjab Courts Act 1918, of which the Division Bench has put its emphasis, which is applicable to Delhi, the Court of District Judge would be the principal civil Court of original jurisdiction. Under Section 5(1) of the Act 1966, the High Court of Delhi exercises all such original, appellate and other jurisdiction as was exercisable by the High Court of Punjab in the Union Territory of Delhi. Then, there is Section 5(2) of the Act 1966 which starts with a non-obstante clause which empowers the High Court of Delhi to exercise its ordinary original civil jurisdiction in every suit where the pecuniary value exceeds, as being notified by the competent authority and thus, the High Court of Delhi indeed holds original civil jurisdiction in a suit where the value exceeds its pecuniary limits and if Section 24 of the Punjab Courts Act, 1918 is read with Section 5(2) of the Act 1966, it is quite clear that certain jurisdiction has been taken away from the District Court and conferred with the High Court of Delhi and this original civil jurisdiction is only in respect to the suits where the pecuniary limit exceeds as notified by the authority under Section 5(2) of the Act 1966 and that would make the High Court of Delhi, the principal Court of original civil jurisdiction, for all practical purposes.

30. The Division Bench has proceeded on the basis of the expression District Court, as being referred under Section 44A of the Code but it has not taken into consideration the other relevant provisions of which a reference has been made by us while coming to the conclusion that the expression District as defined under Section 2(4) of the Code only lays down the limits of the jurisdiction of the principal civil Court of original jurisdiction and that includes the ordinary original civil jurisdiction of the High Court and once the pecuniary jurisdiction exceeds as being notified under the relevant statute, the jurisdiction vests exclusively with the High Court as an ordinary original civil jurisdiction for execution of a foreign decree under Section 44A subject to the just objections which are available to the parties/judgment debtor as envisaged under Section 13 of the Code.

31. Consequently, the appeal succeeds and accordingly allowed. The judgment of the Division Bench of the High Court dated 1 st July 2014 is hereby quashed and set aside. Since the parties have not addressed on merits, E.F.A.(O.S.) No. 3 of 2014 is restored on the file of the Division Bench of the High Court of Delhi. This being an old matter where the foreign decree dated 7 th February, 2006 could not have been executed for almost 16 years by this time, we consider it appropriate to observe that let the Division Bench may take up the matter on priority and decide the same on its own merits as expeditiously as possible keeping in view its long awaiting execution in accordance with law, but in no case later than four months.

32. Pending application(s), if any, stand disposed of.

J.

(AJAY RASTOGI) ...J.

(ABHAY S. OKA) NEW DELHI JANUARY 28, 2022.