

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****IN ITS COMMERCIAL DIVISION****INTERIM APPLICATION NO. 1719 OF 2021****In****COMMERCIAL EXECUTION APPLICATION NO. 15 OF 2021****VIDA JEWELLERY, L.L.C., U.A.E.****..... APPLICANT****IN THE MATTER BETWEEN****VIDA JEWELLERY, L.L.C., U.A.E.****..... DECREE
HOLDER****VERSUS****RAJESH KUMAR PRATAPBHAI SONI****..... RESPONDENT****AND****BANK OF BARODA & ORS.****..... GARNISHEES**

Adv. Ishan Gambhir i/b. India LLP for the Decree Holder.

Adv. Sushant Valimbe a/w. Adv. Revati Alhat i/b. Adv. Onkar Wable
for the Respondents.**CORAM : RAJESH S. PATIL, J.****DATE : 4 DECEMBER, 2025****ORAL JUDGMENT**

1) This interim application has been filed by the decree holder seeking various reliefs. In the initial stage, since the judgment debtor has raised objection about the maintainability of the execution application which has been filed pursuant to a decree passed in Dubai,

United Arab Emirates (for short 'foreign decree'), hence, I am first dealing with the objection raised by Mr.Valimbe, on behalf of the judgment debtor on the maintainability of the execution application.

2) Mr. Valimbe submitted that as per the provisions of section 13(b) and (d) of the Code of Civil Procedure, 1908, (for short C.P.C.) the present foreign decree cannot be executed as the same comes in the exception clauses of Sections 13(b) and 13(d) of C.P.C. He submitted that the judgment debtor was an employee of the decree holder at Dubai and it is alleged that on 6 May, 1980 an incident had occurred pursuant to which 9.8 kg gold and an amount of AED 2,90,000 Dirhams were alleged to have been siphoned of by the judgment debtor, pursuant to which when the judgment debtor was in India, a criminal complaint was lodged by the decree holder before the police station at Dubai. Pursuant to the said police complaint, the police arrested the judgment debtor in India and he was sent to Dubai where he was kept in police lock up and the criminal case was conducted before the Court in Dubai. In the said criminal case, the judgment debtor was convicted and an appeal filed against the said conviction was also dismissed. The judgment debtor remained in the court's custody and was thereafter deported back to India on 26 March, 2019. In the meanwhile, a civil suit for recovery was filed in

the court of first instance being the civil plenary case No. 540 of 2018. In the said civil suit, a decree was passed on 5 February, 2019 thereby directing the judgment debtor to pay a sum of AED 15,70,866 Dirhams.

3) It is the case of the judgment debtor that the said civil decree was not on merits and was also against the principles of natural justice.

4) It is submitted that the judgment debtor was not represented by a lawyer before a Civil Court. Hence, he could not raise all the defences available in law before the said Civil Court. It is submitted that if the judgment debtor could have appointed a lawyer who understands a local law in Dubai, decree would not have been passed against the judgment debtor.

5) Mr. Valimbe, learned advocate on behalf of the judgment debtor has relied upon two authorities to buttress his submissions :-

(1) *International Woollen Mills vs. Standard Wool (U.K.) Ltd.*, reported in (2001) 5 SCC 265

(2) *Algemene Bank Nederland NV vs. Satish Dayalal Choksi*, reported in AIR 1990 Bom 170

6) In response, on behalf of the judgment creditor Mr. Ishan Gambhir appeared and submitted that as far as the civil suit decree is

concerned, the same has been accepted by the judgment debtor as admittedly he has not filed any appeal challenging the said civil decree. It is also pertinent to note that after the crime was committed on 6 May, 2018 as reported to police in Dubai, the judgment debtor in the month of August 2018 purchased a flat in Thane, Maharashtra State in the name of his wife for a sum of Rs.70,05,743/-. The Index – 2 documents of the said flat has been annexed to the interim application filed by the judgment creditor.

6.1) This court while hearing the parties in the interim application, has already granted prayer clause (b) and prayer clause (c).

6.2) The judgment debtor though has made an effort to show that he has complied with the disclosure part, however true and correct facts have not been brought on record. Therefore, the decree holder is only pressing for rest of the prayers of the interim application including the prayer seeking direction against the wife of the judgment debtor. It will be wrong on the part of the judgment debtor to say that he was not allowed to be represented by the lawyer in the Civil Court at Dubai as in the criminal proceedings, he was represented by a lawyer. He had admitted his crime and it is evident from the fact that the money which he has received as a payment of

crime has been used by him to purchase properties in the name of his wife. The principles of natural justice has been followed and the decree needs to be executed as early as possible.

6.3) The learned advocate appearing for the decree holder has relied upon three judgments :-

(1) Janardhan Mohandas Rajan Pillai & Anr. vs. Madhubhai Patel & Ors., reported in 2004(1) Mh.L.J. 37

(2) Arvind Jeram Kotecha vs. Prabhudas Damodar Kotecha, reported in 2020 SCC Online Bom 2611

(3) Alcon Electronics Private Limited vs. Celem S.A. of FOS 34320 ROUJAN FRANCE, reported in (2017) 2 SCC 253

7) I have heard learned advocates for both the sides and I have gone through the documents relied upon by them and so also, I have gone through the citations relied upon by them.

8) I have also considered carefully the provisions of section 13 of the Code of Civil Procedure and more particularly sub-para (b) and sub-section (d), which reads as under :-

13. When foreign judgment not conclusive.—A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

(b) where it has not been given on the merits of the case;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

[Emphasis supplied]

9) In the present proceedings, it is admitted fact that the Civil Court in Dubai has passed money decree against the judgment debtor. The said money decree has not been challenged by the judgment debtor. Therefore, the money decree has become final.

10) This is an executing court, and as regards the objections as raised in the affidavit in reply for reciprocating territory are concerned, the same has not been pressed fairly by the learned advocate appearing for the judgment debtor.

11) It is not the case of the judgment debtor that he was prohibited from appointing an advocate in the Civil Court at Dubai. The decree which is passed by the Civil Court, cannot be called as *ex-parte* decree as from the contents of the decree, it can be seen that the judgment debtor was heard. The said paragraphs are reproduced hereinbelow :-

‘ Whereas, the case was deliberated before the Court as described in the hearings transcripts and in which the plaintiff’s attorney appeared, while the defendant appealed in person.

On the session held on 13/01/2019, the plaintiff’s attorney submitted a memorandum included statement of requests

amendment-indicating the payment of the maximum fees-requested in its conclusion to add the amount 13,838,884 dirhans so the claimed amount reaches 15,316,250 dirhans, besides he attached a docket containing a photocopy of the financial audit report of plaintiff's accounts with the transaction the defendant also submitted a rejoinder requested in its conclusion to dismiss the case and alternatively to assign an accounting expert in order to settle the account between the two parties. '

The above paragraphs which are translated from Arabic to English, shows that the judgment debtor was heard.

15) It is also to be seen that there were criminal proceedings filed against the judgment debtor pursuant to which he was behind bar and ultimately deported back to India.

16) So also, the fact remains that after he was deported back to India on 6 May, 2018, when he left Dubai and came back to India, before he deported back to Dubai in the month of August 2018, a flat was purchased in the name of the wife of the judgment debtor for a sum of Rs.70,05,743/- at Thane, Maharashtra State.

17) As far as two citations relied upon by the learned advocate appearing for the judgment debtor are concerned, the facts of both the citations are quite different than the present proceedings.

18) In the decision of the Supreme Court in case of

International Woollen Mills (supra) again though it was a foreign judgment and decree, it was an *ex-parte* decree. Hence, the Court held that the same would not be enforceable in India because of the facts of that judgment.

18.1) Single Judge of Bombay High Court in *Algemene Bank Nederland NV* (supra) was dealing with facts where an *ex-parte* decree was passed by Hong Kong Court.

18.2) As in both the matters, it was at *ex-parte* proceedings. In the present proceedings, before the High Court of Bombay, the learned Single Judge has passed an order which records the facts of that case and accordingly the order was passed.

19) In my view, since in the present proceedings, it cannot be called as *ex-parte* proceedings, the findings recorded in both the citations mentioned above would not be applicable to the present proceedings.

20) As regards the decision relied upon of the decree holder Supreme Court in the judgment of *Alcon Electronics* (supra) held that a judgment can be considered as a judgment passed on merits when the Court deciding the case gives opportunity to the parties to the case to put forth their case and after considering the rival submissions, gives its decision in the form of an order or judgment.

21) Considering the law laid down by the various judgments discussed above and the facts of the present case which I have narrated in the above paragraph, the defence taken by the judgment debtor about maintainability of the execution application requires to be rejected. Hence, accordingly it is **rejected**. The commercial execution proceedings should proceed further.

22) As regards the interim application preferred by the decree holder in which by an order dated 23 November, 2021, prayers passed by the Single Judge of this Court whereby prayer clauses (b) and (c) were allowed, reads as under :-

(b) The Respondent be directed to disclose on Affidavit of whereabouts/exact location of all movable/immovable properties, bank accounts, assets as more particularly described in Column 'J' of the present Execution Application;

(c) The Respondent be ordered and directed to file an affidavit disclosing the particulars of all movable and immovable properties/assets belonging to him as provided under Order XXI rule 41 of the Civil Procedure Code, 1908 since the said Foreign Decree has remained unsatisfied for more than 30 days from the date of its passing ;

23) Since there was specific allegation made by the decree holder that after the judgment debtor came back to India on 6 May 2018, immediately in few months, he has purchased a property in the

name of his wife in Thane Maharashtra State. Therefore, the wife of the judgment debtor needs to disclose the details of the said transaction.

24) Hence, the garnishee no.8 (Manvir Kaur Soni) is hereby directed **to disclose on** affidavit the moveable and immoveable properties and the amount lying with her and/or received from the judgment debtor within a period of two weeks from today.

25) In the meanwhile, the judgment debtor or the garnishee no.8 should not create any third party rights in flat situated at Sector 1, Apartment No. 45, 4th Floor, 'B' Wing, Cyprus Sunrise, Kalpatatu Sunrise, Village Baadkum, Thane.

26) A copy of the order be served on the garnishee no. 8 (Manvir Kaur Soni) by the advocate appearing for the decree holder, so also, the Prothonotary and Senior Master will send soft copy of this order to garnishee no. 8 (Manvir Kaur Soni) by e-mail.

[RAJESH S. PATIL, J.]