HON'BLE SRI JUSTICE R. SUBHASH REDDY

CIVIL REVISION PETITION Nos.2985, 3068 & 3069 of 2015

COMMON ORDER :

As common questions of law arise for consideration on similar set of facts between the same parties, all these revision petitions are heard together and are being disposed of by this common order.

C.R.P.Nos.3068 and 3069 of 2015 are filed against the common order dated 05.11.2014, passed by the XI Additional Chief Judge, City Civil Court, Hyderabad, in E.P.Nos.3 and 4 of 2014, and C.R.P.No.2985 of 2015 is filed by the very same petitioners, aggrieved by the order, dated 17.06.2015, passed by the same Court, in E.A.No.738 of 2014 in E.P.No.3 of 2014.

The respondent herein is a bank incorporated under the laws of Republic of Mauritius. The 1st petitioner-judgment debtor No.1 is a Company incorporated under the laws of Mauritius and is engaged in the business of sale of palm oil. The 2nd petitioner-judgment debtor No.2 is a Company incorporated under the laws of India and its principal business is manufacture of light engineering components, domestic appliances, castings and steel processing machinery etc. The 1st petitioner-Company is a wholly owned subsidiary of the 2nd petitioner-Company.

The 1st petitioner-Company has entered into Facility Agreement, dated 09.11.2010, with the respondent-bank for providing trade finance banking facility upto a limit of U.S. $10 million. On 09.12.2010, the 2nd petitioner herein has executed a Deed of Guarantee to guarantee the obligations of 1st petitioner to the extent of U.S. $10 million. On 12.07.2011, the original Facility Agreement was amended by increasing the limit of facility to the 1st petitioner upto U.S. $20 million and the 2nd petitioner has further executed the Deed of Guarantee on 03.08.2011, guaranteeing the obligations of 1st petitioner under the amended Facility Agreement. As per Clauses 23 and 24.1(a) of the Restated Facility Agreement, the petitioners have agreed that any dispute arising out of or in connection with the existence, validity or termination of the Restated Facility Agreement shall be governed by English law and all disputes shall be submitted to the Courts of England.

The respondent-decree holder, alleging that the 1st petitioner-judgment debtor No.1 had drawn around U.S. $19,997,102/- on various dates between 13.02.2012 and 22.06.2012, being almost the full amount under the original Facility Agreement and the Amended Facility Agreement and failed to repay the same, submitted a claim on 13.01.2013 in Claim No.2013, Folio 67 in the High Court of Justice, Queen's Bench Division, Royal Courts of Justice, United Kingdom, for a total amount of U.S. $16,588,139.81. Petitioners herein are subjected to jurisdiction of Courts at United Kingdom, who have expressed their intention to contest the jurisdiction of Court to adjudicate the matter. The petitioners' challenge to the jurisdiction of Court by application notice, dated 27.02.2012, is decided by the Commercial Court, Queen's Bench Division on 24.05.2013 by dismissing the same and the petitioners were directed to pay the respondent-Bank, costs of 70,000 pounds. By the aforesaid order, permission to appeal is refused. There is a Minute of Order to that effect, passed by the said Court and also approved judgment of the very same date.

Subsequent to dismissal of the application of the petitioners questioning the jurisdiction of the Court in United Kingdom, respondent-bank has filed two applications before the same Court;

the 1st application for permission to seek summary judgment in the circumstances mentioned therein and the 2nd application is for summary judgment itself. After dismissal of the application of petitioners questioning the jurisdiction of the Court, petitioner has not appeared, as such, the claim made by the respondent-bank is allowed by judgment, dated 08.11.2013. Though such judgment is an *ex parte* one, by said judgment and Minute of Order, dated 08.11.2013, the Court has decided the claim of respondent-bank on merits. In view of the aforesaid judgment of the Queen's Bench, respondent-bank has filed E.P.Nos.3 and 4 of 2014 before the XI Additional Chief Judge, City Civil Court, Hyderabad, one for the total claim and another one for the costs of the case, granted by the UK Court. By orders in interlocutory application in E.A.No.1 of 2014 in E.P.Nos.3 and 4 of 2014, the XI Additional Chief Judge, City Civil Court, Hyderabad has granted *ad interim* injunction, restraining the 2nd petitioner herein from operating the bank accounts. Challenging the said order on the ground that the E.Ps. are entertained without any jurisdiction as the decree passed by the British Court is not a judgment on merits, the petitioners have approached this Court, at first instance, by filing writ petition in W.P.No.13828 of 2014. This Court, by order, dated 25.04.2014, has directed the trial Court to decide the objection of petitioners with regard to maintainability of E.Ps. as preliminary issue and subsequently, by order, dated 03.06.2014, the said writ petition was closed in terms of the interim orders passed earlier. Pursuant to the orders passed in the above said writ petition, the impugned order is passed by the executing Court, rejecting the claim of petitioners with regard to enforceability of the judgment rendered by the U.K. High Court. As against the same, these civil revision petitions are filed.

Heard Sri A.Sudarshan Reddy, learned Senior Counsel appearing on behalf of the counsel for petitioners on record and Sri S.Niranjan Reddy, learned counsel appearing for respondent-bank.

It is contended by Sri A.Sudarshan Reddy, learned Senior Counsel for petitioners that as the judgment and Minute of Order, dated 08.11.2013, passed by the U.K. Court is an *ex parte* judgment delivered by a foreign Court without considering the merits of the case, it cannot be enforced in India in view of the provision under Section 13(b) of the Code of Civil Procedure, 1908. Further, it is submitted that the transcript of Opus-2 cannot be treated as a judgment within the meaning of Section 2(9) of CPC. It is submitted by the learned counsel that though the decree is passed by the Court in reciprocating territory, as the same is not a judgment on merits under Section 13(b) of CPC, it cannot be enforced. It is contended by the learned counsel that though there is an approved judgment in support of the Minute of Order, dated 24.05.2013, passed by the Commercial Court, Queen's Bench Division, United Kingdom, by which, the said Court has dismissed the challenge made by the petitioners with regard to jurisdiction and imposed costs, there is no such approved judgment for the Minute of Order, dated 08.11.2013, passed by the U.K. Court. It is contended that by judgment, dated 24.05.2013, the petitioners are deprived of appeal to the superior Court, as such, same is not in accordance with the Code of Civil Procedure. Further, it is contended by the learned Senior Counsel that the Minute of Order, dated 08.11.2013, is not supported by any judgment within the meaning of Section 2(9) of CPC, as such, the same is not executable before the District Court in India. The learned Senior Counsel, in support of his contentions, has placed reliance on the judgments of Hon'ble Supreme Court in **M/s.International Woollen Mills v. M/s.Standard Wool (U.K.) Ltd.**, in **Balraj Taneja & another v. Sunil Madan & another** and on a Division Bench judgment of this Court in **S.Gurvaiah & others v. S.Ramesh & others** (to which, one of us is a party).

On the other hand, it is contended by Sri S.Niranjan Reddy, learned counsel appearing for respondent that the judgment and decree, dated 08.11.2013, are in accordance with the Civil Procedure Rules, 1998 of U.K. and the said judgment is rendered on merits by considering the oral and documentary evidence on record, as such, it cannot be said that it is not a judgment on merits, so as to claim exclusion from executability under Section 13(b) of CPC. Learned counsel has also relied on the very same judgment relied on by the learned Senior Counsel for petitioners, in **International Woollen Mills**' case (1 supra). It is contended that after claim is filed by the respondent-bank, the petitioners have filed an application before the Commercial Court, Queen's Bench Division, challenging the jurisdiction of said Court, but after considering the various issues raised, the Court has rejected the claim of petitioners by imposing costs of 70,000 Pounds. It is further submitted that the judgment delivered on 08.11.2013 allowing the claim made by the respondent-bank subsequent to dismissal of the application filed by the petitioners questioning the jurisdiction of U.K. Court, was the ex-tempore judgment handed down by Hon'ble Mr.Justice Males on 08.11.2013. It is submitted that as per the Civil Procedure Rules, 1998, applicable for U.K. Commercial Courts, it is permissible to give oral judgment immediately after conclusion of submissions and on producing the transcript by the transcript writers who are present in the Court. It is submitted that as per the practice, the transcript recorded by Opus-2 also is certified after necessary corrections, by Hon'ble Mr.Justice Males, to the effect that the transcript actually reflected the judgment given by him on 08.11.2013. It is further submitted that if transcript is ready, it is clear that it is a judgment by considering the oral and documentary evidence on record, as such, it is not open for the petitioners to plead that such judgment is an *ex parte* one and not on merits, so as to bring within the meaning of Section 13(b) of CPC, to challenge its enforceability in India. It is further submitted that as the Court in a foreign country has rendered judgment as per CPC applicable in such country, having regard to Notification No.SRO. 399, dated 01.03.1953, issued by the Government of India in exercise of powers conferred by Explanation 1 to Section 44-A of CPC, the said decree is enforceable in India.

Under Section 44-A of CPC, if a copy of the decree of any superior Court of any reciprocating territory is filed in a District Court, the decree is executable in India as if it had been passed by the District Court. In view of the power under Explanation 1 to Section 44-A of CPC, the Government of India has issued notification as referred above, notifying the reciprocating territories, which includes the superior Courts of England. Under Section 44-A(3) of CPC, the District Court is empowered to refuse execution of any such decree, if it is shown to the satisfaction of the Court that the said decree falls within any of the exceptions specified in Clauses (a) to (f) of Section 13. In the case on hand, it is the case of petitioners that the judgment and decree, dated 08.11.2013, is not on merits of the case, as such, it falls under Section 13(b) of CPC. So far as the judgment dated 24.05.2013 is concerned, by which, the jurisdictional challenge made by the petitioners was dismissed, it is the case of petitioners that as the said judgment is not appellable, it does not accord to the procedure contemplated under the Code of Civil Procedure in India, as such, it cannot be enforced.

Before proceeding further, I deem it appropriate to refer to certain provisions from the material placed on record by the learned counsel for respondent. As per the provision under Rule 39A of Civil Procedure Rules 1998, as applicable in U.K., there is a Chapter for recording of proceedings and Clauses 6.1, 6.2 and 6.3 of the said Chapter read as under :

> "6.1 At any hearing, whether in the High Court or the County Court, the proceedings will be tape recorded unless the judge directs otherwise.
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> 6.2 No party or member of the public may use unofficial

recording equipment in any court or judge's room without the permission of the court. To do so without permission constitutes a contempt of court.

6.3 Any party or person may require a transcript or transcripts of the recording of any hearing to be supplied to him, upon payment of the charges authorized by any scheme in force for the making of the recording or the transcript."

As per the standard requirements notified under Rule 40.2 of the same Rules, every judgment and order must bear the date on which it is given or made and be sealed by the Court. Rule 40.2.5 of the Rules prescribe the procedure for handing down the written judgments. In the said Rule, it is stated that the Judges are required to give reasons for their decisions; that is to say, reasons for their judgments in the narrow sense. The expression "judgment" is commonly used to mean, not just the Judge's decision, but his or her reasons for it. The judgments, in broad sense, may be given orally or in writing. The material placed on record also makes it clear that as per the procedure, the reserved judgment of the Judge will be made available to the parties either by being handed down in writing or where delivered orally, by request for a transcript of the same. The learned Judge who has rendered the judgment on 08.11.2013, also certified the transcript of Opus-2, by letter dated 03.07.2014, certifying that the transcript of Opus-2 actually reflects the judgment given by him on 08.11.2013. The letter of the Judge, who has rendered judgment on 08.11.2013, dated 03.07.2014, reads as under :

"**JUDICIARY OF ENGLAND AND WALES**

THE HONOURABLE MR.JUSTICE MALES

3rd July 2014

The Mauritius Commercial Bank Ltd and (1) Hestia Holdings Ltd (2) Sujana Universal Industries Ltd (Claim No.2013 Folio 67)

The judgment delivered in the matter The Mauritius Commercial Bank Ltd. and (1) Hestia Holdings Ltd (2) Sujana Universal Industries Ltd (Claim No.2013 Folio 67), handed down on 8 November 2013, was ex tempore.

This means that it was given orally immediately after the conclusion of submissions.

The enclosed transcript was produced by transcript writers present in court and is evidence that I, Mr.Justice Males, handed down judgment in The Mauritius Commercial Bank Ltd and (1) Hestia Holdings Ltd (2) Sujana Universal Industries Ltd ex tempore and in this specific case orally.

The transcript accurately reflects my judgment given on 8 November 2013.

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Mr.Justice Males"

Further, I have also perused the transcript of Opus-2 of the judgment, dated 08.11.2013. The transcript initially begins in the form of the questionnaire by the counsel who appeared for the respondent-bank and the Judge, and there is also a ruling by the Judge on the claim made by the respondent-bank. The relevant extracts in the ruling part of the transcript of the judgment reads as under :

1. "I have been provided with the evidence served by the claimants in support of the application for summary judgment and the documents which make good the claimants' claim and Ms. Emily Wood, lead counsel for the claimants, has provided a skeleton argument which sets out in detail the claimants' case.

I have considered those matters carefully and I am satisfied that the documents and evidence show that the claimants have an unanswerable claim on the merits against the defendants. The defendants not only have no possible defence but have in the past admitted that they have no such defence and that the reason for defaulting on the loan was cashflow difficulties which they were experiencing. That may be commercially understandable, and one sympathises with difficulties which businesses face in the current economic climate."

2. "Following the defaults which occurred on 15 October, Mr.Chowdary, to whom I have already referred, sent an email to the claimants apologising for not making the payment. This is what he said:

"I am extremely sorry for happenings. I am told one of our major expected cashflow got differed. Whatever the reason the bottom line is we have defaulted. My people are working for it and only thing I can promise you is we will be settling ASAP though we are delaying which is beyond our control. Presently traveling in US. I will talk to the bankers also upon my return on Sunday. With best wishes."

This constitutes a clear acknowledgment that the defendants had defaulted on the re-stated agreement. Despite the promise of payment and the fact that that promise was not complied with on 31 October, there was a grant on 1 November of yet further time to pay, with Hestia agreeing, in an agreement of that date, to pay US$1.1 million on 19 November and US$ 1.5 million on 30 November 2012.

But those payments were not made in their entirety, although it appears that some payments were due. It was at this point that the claimants, who had, it may be thought, bent over backwards to assist the defendants and give them time to pay, finally lost patience."

3. Ruling by MR JUSTICE MALES

MR JUSTICE MALES: The claimants have been successful in this action and are entitled to an order for their costs, to be assessed on the standard basis. That will include the costs of the action generally as well as the costs of this application, but obviously will not include the costs of the jurisdiction challenge, which have been dealt with separately and for which the claimants have already obtained an order for payment of 70,000 pounds, albeit not yet complied with.

It is an appropriate case for summary assessment, given that this has been a short hearing so far, of about 45 minutes. The claimants' statement of costs is for a grand total of 99,925.50 pounds, which I have to say seems on the high side given that this is a straightforward debt claim to which there has never been any defence, and given that the substantial costs incurred in explaining the case and resisting the jurisdiction challenge have already been dealt with by a separate order.

Ms. Wood has explained that the claimants have been anxious to bend over backwards to ensure compliance with the rules and to notify the defendants every step of the way so that there would be no doubt that the claimants had given the defendants proper notice and every opportunity to participate in the proceedings. I accept that this will to some extent have increased the costs, and also that the claimants were taking steps to ensure, as best they can, that any judgment they obtain, as indeed they now have done, will be a judgment capable of enforcement in India if that should prove necessary.

Even taking those factors into account, however, the amount claimed still seems to me to be high. I acknowledge that the claim is for $15 million, and in

> percentage terms it may be said that the costs are only a small percentage of that, but nevertheless costs will only be ordered where they are both reasonable and proportionate, not only to the amount of the claim but also to what has been involved in presenting the case. Taking these matters into account, I assess the costs summarily in the sum of 60,000 pounds and that is what the order will be."

From the above extracted portions of the judgment coupled with the confirmation made by the learned Judge who rendered the judgment certifying the accuracy of the transcript of the judgment under Opus-2, it can be termed as a judgment on merits, which is rendered after considering the oral and documentary evidence on record.

I have carefully gone through the judgment of the Hon'ble Supreme Court in **International Woollen Mills'** case (1 supra), relied on by both the parties. In the said judgment, the Hon'ble Supreme Court, while considering the enforceability of a foreign judgment, has held that if the decree has not been given on the merits of the case, then the foreign judgment is not conclusive between the parties and the same cannot be executed in India. It is further held that if an *ex parte* decree is passed in a summary manner under a special procedure without going into the merits and without taking evidence, then those decrees would not be executable in India. But, in the very same judgment, it is held that the burden of proving that the decree is not on merits, is on the judgment debtors. In this judgment, the Hon'ble Supreme Court has approved the view taken by the High Court of Rangoon in the case of **Abdul Rehma v. Md.Ali Rowther** to the effect that a decision on merits involves the application of the mind of the Court to the truth or falsity of the plaintiff's case and a judgment passed after a judicial consideration of the matter by taking evidence may be a decision on the merits even though passed *ex parte*. Similarly, the Hon'ble Supreme Court has also approved the view taken by the High Court of Patna in the case of **Wazir Sahu v. Munshi Das** to the effect that an *ex parte* decision may or may not be on the merits and the mere fact of its being *ex parte* will not in itself justify a finding that the decision was not on merits, and that the real test is not whether the decision was or was not *ex parte*, but whether it was merely formally passed as a matter of course or by way of penalty or it was based on the consideration of the truth or otherwise of the plaintiff's claim.

The aforesaid ratio laid down by the Hon'ble Supreme Court is applicable to the case of respondents, but not to the case of petitioners. After rejection of the plea of petitioners with regard to jurisdiction of U.K. Court, the petitioner has not appeared, as such, respondent-bank has applied for grant of summary judgment, and hence, by appreciating the evidence on record and by considering the claim of respondent-bank in detail, the judgment is delivered on 08.11.2013 and the oral judgment of the learned Judge was handed down and the transcript of the oral judgment is also certified by the same Judge. It was also certified by the competent authorities of the Court by necessary stamping, and further, the petitioners have never disputed the authenticity of such judgment. It is the mere case of the petitioners that as they have not participated in the proceedings, such judgment is to be treated as *ex parte*. Such contention of petitioners cannot be accepted in view of the ratio laid down by the Hon'ble Supreme Court in **International Woollen Mills'** case (1 supra). When the Minute of the Order and transcription are considered, it has to be said that the judgment is rendered by the U.K. Court as per their Civil Procedure Rules. In that view of the matter, it cannot be said that the said judgment is not on merits, within the meaning of Section 13(b) of CPC.

Even the other contention of the learned counsel for petitioners that in the judgment and Minute of Order, dated 24.05.2013, leave to appeal is refused, also cannot be the ground for challenging the enforceability of the decree in the District Court as per the Code of Civil Procedure, 1908. Both the grounds are not tenable. In **Balraj Taneja**'s case (2 supra), the Hon'ble Supreme Court has held that even in the absence of written statement, when the plaint itself indicate existence of disputed questions of fact involved in the case, the Court should not pass judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy, Similar view is also taken by a Division Bench of this Court in **S.Gurvaiah**'s case (3 supra).

Having regard to the fact situation in the present case, this Court is of the view that both the aforesaid judgments would not render any assistance in support of the case of petitioners, as the judgment in the present case is rendered by the U.K. Court after recording various findings having regard to the evidence on record, adduced by the respondent-bank. The extracts of the manuscripts, as referred above, also make it clear that the Court has considered the claim made by the respondent-bank in detail and rendered the judgment. Having failed to contest the claim of respondent-bank after dismissal of the jurisdictional challenge made by the petitioners, it is not open for them to contest the enforceability of the judgment and decree, dated 08.11.2013, on the ground that such judgment and decree are not on merits within the meaning of Section 13(b) of CPC.

For the aforesaid reasons, this Court is of the view that there is no merit in C.R.P.Nos.3068 and 3069 of 2015, so as to interfere with the order, dated 05.11.2014, passed by the XI Additional Chief Judge, City Civil Court, Hyderabad, in E.P.Nos.3 and 4 of 2014.

Coming to the revision in C.R.P.No.2985 of 2015, this revision is filed against the order, dated 17.06.2015, passed by the XI Additional Chief Judge, City Civil Court, Hyderabad, in E.A.No.738 of 2014 in E.P.No.3 of 2014, by which, the application filed by the respondent-bank seeking directions against the 2nd petitioner herein to declare on affidavit, the assets, both movable and immovable, including the details of bank accounts, is allowed, directing to declare the same within 15 days of passing the said order.

In this revision, it is contended by the learned Senior Counsel for petitioners that during pendency of the revision, the 2nd petitioner has already declared the assets, both, movable and immovable, as directed by the trial Court. In that view of the matter, as the directions of the trial Court are already complied with, I do not find any ground to interfere with the order, dated 17.06.2015, passed by the Court below, in E.A.No.738 of 2014 in E.P.No.3 of 2014.

For the reasons recorded above, all the revision petitions are dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

1st October 2015

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