

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4541 of 2017

ORDER:

This Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908, ['the Code', for short] is filed by the unsuccessful petitioner assailing the order, dated 31.07.2017, of the learned Chief Judge, City Civil Court, Hyderabad, passed in EA.No.828 of 2017 in EA.no.218 of 2015 in Case No.3991 of 2012.

2. I have heard the submissions of *Sri R. Raghunandan Rao*, learned senior counsel representing *Sri Salvaji Raja Shekar Rao*, learned counsel for the petitioner, and of *Sri K. Vivek Reddy*, learned counsel for the respondents 3 & 4. I have perused the material record.

3. The introductory facts are as follows: - 'The respondents 3 & 4 herein are the decree holders-applicants in EA.No.218 of 2015. They filed the said Execution Application under Order XXI Rule 41 of the Code requesting to direct the petitioner herein/ 3rd JDr to make an affidavit stating the particulars of his assets and further requesting the Court to orally examine the 3rd JDr as to whether he has any other means of satisfying the decree obtained by the respondents 3 & 4 herein. In the said Execution Application, the 3rd JDr filed the afore-stated Execution Application in EA.No.828 of 2017 under Section 13(b) read with Section 151 of the Code requesting to reject EA.No.218 of 2015 filed by the decree holders/ respondents 3 & 4 herein, on the ground that the order, dated 14.07.2014, in Case No.3991 of 2012 passed by the High Court of Justice, Chancery Division, Companies Court, UK, is not enforceable in India. The said Application was resisted by the decree holders/ respondents 3 & 4 herein, by filing a counter. On merits and by the orders impugned in this revision, the Court below dismissed the application of the petitioner-3rd JDr. Therefore, the aggrieved 3rd JDr is before this Court.

4. In this revision petition, the parties shall hereinafter be referred to as the petitioner-3rd JDr and the respondents 3 & 4-decree holders (DHrs). Be it noted that the respondents 1 & 2 are stated to be JDrs 1 & 2.

5. To begin with, it is necessary to note the following admitted introductory facts:

The DHrs obtained an order, dated 14.07.2014, in Case No.3991 of 2012 on the file of the High Court of Justice Chancery Division Companies Court, UK, [hereinafter, 'the Foreign Court' for brevity] against the JDrs including the 3rd JDr-petitioner herein. The said order verbatim reads as under: -

“An application was made on 23 May 2014 by the solicitors for the Applicants under CPR part 24 for Judgment against the Third Respondent, the First and Second Respondents having reached terms of settlement with the Applicants. Upon hearing the solicitors for the Applicants, the Third Respondent not being in attendance or represented and upon the court being satisfied that service was in order the Registrar read the written evidence filed And the Court having found that the Third Respondent has no real prospect of successfully defending the issue in respect of an interim dividend paid by the company to Kakatiya Investments Limited on 30 August 2011 and that there was no other reason why the said issue should be disposed of at a trial. It is ordered that (1) the Third Respondent pay the applications the sum of £2,139,825 (2) the Third Respondent pay the Applicants the sum of £63,925/- interest thereon; (3) the Third Respondent pay to the applicants their costs of this Application summarily assessed in the sum of £44,354.90.”

Having obtained the said order, the DHrs filed EA.No.218 of 2015 under Order XXI Rule 41 read with Section 151 of the Code for examination of the JDr no.3 as to his property. The said provision of law reads as under:

Examination of judgment debtor as to his property.- (1) Where a decree is for the payment of money the decree holder may apply to the court for an Order that—

(a) the judgment debtor, or

(b) where the judgment debtor is a corporation, any officer thereof, or

(c) any other person, be orally examined as to whether any or what debts are owing to the judgment debtor and whether the judgment debtor has any and what other property or means of satisfying the decree; and the court may make an order for the attendance and examination of such judgment debtor, or officer or other person, and for the production of any books or documents.

(2) Where a decree for the payment of money has remained unsatisfied for a period of, thirty days, the court may, on the application of the decree holder and without prejudice to its power under sub-rule (1), by order require the judgment debtor or where the judgment debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment debtor.

(3) In case of disobedience of any order made under sub-rule (2), the court making the order, or any court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three month unless before the expiry of such terms the court directs his release.)

It appears that along with the said application, the DHrs filed before the Court below a copy of the afore-stated order passed by a Foreign Court and later produced before the Court below a copy of the Judgment of the Foreign Court in the above case (as approved by the said Judge). The 3rd JDr, filed EA.no.828 of 2017, *inter alia*, contending that the afore-stated order passed by the Foreign Court is not enforceable in India and hence, sought rejection of E.A.No.218 of 2015 filed by the DHrs.

6. In this back drop, learned senior counsel appearing for the 3rd JDr forcefully contended that the Execution Application filed by the DHrs under Order XXI Rule 41 of the Code for examination of the 3rd JDr as to his property is liable for rejection as the order of the Foreign Court itself is unenforceable in India and as the requirement of the 3rd JDr's examination as to his property would arise if only the order of the Foreign Court is enforceable in India. In reply, learned counsel for the DHrs first contended that no Execution Petition (EP) for realisation of the fruits of the order of the Foreign Court has yet been filed in India by the DHrs and that the DHrs only filed an Execution Application (EA) for examination of the 3rd JDr as to his property before filing an EP for enforcing the order of the Foreign Court in India and that, therefore, the contention raised at this stage by the 3rd JDr in regard to the enforceability of the order of the Foreign Court in India is premature. The contention of the learned counsel for the DHrs precisely is that the application under Order XXI Rule 41 of the Code is filed only for ascertaining the assets and means of the 3rd JDr, as a step in aid for later filing an EP for appropriate relief before an appropriate forum, and hence, the enforceability in India of the order of the

Foreign Court shall be examined, if necessary, in the event an EP comes to be filed at a later stage but not at this stage of examination of the 3rd JDr as to his property as envisaged under Order XXI Rule 41 of the Code. He alternatively and without prejudice to the first contention advanced submissions in regard to the enforceability of the order of the Foreign Court in India. In reply, the learned senior counsel contended that mere filing of EA under Order XXI Rule 41 of the Code for examination of the 3rd JDr as to his property for all purposes would amount to execution of the order of the Foreign Court in India and hence, the question of enforceability in India of the order of the Foreign Court requires to be examined at this stage and such a request of the 3rd JDr for examination of the said aspect cannot be termed as premature as being contended by the DHrs. He would further submit that unless the order of the Foreign Court is enforceable in India, no EA under Order XXI Rule 41 of the Code would lie before the Court below, which is an executing Court. He, therefore, submitted that entertaining the said application of the DHrs for appropriate consideration by the Court below, which is an executing Court, would itself amount to enforcing the order of a Foreign Court in India and, therefore, the examination of the enforceability in India of the order of the Foreign Court is necessary even before ordering the said application of the DHrs.

7. Thus, from the afore-stated submissions it is obvious that the contentions raised before this Court are two fold. The first set of contentions revolves round the issue – ‘whether the examination of the question with regard to the enforceability of the order of the Foreign Court in India at this stage of the matter is either a *sine-qua-non* or premature? It is axiomatic that the second set of contentions relate to the merits of the matter, that is, the enforceability or otherwise of the order of the Foreign Court in India. It is trite to note that if this Court comes to the conclusion that the examination of the question with regard to enforceability of the order of the Foreign Court in India does not fall for consideration at this stage and that the said question requires examination, if

necessary, at an appropriate later stage of the matter, that is, at the stage of consideration of EP that comes to be filed by the DHrs, then at this stage there is no need to examine the second set of contentions related to the merits of the matter, that is, enforceability or otherwise of the order of the Foreign Court in India. However, if this Court comes to a conclusion to the contrary, then the second set of contentions related to the enforceability or otherwise of the order of the Foreign Court in India also need examination.

8. Learned senior counsel appearing for the 3rd JDr, on the first aspect contended as follows: - 'The DHrs admittedly filed an EA under Order XXI Rule 41 of the Code after having obtained an order/judgment from a Foreign Court, that is, High Court of Justice Chancery Division Companies Court, UK. The said application was filed for directing the 3rd JDr to make an affidavit stating the particulars of his assets and further requesting the Court below to orally examine the 3rd JDr as to whether or not he has any other means to satisfy the decree. Immediately on receipt of notices in the said application, the 3rd JDr filed the subject EA requesting to reject the EA filed under Order XXI Rule 41 of the Code by the DHrs on the ground that the order passed by the Foreign Court under execution was not passed on merits and that it falls under the exceptions contemplated under Section 13 of the Code and that it is unenforceable in India. The said Application was dismissed without numbering. The afore-stated order was assailed in CRP.No.5752 of 2016. This Court, having allowed the said CRP, remitted the matter to the Court below with a direction to number the EA of the 3rd JDr, hear and dispose of the same on its merit. Despite the Court below giving an opportunity to the DHrs to file a counter, they have not chosen to file a counter in the subject EA filed by the 3rd JDr. Thereafter, the Court below dismissed the said application of the 3rd JDr by passing the impugned order. Hence, the 3rd JDr is before this Court. The purported order of the Foreign Court was devoid of reasons is one of the contentions raised before the Court below. The 3rd JDr also stated in his pleadings that he is a permanent resident and

citizen of India and was not present in the UK when the alleged case proceedings took place in the Foreign Court. The Court below in its order observed that the counsel for the DHrs filed a copy of the judgment of the Foreign Court. The said copy of the judgment was handed over across the Bench to the learned Chief Judge without filing an appropriate petition with a supporting affidavit. The DHrs till date have not filed into Court the certified copy of the purported judgment of the Foreign Court. The said copy of the judgment said to be the judgment of the Foreign Court is not a certified copy and is a mere print out. It is not in compliance with Sections 14 & 14(a) of the Code. Despite the said facts, the Court below relied upon the said judgment of the Foreign Court while dismissing the EA filed by the 3rd JDr. The 3rd JDr's preliminary contention is that the EA filed by the DHrs under Order XXI Rule 41 of the Code for eliciting information regarding the assets of the 3rd JDr is not maintainable. However, the DHrs argument is that on information obtained from the 3rd JDr, the DHrs would be able to file proper Execution Petition and that the 3rd JDr is not entitled at this stage to question the enforceability in India of the order of the Foreign Court on any grounds mentioned in Section 13 of the Code. Since the very executability or enforceability in India of the order of the Foreign Court is questioned in the instant case, the application under Order XXI Rule 41 of the Code cannot be ordered unless such enforceability or executability of the order of the Foreign Court in India is tested in the first instance as only a 'decree holder' would be entitled to move an application under Order XXI Rule 41 of the Code. Unless the decree is an enforceable decree, the petition filed by the DHrs under Order XXI Rule 41 of the Code would not be maintainable and such an application cannot be entertained by the Court below without the DHrs first establishing that the order of the Foreign Court is enforceable in India. Hence, the order impugned is liable to be set aside. However, since the Court below did not consider the factual and legal aspects in proper perspective, the Execution Application filed by the 3rd JDr may be remitted to the Court below for

determining the enforceability or otherwise of the order in India of the Foreign Court and for adjudication of the application of the 3rd JDr afresh on merits and in accordance with the procedure established by law.’

9.1 Be it noted that the learned senior counsel placed reliance on the following ratios in the Full Bench decision of this Court in Kukadap Krishna Murthy v. G. Venkata Rao [AIR 1962 AP 400 FB].

In actions ‘in personam’ a foreign court can be considered as a court of competent jurisdiction only under certain specified conditions viz., when the defendant happens to be within the foreign country at the time of the commencement of the action in obedience to the laws and the jurisdiction of the court or when he submits to the jurisdiction of the court or when the defendant at the time of the judgment in the action is a subject or citizen of such country. Jurisdiction is based on territorial dominion, if none of these circumstances is present, a foreign court quae such a defendant cannot be regarded as a court of competent jurisdiction.

We may usefully refer to the pronouncement of the Privy Council in Srdar Gurdial Singh v. Rajah of Faridkote, 4 Mad LJ 267 (PC).... The position was stated by their Lordships in these words:

In a personal action, to which none of these causes of jurisdiction apply, a decree pronounced in absentem by a foreign court, to the jurisdiction of which the defendant has not in any way submitted himself, is by international law an absolute nullity. He is under no obligation, of any kind, to obey it, and it must be regarded as a mere nullity, by the courts of every nation except (when authorised by special local legislation) in the country of the forum by which it was pronounced.”

9.2 He also placed reliance on the provisions of Sections 82 & 86 of the Indian Evidence Act dealing with presumption as to documents and presumption as to certified copy of foreign judicial records and the meaning ascribable to ‘Her Majesty’s Dominions’.

10. Per contra, learned counsel for the DHrs contended as follows: - “On, 14.07.2014, the High Court of Justice Chancery Division Companies Court, UK, pronounced the decree/ order against the 3rd JDr. Notices were served on the 3rd JDr and opportunity to the 3rd JDr to file points of defence was given. The DHrs were required to file their evidence. Eventually the evidence was read over and considered by the UK High Court before the order and judgment were pronounced in the case. Reasons were assigned in the judgment. The order and

judgment have attained finality. The 3rd JDr is a resident of Hyderabad. The DHrs have no knowledge of his assets. Hence, they filed an EA under Order XXI Rule 41 of the Code for appropriate reliefs, that is, for examination of the 3rd JDr as to his property. In that EA, the 3rd JDr filed the subject application for rejection of the EA filed by the DHrs under Order XXI Rule 41 of the Code alleging *inter alia* that the order of the Foreign Court is not executable/enforceable in India. Filing of an EP under Order XXI Rule 11 of the Code is not a condition precedent for filing an Application under Order XXI Rule 41 of the Code for examination of the JDr as to his property. The said provision was inserted pursuant to the 27th and 54th reports of the Law Commission of India to expedite execution. Order XXI Rule 41 only enables the DHr to ascertain the properties/ assets and means of the JDr provided the JDr reveals his properties and discloses his means. The provision under Order XXI Rule 11 of the Code requires the DHr to specify in the EP the mode in which the assistance of the Court is required; and it further requires the DHr to state the necessary particulars in a tabular form. In *N. Chandra Chems v. Varma Mukherji* [2007 (5) Mh.L.J.722]; *United Phosphorous v. A.K. Kanoria* [2002 (4) Mh.L.J.358]; and, *SBI. V. M.K.Raveendran* [AIR 2010 Ker 20] it was held that an application under Order XXI Rule 41 of the Code can be filed before filing of the Execution Petition for effective execution of the decree. Entertaining an application under Order XXI Rule 41 of the Code also enables a Court to effectively execute the decree as the particulars that may be furnished by the JDr would also reveal as to whether any properties of the JDr are exempt from attachment and sale. In *N. Chandra Chem's case* (supra) it was held as follows: '...the decree holder must be aware of the properties which are available for attachment and which are statutorily exempted and unless this information is available to the decree holder, he may not be able to submit the application for execution under Order XXI Rule 11(2) of the Code complete in all respects'. '...the information from the judgment debtor regarding his assets prior to proceeding with the application under Order XXI Rule

11(2) of the Code would be of advantage to the Court itself.’ Therefore, an enquiry into the validity/ executability/ enforceability of a decree while considering the request in an application under Order XXI Rule 41 of the Code filed by the DHrs is premature. From the facts borne out by the material record it is discernable that no EP has yet been filed in a Court in India to execute the decree/ order of the Foreign Court. Nonetheless, the 3rd JDr is under an erroneous impression that an EP has been filed. The provisions of the Code do not contemplate enquiry into the executability or enforceability of the decree on the grounds specified under Section 13 of the Code prior to the filing of the Execution Petition. The testing of validity of the decree on the grounds specified under Section 13 of the Code would be required only when the decree is being put to execution by filing an EP. An EA under Order XXI Rule 41 is not an application seeking execution of a decree; it is only an application filed in aid of execution and filing of application under Order XXI Rule 41 of the Code is a step in aid towards execution; it is merely an aid to the DHr to enable him to execute the decree by obtaining information, which is within the special knowledge of the JDr. The JDr will not suffer any prejudice if the Court below decides the application under Order XXI Rule 41 as he will have an opportunity at an appropriate stage to contest the validity or executability or enforceability of the decree or order of the Foreign Court when the DHrs file an Execution Petition in a Court in India. This High Court in *International Investor v. Sanghi Polyester* [2002 (5) ALD 647] held that when an application is filed under Order XXI Rule 41 of the Code a direction should be given for disclosure of the assets of the JDr. Hence, the EA filed by the 3rd JDr for rejection of the EA filed by the DHrs is premature and is liable for dismissal.”

11. Dealing further with the first aspect and the set of contentions on the first aspect, it is now to be examined as to mere filing of an Application under Order XXI Rule 41 of the Code by the DHrs would tantamount to either enforcing the order of the Foreign Court in India or putting the order of the Foreign Court for

execution in India for realisation of the reliefs granted in the said order. It is profitable to refer to the relevant rules in the Civil Rules of Practice and Circular Orders in AP/ TS['CRP', for brevity]:

Rule 209: Application for execution: -

- (1) Except when made under Order XXI, Rule 11(1) of the Code, an application for execution of a decree shall be by petition and, in addition to the particulars set forth in Order XXI, Rule 11(2) of the Code, shall be headed with the cause title of the suit and separately numbered in each suit.
- (2) The petition shall, if it relates to any property of the judgment-debtor, pray for the realisation thereof, in the manner appropriate to the nature of the property, as in Form No.53 and shall also set out the whole of the relief which the Applicant requires at the time of presenting the same. The court shall not grant any relief not claimed by the execution petition.

Thus, the Execution Petition is in the nature of an Original Petition for execution of a decree whereas the Execution Application is in the nature of an interlocutory application. Order XXI Rule 11(1) of the Code deals with oral application and Rule 11(2) deals with written application of the decree holder for execution of the decree. Oral application of the Dhr will have to be made at the time of passing of the decree, where the decree is for payment of money and on such oral application the Court may order immediate execution thereof by the arrest of the JDr prior to the preparation of the warrant, if he is within the precincts of the Court. In all other cases every application for execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case and shall contain in a tabular form the particulars as mentioned in sub rule (2) of Rule 11 of Order XXI. The Court to which such written application is made under sub rule 2 may require the Dhr to produce a certified copy of the decree. Section 51 of the Code postulates the procedure in execution as follows:

1. Powers of Court to enforce execution— Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale or by the sale without attachment of any property;
- (c) by arrest and detention in prison [31][for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section];
- (d) by appointing a receiver; or
- (e) in such other manner as the nature of the relief granted may require:

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the

Court, for reasons recorded in writing, is satisfied—

- (a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—
 - (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or
 - (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or
- (b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or
- (c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation.—In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

Thus, this provision of law deals with modes of execution of a decree depending upon nature of the decree.

12. A plain consideration of Order XXI Rule 41 of the Code (which is already extracted supra) only envisages examination of JDr as to his properties. Under this provision, the DHr may apply to the Court for ordering the JDr to be orally examined as to whether any or what debts are owing to the JDr and whether the JDr has any and what other property or means of satisfying the decree. When such application is made, the Court may make an order for attendance and

examination of such JDr and order for production of any books or documents by the JDr. Further, on the decree remaining unsatisfied for a period of 30 days, the Court may on the application of the DHr and without prejudice to its power under sub rule 1 may by an order require the JDr to make an affidavit stating the particulars of the assets of the JDr. Sub rule 3 of the said Rule 41 deals with consequences of disobedience of any order made by the Court under sub rule 2. Therefore, an application under Order XXI Rule 41 of the Code obviously is intended for examination of the JDr to know from him as to any or what debts are owing to the JDr and whether he has any and what other property or means of satisfying the decree. Unless the DHr knows the properties as well as the means of the JDr by invoking the provision of Order XXI Rule 41 of the Code, the DHr may not be able to file an Execution Petition with the details as stated in Order XXI Rule 11 and in the manner provided under procedure established by law. Therefore, from a wholesome consideration of the provisions of law this Court finds that the DHrs' right to apply to Court for examination of the JDr as to his property is a step in aid for executing the decree and for filing an EP in appropriate Court for appropriate relief. Without knowing the details of properties and means of the JDr, it may not be possible to institute an EP for realisation of the reliefs as per the terms of the decree/ order. To illustrate the point under consideration, it is to be noted that if the JDr, on examination as to his property, discloses that he has any particular immovable property at a particular place then the DHr would be required to file an EP before a competent Court having jurisdiction over the place at which the property of the JDr is situated. Now it is pertinent to note the provisions of Rules 207 & 208 of the CRP, which read as under:

207. When sent to District Court of another District: - If the decree is sent to the District Court of another district for execution by a court subordinate thereto, the district court shall at once transmit it to the subordinate court, and no application to the District court shall be necessary. No charges for

transmitting the decree to such subordinate court shall be levied by the District court.

208. Return of decree to the Transmitting Court: -

1. The court to which a decree is sent for execution shall certify to the court which sent the decree, the fact of execution of such decree specifying the nature and extent of satisfaction, or, where the former court fails to execute the decree the circumstances attending such failure.

2. If the decree-holder does not, within six months from the date of the receipt of the decree on such transfer, apply for execution thereof, the court to which the decree has been sent shall certify the fact that no application for execution has been made to the court which passed the decree and shall return the decree to that court.

Thus, in the event that the property is within the jurisdiction of a Court, which has not passed the decree, then as per the procedure, the DHr may be required to make a request to the Court which passed the decree to send the decree to such other court for execution, if the Court which passed the decree has no jurisdiction to execute the decree. Thus, an application for a transfer of a decree is only considered as an execution application and when once the transferor court transmits the decree to the transferee Court with a non satisfaction certificate, the DHr shall apply to the transferee court or the Court to which the decree has been sent for execution of the decree by filing an execution petition before the transferee Court. The Code thus recognises a procedure for filing Execution Applications before filing of the Execution Petitions.

13. For the reasons afore-stated and on the above analysis of the facts and the provisions of law and the legal position obtaining, this Court is of the considered view that mere filing of an application under Order XXI Rule 41 of the Code by the DHrs for examination of the 3rd JDr as to his property cannot be equated to the filing of an Execution Petition for executing or enforcing in India, the decree or an order of the Foreign Court.

14. In-fact, in the case on hand, no Execution Petition has yet been filed is an undisputed fact. The only contention of the 3rd JDr is that, though an Execution Petition has not yet been filed, the mere filing of an Application under Order XXI Rule 41 of the Code is itself an Application by the DHrs for enforcing in India, the order of the Foreign Court and that, therefore, the enforceability of the order of the Foreign Court requires examination even while considering the merits of the application under Order XXI Rule 41 of the Code. However, in the light of the provisions and as admittedly no Execution Petition has yet been filed either seeking arrest or attachment of the properties of the 3rd JDr, and only his examination as to his property was sought, this Court does not find any merit in the contentions of the 3rd JDr.

15. Viewed thus, this Court finds that as the DHrs have not filed an EP and as only an application under Order XXI Rule 41 of the Code is filed by the DHrs against the 3rd JDr, the examination of the question of enforceability or otherwise of the order in India of the Foreign Court does not arise for consideration at this stage and, therefore, the application in EA.No.828 of 2017 filed by the 3rd JDr for rejection of EA.No.218 of 2015 on the ground that the order of the Foreign Court is un-enforceable in India is premature and is liable to be dismissed on that ground alone.

16. In view of the said finding, this Court need not examine the contentions related to the merits of the matter and need not go into the question of enforceability/ executability or otherwise in India of the order of the Foreign Court at this stage as the said question may require examination at a stage when the order/ decree of the Foreign Court is put up for execution in India by filing an Execution Petition as contemplated under Order XXI Rule 11 of the Code. Though the learned counsel for both the sides made submissions and relied upon certain decisions dealing with the provisions of Section 13 of the Code and the provisions of various Sections of the Indian Evidence Act and further relied upon decisions

on the aspects related to the merits of the matter, that is, the executability or enforceability of a decree or order in India of a Foreign Court, this Court need not examine the said aspects in view of the finding that the said question has to be considered at a later stage on its merits in the event Execution Petition comes to be filed by the DHrs but not at this stage of the matter.

17. Before parting it is to be noted that while dismissing the subject application filed by the 3rd JDr for rejection of the Execution Application filed by the DHrs, the Court below made certain observations on the enforceability in India of the order of the Foreign Court and even recorded a finding that it was passed on merits. In the considered view of this Court, the said findings of the Court below are unwarranted at this present stage as the EP has not yet been filed by the DHrs against the 3rd JDr as contemplated under law and procedure. Therefore, the said and all other related findings in the impugned order are expunged while confirming the conclusion that the petition of the 3rd JDr is liable for dismissal without costs. Accordingly, liberty is reserved to the 3rd JDr to raise all factual and other contentions, which the law permits, regarding the enforceability or otherwise in India of the order passed by the Foreign Court at an appropriate later stage, in the event any Execution Petition comes to be filed in a Court in India by the DHrs against the 3rd JDr.

18. In the result, the Civil Revision Petition is dismissed confirming accordingly the order, dated 31.07.2017, of the learned Chief Judge, City Civil Court, Hyderabad, passed in EA.No.828 of 2017 in EA.no.218 of 2015 in Case No.3991 of 2012, subject, however, to the observations in the preceding paragraph of this order. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J