

\$~19

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ EX.P. 31/2017 & Ex.Appl (OS) 180/2017

CISCO SYSTEMS CAPITAL (INDIA) PVT. LTD.

..... Decree Holder

Through Mr.Punit Bhalla, Advocate.

versus

MANTHAN BROADBAND SERVICES PVT. LTD. & ORS.

..... Judgement Debtors

Through Ms.Nidhi Mohan Parashar, Advocate
for JD-1.

Mr.Abhijat with Mr.Tushar Singh,
Advocates for JD-2 to 7.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

%

08.11.2017

Present execution petition has been filed seeking execution of the judgment and order dated 09th December, 2015 in accordance with the mediated settlement dated 24th April, 2015.

Today, the judgment debtor no.1 has handed over an affidavit in which it is stated that it has no movable and immovable properties within the territory of Delhi. It is further stated that the equipments specified in the mediated settlement is not situated within the territory of Delhi. Similar affidavits have been filed by judgment debtor nos.2 to 7.

The Supreme Court in *Mohit Bhargava Vs.Bharat Bhushan*

Bhargava & Ors. (2007) 4 SCC 795 has held as under:-

“8. Pending a suit, the court approached with the suit, may have jurisdiction to order attachment of a property even outside its jurisdiction. In execution, under Order 21 Rule 54 of the Code, it may also have jurisdiction to order attachment of the property prohibiting the judgment-debtor from transferring or charging the property in any way when it exercises its jurisdiction over the judgment-debtor though not over the property itself. It could in such a case issue a precept in terms of Section 46 of the Code and thereupon, the court to which the precept is sent, has to actually attach the property in the manner prescribed. Section 136 of the Code provides for an order of attachment in respect of a property outside the jurisdiction of the court and sending the order of attachment to the District Court within whose local limits the property sought to be attached is situate, as provided for therein. But Section 136 clearly excludes execution of decrees from within its purview. An execution against immovable property lying outside the jurisdiction of the executing court is possible in terms of Order 21 Rule 3 of the Code which governs a case where the particular item of immovable property, forms one estate or tenure situate within the local limits of jurisdiction of two or more courts, and one of those courts is approached for execution of the decree against that property. In a case where Order 21 Rule 3 has no application, the position seems to be that if a decree-holder wants to proceed against a property situate outside the jurisdiction of the court which passed the decree, he has to get the decree transferred to the appropriate court for execution on moving the executing court in that behalf. Whatever doubts there might have been earlier on this question, must be taken to have been resolved by the introduction of sub-section (4) of Section 39 of the Code which is a mandate to the executing court to desist from proceeding against a property situate outside its jurisdiction, unless it be a case coming under Order 21 Rule 3 of the Code.

(emphasis supplied)

Keeping in view the aforesaid mandate of law as well as Order XXI Rule 5 CPC, Registry of this Court is directed to transfer the judgment and order dated 09th December, 2015 along with a copy of the mediated settlement dated 24th April, 2015, which is marked Ex.C-1, directly to the Court of Registrar (Original side), Kolkata High Court, West Bengal for onward transmission to the concerned Court. Needless to say, the judgment debtors shall be at liberty to file/raise objections in accordance with law before the appropriate court.

Interim order dated 24th April, 2017 to continue till the court having jurisdiction passes an appropriate order.

MANMOHAN, J

NOVEMBER 08, 2017
KA