

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 1st December, 2017.

+ CS(COMM) 449/2017, IA No.7571/2017 (under Order XXXIX Rules 1&2 CPC), IA No.9903/2017 (under Order XXXVII Rule 3(4) CPC), IA No.9948/2017 and IA No.9949/2017 (both for exemption), IA No.11585/2017 (under Order XXXVII Rule 3(5) CPC), IA No.11586/2017 (under Order XXXVII Rule 7 CPC), IA No.11587/2017 (under Order XXXVII Rule 3(5) CPC), IA No.11588/2017 (under Order XXXVII Rule 7 CPC), IA No.11589/2017 (under Order XXXVII Rule 3(5) CPC) and IA No.11590/2017 (under Order XXXVII Rule 7 CPC)

**CENTURY METAL RECYCLING PRIVATE
LIMITED**

.....Plaintiff

Through: Mr. Rahul Gupta and Mr. Shekhar
Gupta, Advs.

Versus

SACHIN CHHABRA & ORS

..... Defendants

Through: Mr. Manik Dogra and Mr. Aditya
Goyal, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has sued under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) for recovery of Rs.2,25,64,500/- jointly and severally from the three defendants, namely (i) Sachin Chhabra, (ii) TCC Wireless Inc., and (iii) Tarun Chhabra.

2. The suit was entertained and summons for appearance issued and on the defendants entering appearance, summons for judgment served on the defendants and the defendants have filed separate leave to defend applications and which are listed for hearing today.

3. The counsel for the plaintiff has at the outset drawn attention to the order dated 13th July, 2017, vide which the personal presence of the defendants no.1&3 was directed for 31st August, 2017, and to the order dated 31st August, 2017, when the counsel for the defendants was asked to inform as to when the defendants no.1&3 whose addresses given in the plaint are of United States of America (USA), are coming to India. The counsel for the plaintiff states that the personal presence of the defendants no.1&3 before this Court has to be enforced.

4. I have enquired from the counsel for the plaintiff, the reason for which the personal presence was so directed.

5. The counsel for the plaintiff states, “to furnish security for the suit amount”.

6. I have enquired from the counsel for the plaintiff, whether not once leave to defend applications are heard and if leave is not granted, the plaintiff would be entitled to decree straightaway and the need for directing the defendants to furnish security would also not arise.

7. Else, it *prima facie* appears, that if the statement under Order X of the CPC were to be recorded of the defendants no.1&3, the suit would *inter alia* be converted into an ordinary suit and for which the counsel for the plaintiff is not agreeable.

8. The counsels have thus been heard on the leave to defend applications.

9. The plaintiff has sued, pleading (i) that the defendant no.2 TCC Wireless Inc. is a company duly registered and incorporated under the laws of USA and the defendant no.3 Tarun Chhabra is the majority shareholder

and Director in-charge and responsible for all the affairs and business of the defendant no.2 TCC Wireless Inc.; (ii) the defendant no.1 Sachin Chhabra is the brother of the defendant no.3 and has executed a personal guarantee in favour of the plaintiff for payment of the amount claimed in the present suit; (iii) that the defendants no.1&3 have been residing and carrying on business in United States of America but are citizens of India, holding Indian passports; (iv) that on 5th February, 2016 a summary judgment was passed by the Court of United States District Court for the District of Maryland (Northern Division), in favour of the plaintiff and against Metal Worldwide Inc. in the sum of US\$ 7,00,000/- together with interest at 15% per annum from 1st April, 2011 to 5th February, 2016; however the suit was kept pending for decision on other issues; a compromise was entered into between the parties and a joint motion of compromise dated 20th July, 2016 signed between the parties and filed for entry of consent judgment and for withdrawal of remaining un-resolved counts; (v) that as per the said compromise it was agreed that a judgment be passed in favour of the plaintiff and against the defendant no.2 TCC Wireless Inc. in the sum of US\$ 3,50,000/- with the said amount bearing interest in accordance with 28 U.S.C. 1961; it was also agreed that the defendant no.2 TCC Wireless Inc. shall pay attorney's costs, etc. to the plaintiff; (vi) it was also mentioned in the joint motion that the defendant no.1 Sachin Chhabra shall furnish his personal guarantee to secure the payment in favour of the plaintiff in terms of joint motion so that the judgment on the basis of consent terms be satisfied; (vii) that the defendant no.1 Sachin Chhabra in furtherance of the joint motion also submitted his personal guarantee dated 20th July, 2016; (viii) that despite the consent judgment dated 5th August, 2016 and the

personal guarantee dated 20th July, 2016 having been executed, the defendants have not paid the judgment amount and the interest accrued thereon till now; (ix) the plaintiff is filing the present suit for recovery of Rs.2,25,64,500/- with interest at 12% per annum from 20th July, 2016 to the date of institution of this suit and claims *pendente lite* and future interest; and, (x) that the plaintiff is filing the present suit on the basis of the aforesaid.

10. The counsel for all the three defendants, on behalf of the defendant no.3 Tarun Chhabra has contended that he had merely signed the joint motion filed in the US Court on behalf of the defendant no.2 TCC Wireless Inc. which is a juristic entity and thereby the defendant no.3 Tarun Chhabra did not incur any personal liability and the claim of the plaintiff against the defendant no.3 Tarun Chhabra is misconceived.

11. The counsel for the plaintiff has fairly agreed and states that the suit amount has not been claimed personally from the defendant no.3 Tarun Chhabra and that he has been impleaded merely as a President of the defendant no.2 TCC Wireless Inc.

12. In this view of the matter, not only is the defendant no.3 Tarun Chhabra entitled to leave to defend but the suit, even as an ordinary suit, would not survive against the defendant no.3 Tarun Chhabra.

13. The first contention of the counsel for the defendants, on behalf of the defendants no.1&2 is that the suit does not fall in the classes of suits to which Order XXXVII of the CPC is applicable.

14. No merit is however found in the aforesaid contention. The suit against the defendant no.2 TCC Wireless Inc. has been filed on the basis of a

joint motion filed in the US Court and the suit against the defendant no.1 Sachin Chhabra has been filed on the basis of guarantee executed by the defendant no.1 Sachin Chhabra in favour of the plaintiff.

15. The counsel for the defendants has contended that the joint motion filed by the plaintiff and the defendant no.2 in the US Court has crystallised in a judgment and does not remain a written contract between the plaintiff and the defendant no.2 TCC Wireless Inc.

16. I am unable to agree. A consent judgment retains the character of a contract and it is for this reason only that the Courts have held that a consent judgment cannot be altered or modified by the Court without the consent of the parties who had consented thereto. Thus, notwithstanding the joint motion having crystallised to a judgment of the US Court, the same does not lose its character as a written contract within the meaning of Order XXXVII Rule 1(2)(b)(i) of the CPC. Similarly, the guarantee executed by the defendant no.1 Sachin Chhabra in favour of the plaintiff guaranteeing the payment by the defendant no.2 TCC Wireless Inc. of the amount due under the joint motion / judgment of the US Court is also expressly covered by Order XXXVII Rule 1(2)(b)(iii) of the CPC. There is thus no merit in the contention that the suit against the defendants no.1&2 is not maintainable under Order XXXVII of the CPC.

17. The only other argument of the counsel for the defendants on behalf of the defendants no.1&2 is that this Court does not have territorial jurisdiction to entertain the suit. Attention in this regard is drawn to the clause in the guarantee as under:-

“In any confession of judgment action necessary to enforce the consent judgment, Chhabra hereby consents to personal jurisdiction and venue in the state or federal courts located in Baltimore, Maryland or in any jurisdiction in which he has property at the time any enforcement action is needed, irrevocably waives personal service for any action taken to collect the Consent Judgment award, and waives demand or presentment for payment, notice of dishonour, protest, and notice of protest in advance or as a condition of Plaintiff’s taking action to collect on the Consent Judgment, including Century’s filing suit for confessed judgment against Chhabra. Chhabra waives the benefit of any and every statute, ordinance, or rule of court which may be lawfully waived conferring upon Chhabra any right or privilege of exemption, homestead rights, appeal, stay of execution or supplementary proceedings, inquisition, extension upon any levy on real estate or personal property, and any other relief from the enforcement or immediate enforcement of a judgment or related proceedings on a judgment. A final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law. This remedy for default by TCC is not exclusive and Century reserves the right to undertake any remedy available to it under the law to collect any outstanding balance under the consent judgment.”

and to following clauses of the joint motion:-

“k. Defendants agree to the uncontested enforcement of this Consent Judgment in any jurisdiction where their assets are present. Defendants expressly waive moving to dismiss or otherwise contesting Plaintiff’s enforcement of this Consent Judgment in any jurisdiction. To the extent that the jurisdiction where enforcement of this judgment is sought recognizes “confessions of judgment,” then Defendants consent to the entry of same to facilitate execution of such judgment to expedite collection

proceedings.

- l. Defendants waive the service of process requirements of the November 15, 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ("Hague Convention"). TCC consents to service of process in any enforcement proceedings being effected upon it by registered mail sent to TCC the following address: Sachin chhabra, 4334 Plaza Gate Lane South, # 301, Jacksonville, Florida 32217. It is the obligation of TCC to update Plaintiff of any such change of address. Otherwise, TCC consents that process or notices sent to it shall be valid when sent to the above address. Any change of address by TCC shall be made to Plaintiff via Mr. Rajiv Kaushal, 120 College Street, 600 Plaza Middlesex, Middletown, CT 06457."*

(emphasis added)

18. The counsel for the defendants has argued that the plaintiff has invoked the territorial jurisdiction of this Court by pleading the defendant no.1 Sachin Chhabra to be having an asset in the form of a property at Lajpat Nagar, New Delhi; that the only other asset in India pleaded of the defendant no.1 Sachin Chhabra is a house at Pune. It is stated that as far as the Lajpat Nagar house is concerned, the defendants along with their leave to defend applications have placed before this Court documents to show sale thereof in a Court proceeding in the year 2007 i.e. much prior to the institution of this suit and thus this suit could not have been instituted in the year 2017 on the basis of the said property at Lajpat Nagar, New Delhi. With respect to the property at Pune, it is stated that the defendants in their leave to defend applications have pleaded not having any right, title, interest or share therein

and the same to be belonging to the sister of the defendants no.1&3. On enquiry, though it is stated that no documents with respect to the Pune property have been filed but it is further stated that the same can be filed. It is also the argument of the counsel for the defendants that no cause of action for the suit has accrued to the plaintiff at Delhi; the plaintiff has instituted the suit on the basis of cause of action qua the transaction, on the basis of which claim in the US Court was filed, having accrued to the plaintiff at Delhi but the said cause of action has crystallised in the judgment of the US Court and the cause of action for the present suit is the joint motion and the judgment of the US Court and the guarantee executed by the defendant no.1 Sachin Chhabra and all of which admittedly happened in US and this Court would not have territorial jurisdiction to entertain the suit.

19. The counsel for the defendants has also drawn attention to the following clause in the joint motion:-

“j. Expressly for purposes of enforcing this judgment in India, the Parties agree that this Consent Judgment is conclusive, and it:

- i. Has been pronounced by a court of competent jurisdiction;*
- ii. Has been given on the merits of the case;*
- iii. Is founded on a correct view of international law;*
- iv. Is contained in proceedings that followed principles of natural justice;*
- v. Has not been obtained by fraud; and*
- vi. Does not sustain a claim on a breach of any law in force in India.”*

so as to be not blamed of any concealment.

20. A perusal of the plaint shows the plaintiff to have therein pleaded as under:-

“18. That it is stated that the plaintiff is filing the present suit on the basis of joint motion and stipulation for entry of consent judgment dated 20.7.2016 submitted by the parties before Hon’ble Distt. Courts United States and the personal guarantee dated 20.7.2016 furnished by defendant No.1 Mr. Sachin Chhabra and order / judgment of dated 5.8.2016 passed by United States Distt. Courts as mentioned herein above.

19. That it is stated that the claims of the plaintiff company are crystal clear and undisputed and based on consent terms filed by the parties before Hon’ble United States Distt. Courts and followed by order of consent dated 5.8.2016 as mentioned herein above together read with the personal guarantee bond dated 20.7.2016 furnished by defendant No.1 Mr. Sachin Chhabra.

21. That it is stated that the cause of action to file the present suit arose on 5.2.2016 when the Hon’ble United States Distt. Courts passed a summary judgment in favour of the plaintiff company and against the defendants in the sum of US\$ 7,00,000/- along with interest and attorney fees. The cause of action further arose on 20.7.2016 when the parties filed a joint motion and defendant no.1 also submitted his personal guarantee before United States Distt. Courts and also arose on 5.8.2016 when the Hon’ble Court of United States Distt. Courts passed order / judgment on 5.8.2016. The cause of action arose when the defendants despite the aforesaid consent order and personal guarantee have not paid the amount to the plaintiff. The cause of action to file the present suit continues to exist on the date of filing of the present suit.”

and to have invoked territorial jurisdiction of this Court pleading as

under:-

“22. That this Hon’ble Court has territorial jurisdiction by try, entertain and decide the present suit since defendant no.1 i.e. Sachin Chhabra (defendant no.1) is a permanent resident at 1 Ring Road, Lajpat Nagar IV, New Delhi. The cause of action also arose within the jurisdiction of this court since all the advance payments were made by the plaintiff company to the defendants through the plaintiff’s bank at New Delhi. All negotiation between the parties were held by exchange of email at the registered office of the plaintiffs at New Delhi. The business deals had happened between the parties at New Delhi and even the supply of goods were to be made by the defendants to the plaintiff company at New Delhi. It was also agreed by the parties in the joint motion which was filed before the Distt. Court in Maryland USA that the consent order passed on the joint can be enforced in India and for the purpose the said consent which is conclusive.”

21. The argument of the counsel for the plaintiff is also on above lines. It is argued that in the transaction between the plaintiff and the defendants, though the defendants were situated at USA but the plaintiff was situated at India and the payments were made by the plaintiff to the defendants from the bank of the plaintiff at New Delhi and all negotiations between the parties were by exchange of e-mails from the registered office of the plaintiff at New Delhi.

22. I have enquired from the counsel for the plaintiff, whether not the plaintiff, on the basis of the aforesaid cause of action, instead of choosing to sue the defendants in India chose to sue the defendants in the Courts at USA and whether not that cause of action has now merged in the proceedings and judgment of the US Court. I have further enquired, whether not the plaintiff

has chosen to institute this suit, not on the original cause of action but on the basis of judgment obtained from the U.S. Court on the basis of original cause of action.

23. The claim of the plaintiff in this suit against the defendants is not on the basis of the same cause of action on which the plaintiff has already chosen to invoke the jurisdiction of the US Courts and obtained judgment therefrom. The cause of action for the present suit is on the basis of foreign judgment and guarantee executed in pursuance thereto, as is evident from the paragraphs of the plaint reproduced above, and which cause of action has accrued to the plaintiff in foreign lands only and not within the territory of this Court. The plaintiff has sued under Order XXXVII, only on the basis of foreign judgment and not the original cause of action.

24. The counsel for the plaintiff then contends that if that were to be so, then there would have been no need for Section 13 of the CPC.

25. I am afraid, Section 13 of the CPC does not provide for filing of a suit. Section 13 merely provides for cases in which a foreign judgment would be conclusive and in which it would not and though undoubtedly on the foreign judgment of a territory with which India does not have reciprocity treaty, a suit can be filed in India but the plaintiff would still have to show that the cause of action therefor accrued within the territory of India, jurisdiction whereof is invoked or that the defendant, at the time of commencement of suit, actually and voluntarily resides or carries on business or personally works for gain within the said territory. If no cause of action is shown to have accrued within the jurisdiction of this Court or if the defendants are not shown to be so residing in or carrying on business within the jurisdiction of

this Court, nothing in Section 13 of the CPC can entitle the plaintiff to institute a suit in this Court.

26. I find a Division Bench of the High Court of Madras, as far back as in ***S. Jayam Sunder Rajaratnam Vs. K. Muthuswami Kangani*** AIR 1958 Mad. 203, to have held that a suit on the basis of foreign judgment would not be maintainable for want of jurisdiction in a Court within whose jurisdiction the defendant did not reside, even if has immovable properties within the jurisdiction of that Court, as the presence of immovable properties would not give rise to cause of action for recovery of money due under a foreign judgment.

27. I also find Supreme Court in ***Badat and Co. Bombay Vs. East India Trading Co.*** AIR 1964 SC 538 to have been concerned with a foreign judgment based on a foreign award. The question for consideration was, whether the foreign judgment could be enforced against the defendants by instituting a suit on the Original Side of the High Court of Bombay within whose jurisdiction the defendants at the time of institution of the suit were admittedly not residing. It was held by the Division Bench of the High Court of Bombay that the original cause of action having arisen wholly or in part within the limits of the original jurisdiction of the High Court, the suit was maintainable. Supreme Court however held (i) if the plaintiff was suing upon the original cause of action, there would have been no difficulty and the High Court could have granted leave under Clause 12 of the Letters Patent for Bombay to the plaintiff to institute the suit; (ii) however the plaintiff had chosen to sue not on the original cause of action but on the basis of the foreign judgment and the arbitral award; (iii) the judgment furnishes

an independent cause of action; (iv) the question would be, whether the cause of action furnished by it arose between the limits of original jurisdiction of the High Court; (v) the judgment was rendered in New York and therefore the cause of action furnished by it arose at that place and not anywhere else; (vi) this cause of action is really independent of the cause of action afforded by the contract and therefore if advantage was sought to be taken of it, the suit would not lie at Bombay; (vii) the Doctrine of Merger has been consistently held in England not to apply to a foreign judgment, with the result that despite the fact that a plaintiff has obtained a foreign judgment, he may nevertheless sue upon the original cause of action, instead of upon the judgment; (viii) when the plaintiff sues upon the original cause of action, no doubt the Court within whose jurisdiction, the cause of action arose, would be entitled to entertain the suit; (ix) but if on the other hand, the plaintiff chooses to sue upon the judgment, he cannot found jurisdiction for the institution of the suit on the basis of the original cause of action because once he chooses to rest himself on the judgment obtained by him in a Foreign Court, the original cause of action will have no relevance whatsoever, even though it may not have merged in that judgment; (x) since the plaintiff in that case had chosen to sue on the foreign judgment and cause of action whereof did not arise within the limits of the original jurisdiction of the High Court of Bombay, the suit based upon that judgment was beyond the jurisdiction of the Court.

28. Contrary to what I thought, as per aforesaid dicta, cause of action available to the plaintiff did not merge in the judgment of Courts of USA obtained by the plaintiff on said cause of action and it was open for the plaintiff to again sue on the same cause of action in this Court if the cause of

action had accrued in territorial jurisdiction of this Court and if the suit claim was within time. However the plaintiff herein has not done so.

29. I have already hereinabove, on a reading of the plaint found that the plaintiff in the present case has sued on the basis of foreign judgment and not on the basis of original cause of action. The same has been the tenor of the arguments of the counsel for the plaintiff. It is for this reason only that the counsel for the plaintiff has invoked Section 13 of the CPC and the plaintiff, while agreeing to the joint terms before the Foreign Court, is also found to have insisted on recording that the requirements of Section 13 of the CPC are fulfilled by the consensual foreign judgment. The plaintiff cannot now, upon the territorial jurisdiction of this Court having been challenged, fall back on the original cause of action.

30. As far as the plea of the plaintiff, of the permanent place of residence of the defendants being within the territorial jurisdiction of this Court, Section 20 of the CPC permits the defendant to be sued within the jurisdiction of the Court in which the defendant “actually and voluntarily resides” and not within whose jurisdiction the defendant has permanent place of residence. Neither the defendant No.1 nor the defendant No.2 in the present case are pleaded to be actually and voluntarily residing or carrying on business within the territorial jurisdiction of this Court. The words “actually and voluntarily resides” are of some import and do not allow interpretation of Section 20 to vest jurisdiction in Court within whose territorial jurisdiction passport address of the defendant is or within whose territorial jurisdiction the permanent place of residence disclosed by the defendant in any other document, is situated or within whose jurisdiction

property of the defendant is situated.

31. Supreme Court in *Mohannakumaran Nair Vs. Vijayakumaran Nair* (2007) 14 SCC 426, held the Court in Kerala to be not having territorial jurisdiction because the defendant, at the time of institution of suit was residing in Saudi Arabia. It was further held that the subsequent change of the residence of the defendant, to within the jurisdiction of Kerala Court was immaterial as the relevant date is the date of institution of suit. It was further held that plaintiff is the *dominus litus*, but he can file a suit only in accordance with the CPC and not at any place where he desires. It was yet further held that it is one thing to say that a party has his residence in India but when the party is residing elsewhere, the suit could be filed only where the party is so residing at the time of institution of suit.

32. Moreover, just like the plaintiff is holding the defendants to be bound by the foreign judgment and by the guarantee furnished in pursuance thereto, so is the plaintiff bound thereby and the plaintiff therein has agreed to enforce the consent terms and the judgment in terms thereof where the assets of the defendants are present. Though the plaintiff realising so has pleaded the asset of the defendants at New Delhi but the counsel for the plaintiff is unable to controvert that the documents placed by the defendants before this Court along with their leave to defend applications unequivocally show the defendant no.1 Sachin Chhabra to be not having any right, title, share or interest in the property at Lajpat Nagar, New Delhi. No other property within the territorial jurisdiction of this Court has been disclosed. Though the counsel for the plaintiff has also argued that the defendants no.1&3 are filing their Income Tax returns in India but on enquiry whether the same disclose

any assets in India has not been able to show any. Without the plaintiff being able to show even *prima facie* before this Court any assets of the defendant no.1 Sachin Chhabra or the defendant no.2 TCC Wireless Inc. in India, as per the consent terms, the plaintiff cannot enforce the joint motion / consent terms / foreign judgment in this Court and for which purposes the present suit has been filed.

33. The counsel for the plaintiff has then contended that a perusal of clause 'j' supra of the joint motion as reproduced above shows it to be in contemplation of the parties that the judgment may be enforced in India.

34. Clause 'j' of the joint motion as reproduced above is paying lip service to the requirements of Section 13 of the CPC and ensuring that in the event of the plaintiff being entitled to enforce the judgment in India, the plaintiff is not faced with the defences which make a foreign judgment inconclusive in India. However clause 'j' cannot be read as a clause pertaining to territorial jurisdiction. If the plaintiff had been able to show any assets of the defendants no.1&2 within the territorial jurisdiction of this Court, the counsel for the defendants also does not dispute that this Court would have territorial jurisdiction (though the view of the Division Bench of Madras High Court is otherwise).

35. The only two other arguments of the counsel for the plaintiff are that clause 'k' of the joint motion as reproduced above also provides that the defendants waive contesting the plaintiff's enforcement of consent judgment in "any jurisdiction" and that the plaintiff in the plaint has also pleaded that the defendant no.1 Sachin Chhabra is a permanent resident of New Delhi and is carrying Indian passport.

36. As far as the first of the aforesaid contentions is concerned, the same cannot be read *de hors* the remaining part of clause 'k'. In the first part of clause 'k' the parties have agreed to enforcement of the consent judgment in jurisdiction where the assets of the defendants are present. In my view, a wholesome reading of clause 'k' would not entitle the plaintiff to enforce the consent judgment even in a jurisdiction where the defendants do not have any asset. The words "any jurisdiction" have to be read as meaning any jurisdiction in which the assets of the defendants are present. Not only so, it is the settled principle that by consent, jurisdiction cannot be vested in a Court. Reference if any required may be made to ***Harshad Chiman Lal Modi Vs. DLF Universal Ltd.*** (2005) 7 SCC 791.

37. As far as the second of the aforesaid contentions is concerned, as aforesaid, the words used in Section 20 of the CPC are "where the defendant actually and voluntarily resides or carries on business or personally works for gain" and not the place where the defendant is permanent resident of or the place from where the passport of the defendant is issued. There is no plea that the defendant no.1 Sachin Chhabra actually resides or carries on business within the territorial jurisdiction of this Court. The plaintiff, in the plaint has not pleaded any business of the defendants within the territorial jurisdiction of this Court or even given the place of residence of the defendant no.1.

38. There is thus no merit in the said contentions either. Moreover, the aforesaid contentions are available only qua the defendant no.1 Sachin Chhabra and not qua the defendant no.2 TCC Wireless Inc.

39. Though the counsel for the plaintiff has also contended that the

defendants have in their leave to defend applications not disputed their liability for the monies claimed and has called upon this Court to consider the plight of the plaintiff, who for the reason of heavy costs required to be incurred for enforcing the judgment in US or in any other jurisdiction where the defendants have assets is unable to do so but I am afraid the same cannot constitute legal grounds to entertain a suit when this Court is not found to have territorial jurisdiction. I have however called upon the counsel for the defendants to attempt to have the controversy amicably resolved, to prevent further litigation. The counsel for the defendants states that he will communicate the same.

40. Having found this Court to be lacking territorial jurisdiction to entertain the suit, not only are the defendants no.1&2, against whom only the suit claim lies, are entitled to leave to defend but the suit is also dismissed with liberty to the plaintiff to approach the Court of appropriate jurisdiction.

No costs.

RAJIV SAHAI ENDLAW, J.

DECEMBER 01, 2017

‘pp’/bs..

(corrected & released on 28th December, 2017)