

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

IN ITS COMMERCIAL DIVISION

COMM.CHAMBER SUMMONS (L) NO.1742 OF 2018

IN

COMM.EXECUTION APPLICATION (L) NO.2838 OF 2018

Damas LLC)....Applicant/Org.Judgment creditor

V/s.

Deepak Ratilal Dhakan & Anr.)....Respondents/Judgment Debtors

WITH

NOTICE NO.1216 OF 2016

IN

EXECUTION APPLICATION NO.807 OF 2016

Michael Joseph Meenaghan & Anr.)....Plaintiffs

V/s.

Naveen Kumar Seth)....Defendant

Mr.Prathamesh Kamat a/w Mr.Zeob Cuttlerywala and Ms.Shruti Salian
I/by Kochhar and Co. for claimant/applicant in Notice of Motion
No.1742 of 2018.

Mr.Rumi Mirza a/w Mr.Kaushal Thakker I/by Dipesh Mehta &
Associates for respondent no.2.

Mr.Rui A.Rodrigues for Union of India.

[Mr.Kishore R.Dhakan-respondent no.2 present in person].

Mr.Aaditya Thakkar a/w Mr.Vaibhav Wali I/by Juris Corp. for
claimant/applicant in Notice 1216 of 2016.

Mr.Rohan Ketkar a/w Mr.Rashmin Khandekar and Ms.Smruti Kanade
I/by Negandhi Shah and Himayatullah for defendant.

Mr.Rui A.Rodrigues for Union of India.

CORAM : K.R.SHRIRAM,J

DATE : 17.1.2019

P.C.:-

1. In Execution Application No.807 of 2016, on 13.12.2018,

the following order came to be passed :-

“1. Decree holder is seeking to execute a decree passed by the Courts of Competent Jurisdiction in United Arab Emirates. Some of the website states that UAE is reciprocating territory under Section 44A of Civil Procedure Code 1908 whereas some of the website says no.

2. In this matter, Mr.Kelkar has produced a response from the Department of Legal Affairs, Government of India to an RTI application stating that UAE has not been notified as a reciprocating territory for the purpose of Section 44A of Civil Procedure Code 1908. This has been issued on 22nd June 2018. It is not clear if after this date whether UAE has been notified as a reciprocating territory for the purpose of Section 44A of Civil Procedure Code 1908. This is not the only matter. There was another matter which was heard this morning where similar situation prevails.

3. In the circumstances, this order be placed before the Additional Solicitor General of India, who is requested to contact the concerned Ministry and revert to this Court as to whether UAE is notified as a reciprocating territory for the purpose of Section 44A of Civil Procedure Code 1908 and which are the superior Courts whose decree has to be recognised as a decree of Competent Court.

4. Stand over to 3rd January 2019.”

2. In response to the said order on 3.1.2019, Mr.Rodrigues appeared for Union of India and on the issue raised by this Court, requested for time to consult the Ministry of Law & Justice, Department of Legal Affairs, New Delhi. The matter was therefore, stood over to today.

3. Mr.Rodrigues tenders a copy of a letter dated 15.1.2019 from one L.C.Dabaria, Assistant Legal Adviser to Government of India, Ministry of Law & Justice, Department of Legal Affairs (Judicial section) addressed to Ms.Bharati R.Rane, Superintendent (Legal) Branch Secretariat, Department of Legal Affairs, Ministry of Law &

Justice, in which Government of India has clarified that UAE has not been notified as a reciprocating territory for the purposes of section 44A of Code of Civil Procedure, 1908. In the said letter it is mentioned that UAE was notified as reciprocating territory only for the purposes of section 29(c) of the Code of Civil Procedure, 1908. A copy of the letter with its enclosures is taken on record and marked 'X' for identification. For ease of reference, letter, with its enclosures is scanned and reproduced hereunder :-


 P. No. J-11/14/2017-Judicial
 Government of India
 Ministry of Law & Justice
 Department of Legal Affairs
 (Judicial Section)

Order No. 48-56,
 44 Floor, W. Wing, Sector Bhawan
 New Delhi 110 002

To
 Mr. Sharad R. Rane
 Superintendent (Legal)
 Branch Secretariat, Department of Legal Affairs
 M/o Law & Justice, 2nd Floor, Asyokar Bhawan
 New Marine Lines, Mumbai 400 020

Sub: Clarification sought from the Bombay High Court regarding the notification of UAE under Section 44A of CPC, 1908 in connection with Notice No. 1276 of 2018 in Execution Application No. 807 of 2016 titled Michael Joseph Moynaghian & Ors. vs. Naveen Kumar Seth

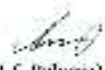
Notes:-

With reference to the subject mentioned above, it is informed that the agreement with UAE in Civil and Commercial matters was signed on 25.11.1999 in New Delhi and the exchange of Instruments of Ratification took place on 29.05.2000 in Abu Dhabi. Subsequent to the signing and ratification of the treaty, UAE was notified as a reciprocating territory for the purposes of Section 29(c) of the Code of Civil Procedure 1908 (copy enclosed).

2. It is also informed that UAE has not been notified as a reciprocating territory for the purposes of the Section 44A of the Code of Civil Procedure 1908. The notification in this regard has not been issued till date as information regarding the designation/levels of UAE Courts has not been received in this Department. Such information is necessary for notifying a country as a reciprocating territory for the purposes of Section 44A. As the responsibility of collecting such information falls on MEA, this Department has on several instances requested the MEA to seek information regarding the designation of Courts from the UAE Authorities. However, the MEA has not responded till date. A copy of the last reminder dated 04.01.2017 sent to the MEA is attached herewith for your reference.

Signed: Associate

Yours sincerely,


 (L.C. Dalmiya)
 Assistant Legal Adviser
 E-mail: judicial-dla@gov.in



प्रा.सं.सं. ३३, १९५५-५६

REGD. NO. D. 1. 1874



भारत का राजपत्र

The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—अध्याय (I)

PART II—Section 3—Sub-section (i)

अधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

नं. 598]
No. 598]

नई दिल्ली, बुधवार, नवम्बर 24, 2000/शकाब्द 3, 1922

NEW DELHI, FRIDAY, NOVEMBER 24, 2000/SHAKABHAYA 3, 1922

विधि, न्याय और कंपनी कार्य विभाग

(विधि कार्य विभाग)

अधिसूचना

नई दिल्ली, 23 नवम्बर, 2000

आ. सं. वि. 494(अ) — केन्द्रीय सरकार, विधि विभाग अधिनियम (1908 का 5) की धारा 29 के अधीन (1) द्वारा श्राव्य हस्तिले का प्रयोग करने हेतु यह अधिसूचना जारी है कि उक्त धारा के उपबन्ध, समुदाय श्राव्य अधिनियम के सभी विहित व्यवस्थाओं को लागू करेंगे।

[सं. नं. 12(1)/99, अधिसूचना]

2, विभाग, संसदीय सचिव और विधि विभाग

MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS

(Department of Legal Affairs)

NOTIFICATION

New Delhi, the 23rd November, 2000.

G. S. R. 894(E).—In exercise of the powers conferred by clause (1) of Section 29 of the Code of Civil Procedure, 1908 (5 of 1908), the Central Government hereby declares that the provisions of the said Section shall apply to all civil courts in the United Arab Emirates.

[S. No. 12(1)/99-Just.]

A. SINHA, J. Secy.

7227-17/0000

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File No. J 14014/1/2015-Jud
Government of India
Ministry of Law and Justice
Department of Legal Affairs

4th Floor,
Sashil Bhawan, New Delhi,
24.01.2017

OFFICE MEMORANDUM

SUB: - Agreement on Mutual Legal Assistance Treaty in Civil and Commercial Matters with UAE.

The undersigned is directed to refer the Department's DO dated 12/11/98/2ud, dated 10.10.2000 followed by reminders dated 08.12.2000, 20.05.2001, 17.08.2001, 28.09.2004, 13.06.2005, 28.02.2007, 14.05.2009 and 07.04.2011 addressed to MEA, requesting for providing the designations/levels of the courts of UAE in connection with the issuing of notification under Section 44 A of CPC in order to implement the provisions of the above agreement with UAE.

2. The information has not yet been received despite a number of repeated reminders resulting inordinate delay in implementing the said agreement.

3. It is therefore, requested to take up the matter with UAE, for providing the necessary information so that the required notification may be issued by this Department.

This issues with the approval of the Law Secretary

End. as above

[Signature]
(R.K. Srivastava)
Off. Legal Adviser
23327543(D)

Mukul Kumar
JS (GULF), Ministry of External Affairs
South Block, New Delhi 11.

4. In view of the above clarification, both Execution Applications are not maintainable and are hereby dismissed with liberty to the applicants to take such steps as available and in accordance with Law.

All interim applications stand disposed.

5. This Court is very disappointed with the contents of the letter dated 15.1.2019. It is stated that the responsibility of collecting information regarding the designations of courts from the UAE authorities falls on Ministry of External Affairs (MEA) and despite repeated reminders, last of which is dated 24.1.2017, MEA has not provided the designation/levels of Courts of UAE. It appears that Ministry of Law and affairs has been requesting the Ministry of External affairs from October-2000 and for more than 18 years, the matter remains pending. The Government of India had entered into an agreement on mutual legal assistance in Civil and Commercial matters with the Government of UAE on 25.10.1999 (UAE Agreement). The instruments of ratification of agreement were exchanged in Abu Dhabi on 29.5.2000. The text of the agreement was published for information of general public on 23.11.2000 as per the Government Notification in the Gazette of India on 16.12.2000, part-1, page-1073. The object of the agreement was very worthy in as much as it was for strengthening the bonds of friendship between Republic of India and UAE and for promoting fruitful co-operation between judicial and legal sphere. It Recognised the need to facilitate the widest measure of legal assistance in civil and commercial matters. The scope of application under the agreement was for assistance in (a)

service of summons and other judicial documents or processes ; (b) taking of evidence by means of letters of request or commission and (c) execution of decrees, settlement and arbitral awards. Of the 3 objects only the first one i.e., 2(a) has been achieved by notifying section 29(c) of the Code of Civil Procedure, 1908 which reads as under :-

“ 29. Service of foreign summonses-

(a).....

(b).....

(c) any other Civil or Revenue Court outside India to which the Central Government has, by notification in the Official Gazette, declared the provisions of this section to apply, may be sent to the Courts in the territories to which this Code extends, and served as if they were summonses issued by such Courts.”

The agreement was to apply for any request for mutual legal assistance relating to any civil or commercial matter arising either prior to or after its entry into force.

6. Article-XV, Article-XXV and Article-XXVI of the agreement read as under :-

“Article XV :-

1. Each of the Contracting parties shall, in accordance with its laws, recognise and/or execute decrees passed by the Courts of the other Contracting Party in civil, commercial and personal matters and by criminal courts in civil matters ;
2. The term “Decree” as used in this Agreement, whatever its designation, means any decision rendered in judicial proceedings by a competent court of the Contracting States ;
3. This Agreement shall not apply to interim or provisional measures,

except matters relating to taxation and allowances.”

Article XXV :

1. Without prejudice to the provisions of Article XXIV and XXVI of this Agreement, arbitral awards given in the territory of either party shall be recognised and enforced in the other Party provided that :

(a) the award of arbitrators is based on a written agreement of the parties to the dispute to submit to arbitrators for determination of any specific or future dispute arising out of legal relations ;

(b) the award is made on matters arbitrable according to the law of the State requested to recognise its enforcement unless it is contrary to the public policy of the Requested State.

2. The party requesting the recognition and enforcement of an award, shall produce a copy of the award accompanied by a certificate of the competent judicial authority in the Requesting State to the effect that the award is executable.

3. A certified copy of the Agreement between the disputant Parties empowering the arbitrators to decide the dispute shall also be produced.

Article XXVI :-

This Agreement is subject to ratification and the instruments of ratification shall be exchanged as soon as possible. It shall come into force on the date of exchange of instruments of ratification.

Either of the Contracting parties may terminate this Agreement by giving six months notice thereof through diplomatic channels. Upon the expiry of such notice, the Agreement shall cease to have any force or effect.

In witness whereof, the undersigned, being duly authorized thereto by their respective governments, have signed this Agreement.

Done at New Delhi on 25th October, 1999 in two originals each in Hindi, Arabic and English languages, each text being equally authentic. However, in case of difference, the English text shall prevail.

*For the Government of
The Republic of India*

*For the Government
of*

The United Arab Emirates

*A.SINHA
Jt.Secy. & Legal Adviser*

7. For more than 18 years except notifying it under Section 29(c) of the Code of Civil Procedure, 1908, nothing has been done.

8. The applicants in the two Execution Applications listed above are holding decrees from Courts in UAE of substantial amounts and they are helpless because applicants are unable to execute the decrees against respondents despite respondents having assets (according to applicants) within the jurisdiction of this Court.

9. In Commercial Execution Application (L) No.2838 of 2018 the applicants obtained a decree on 15.11.2017 from the Court of 1st instance, Dubai. This was challenged in Appeal and the Court of appeal heard the appeal of the judgment debtors and dismissed the said appeal by a judgment dated 13.2.2018. This was again challenged by the judgment debtors and the court of Cassation, by a judgment dated 8.7.2018, dismissed the appeal also. The applicants are therefore, holding a decree which has attained finality in the sum of AED 25,972,322.11 (Twenty-Five Million, Nine Hundred Seventy-Two Thousand, Three Hundred and Twenty-Two Dirhams and Eleven Fils) in addition to an annual interest @ 9% from 28.3.2017 until full payment is made. The cost in the sum of AED 1000 (one thousand dirhams) as attorneys' fees has also been awarded.

10. In Execution Application No.807 of 2016, plaintiffs are holding a decree issued by the Fujairah Civil Court, UAE. The decree is dated 27.1.2013 in the sum of AED 4,082,357 + interest @ 9% P.a., from 27.4.2011 + Attorney's cost. As on the date of filing the Execution Application, the amount payable was in excess of AED 5,827,850 and it is increasing by the day.

11. Therefore, the purpose of entering into the agreement dated 25.10.1999 between the Republic of India and UAE is defeated in view of non notifying UAE as a reciprocating territory for the purposes of section 44-A of The Code of Civil Procedure, 1908. Eighteen years is a very long period. I am not for a moment, even stating that UAE should be notified as a reciprocating territory, that is a policy decision to be taken by the Government. From the UAE agreement it does appear the intention was to for both countries shall recognise and/or execute decrees passed by the courts of the other country in civil, commercial and personal matters etc. I only felt that the situation as noted above has to be brought out in this judicial order so that the concerned Ministry (MEA) will at least take a decision one way or the other and that too, expeditiously.

12. Both the Execution Applications disposed.

13. Copy of this order be placed before the Minister of Law and

Justice, Government of India ; Minister for External affairs,
Government of India ; The Attorney General for India and The
Solicitor General of India for information and necessary action.

COMM.EXECUTION APPLICATION (L) NO.2838 OF

1. Judgment debtor no.2 is present in Court. Counsel Mr.Mirza for respondent no.2 states that respondent no.2 has affirmed an affidavit dated 16.1.2019 which for completion of record may be permitted to be filed in the registry. Leave granted.

2. Respondent no.2 has also given the address of respondent no.1-Deepak Dhakan. Respondent no.2 states that respondent no.1-Deepak Dhakan is presently residing at Al Yusufi Building, Buheira, P.O.Box 4262, Sharjah, U.A.E and his telephone number is +00971 50 6267786. Slip which contained address and telephone number is taken on record and marked 'X' for identification. Copy of the slip on which address and telephone number was written has been signed by respondent no.2 and the same for ease of reference, is scanned and reproduced herein :-

X-10
7/1/19
Al- Yusufi Building,
Buheira,
P.O.Box 4262,
Sharjah, U.A.E.
00971 50 6267786
D

3. It is open for the applicants to approach the appropriate authorities.

(K.R.SHRIRAM,J)