

\$~1(2021)

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

%

Date of decision: 25.08.2021

+ **EFA(OS) 2/2021, CM Nos.3031/2021, 3033-34/2021, 8432/2021, 11825-26/2021, 11883/2021 & 21295-96/2021**

VARUN MOUDGIL & ORS.

..... Appellants

Through : Ms. Kanika Agnihotri, Mr. Amer Vaid and Ms. Yashodhara Gupta, Advs.

versus

NEENA KHATRY

..... Respondent

Through : Mr. Saurabh Kirpal, Sr. Adv. with Mr. Tanmaya Mehta and Mr. Anunaya Mehta, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Court hearing convened *via* video-conferencing on account of COVID-19]

RAJIV SHAKDHER, J.: (ORAL)

CM No.21296/2021

1. The prayer made in the captioned application is to grant exemption from filing notarised/attested affidavits.

2. The captioned application is disposed of with a direction to the applicants/appellants to place on record the duly notarised/attested affidavits, within two weeks from today, notwithstanding the order passed hereinbelow.

CM Nos.3033-34/2021 & 21295/2021

3. These applications have been filed on behalf of the appellants seeking

condonation of delay in filing and re-filing the appeal as also in filing the written submissions and convenience compilation, as directed by this Court.

3.1. Mr. Saurabh Kirpal, learned senior counsel, who appears on behalf of the respondent, says that, he has no objection, if the prayers made in the captioned applications, are allowed.

4. Accordingly, the delay in filing and re-filing the appeal, as also in filing the written submissions and convenience compilation, is condoned.

5. The captioned applications are, accordingly, disposed of.

EFA(OS) 2/2021 &

CM No.3031/2021 *[Application filed on behalf of the appellants seeking stay on the operation of the impugned order dated 23.09.2020]*

CM No.8432/2021 *[Application filed on behalf of the appellants seeking leave to amend the memo of appeal]*

CM No.11825/2021 *[Application filed on behalf of the appellants to place on record subsequent developments]*

CM No.11826/2021 *[Application filed on behalf of the appellants seeking leave to seek consequential relief, if any, at a later stage, in view of the subsequent developments that come into the knowledge of the appellants]*

CM No.11883/2021 *[Application filed on behalf of the appellants seeking production of documents in the possession, power and knowledge of the respondent pertaining to the subsequent transfer of the suit premises by the respondent to third parties during the pendency of the appeal]*

6. This appeal has been preferred against the judgment of the learned Single judge, dated 23.09.2020.

6.1. The appellants before us are the judgment debtors while the respondent is the decree holder.

Background facts: -

7. For the purposes of adjudication of the appeal, the following facts, qua which, largely, there is no dispute, are required to be noticed.

7.1. The respondent/decreed holder, i.e., the original plaintiff had filed two suits before this court, i.e., CS(OS) Nos. 674/2017 and 675/2017. These two suits concerned agreements to sell, dated 11.05.2017 and 29.06.2017.

7.2. The suit properties, which were involved in the aforementioned suits, were: the basement, ground floor and third floor, along with terrace, situate at D-6/32, Vasant Vihar, New Delhi.

7.3. While the aforementioned suits, were pending, the parties arrived at a settlement amongst themselves, which resulted in a Settlement Agreement dated 22.04.2019 [hereafter referred to as 'SA'] being drawn-up. The SA morphed into a consent decree, dated 01.05.2019. The broad terms of settlement, as arrived at between the parties, as incorporated in the SA, were as follows:

(i) The respondent/decreed holder was required to pay Rs. 10.50 crores to an entity going by the name of IDFC First Ltd. [hereafter referred to as "IDFC"].

(ii) The appellants/judgment debtors were required to execute, within three days of the payment of the aforesaid sum [i.e., Rs. 10.50 crores] to IDFC, three separate irrevocable general power of attorney(s) (in short "PoAs") in favour of the respondent/decreed holder, in respect of the aforementioned suit properties.

(iii) The appellants/judgement debtors were required to pay Rs. 13.39 crores to the respondent/decreed holder, within 10 months, commencing from

the date of the payment of Rs. 10.50 crores to IDFC; whereupon the title deeds concerning the suit properties, which were in the custody of the respondent/decreed holder, were required to be handed over to the appellants/judgement debtors. Although, Rs 13.39 crores was to be paid within 10 months, it could have been paid either in prescribed tranches or as a single shot amount [See: Clause 12 of the SA].

(iv) The appellants/judgement debtors were obliged to place the respondent/decreed holder, in possession of the suit properties, pending the repayment of the aforesaid amount i.e., Rs.13.39 crores.

7.4. Admittedly, the appellants/judgement debtors failed to repay the money, within the timeline set forth in the SA. It appears that the appellants/judgement debtors did not have the requisite funds.

7.5. Accordingly, an application was moved by the appellants/judgement debtors, under Order XX Rule 11 read with Section 148 and Section 151 of the Code of Civil procedure, 1908 (in short 'CPC'), seeking for extension of time for repayment of money to the respondent/decreed holder. This application was moved on 25.02.2020 and was numbered, as Ex. Appl. (OS) No.266/2020.

7.6. It is not disputed that, the agreed timeframe of 10 months set down for the repayment of Rs. 13.39 crores, in effect, was to expire on 24.02.2020, as per the terms of the SA.

7.7. Apparently, the respondent/decreed holder moved to execute the consent decree dated 01.05.2019. The execution petition was filed by the respondent/decreed holder, on 16.07.2019.

7.8. The record also reveals that, on 28.01.2020, the appellants/judgement debtors had clearly indicated to the Executing Court that, they shall execute

three registered POAs in favour of the respondent/deGREE holder, if they failed to make payment of Rs. 13.39 crores by due date i.e., 24.02.2020. Since the appellants/judgement debtors failed to discharge this crucial obligation, although it stood stipulated both in the SA and the consent decree, the respondent/deGREE holder pressed for grant of relief in terms of the consent decree.

7.9. Even though before the learned Single judge, arguments were put forth on behalf of the appellants/judgement debtors that, they were entitled to extension of time for repayment of Rs. 13.39 crores to the respondent/deGREE holder [given the fact that they had been able to arrange a buyer who was ready and willing to buy the suit properties], she was not impressed.

8. In this behalf, the appellants/judgement debtors seem to have relied upon the correspondence exchanged, with the respondent/deGREE holder, in June 2019. The main thrust of this correspondence, was that, the appellants/judgement debtors wanted the respondent/deGREE holder to allow for inspection of third floor, along with terrace, located at property bearing no. D-6/32, Vasant Vihar, New Delhi, as well as the original documents, which were in custody of the respondent/deGREE holder. These letters are dated 13.06.2019 and 20.06.2019.

8.1. There is also a letter dated 22.06.2019, on record, which has been addressed by the respondent/deGREE holder to the appellants/judgement debtors. The respondent/deGREE holder, *inter alia*, conveyed to the appellants/judgement debtors that, the prospective buyer could visit her residence for inspection of the original title documents.

Arguments advanced on behalf of the appellants: -

9. Given the foregoing broad facts, Ms. Kanika Agnihotri, who appears on behalf of the appellants/judgement debtors, says that, the impugned order is flawed for the following reasons.

9.1 The appellants/judgement debtors should have been granted extension of time to comply with the terms of the consent decree. Ms. Agnihotri says that, since a buyer had been presented before the court, who was ready and willing to pay Rs.15 crores, the request for extension of time was eminently in order. Ms. Agnihotri also adverted, in this behalf, to the agreement to sell arrived at between appellant no.1 and, one, Mr. Inder Pal Singh, dated 20.02.2020.

9.2. The SA went beyond the scope and ambit of the controversy and/or the dispute, which obtained between the parties. It was contended that, since the SA covered the areas and/or issues which were not embedded in the aforementioned suits, the route taken by the respondent/decreed holder to have the obligations contained in the SA enforced, *via* execution proceedings, was not available to her in law. In this regard, reliance was placed by Ms. Agnihotri on the judgment of the learned Single judge of this Court in *Novartis A.G. vs. Wander Pvt. Ltd.*, 2009 SCC OnLine Del. 1376¹.

9.3. The learned Single judge failed to consider the provisions of Order XXI Rule 34 of the CPC and the provisions of Rule 9 of Chapter XXIV of the Delhi High Court (Original Side) Rules, 2018 [in short 'DHC (OS) Rules, 2018']. The submission was that, since in the execution proceedings, the assistance of the Court was sought for drawing-up of the POAs, the draft copies of the POAs should have been placed on record, which, in turn, would have given an opportunity to the appellants/judgment debtors to raise

objections, if any, with regard to the same.

9.3(a) This argument is raised in the context that, the respondent/decreed holder has, based on the POAs, executed a sale deed in favour of herself and her sister. The submission advanced, is that, although the respondent/decreed holder, at the highest was a POA holder, she has ended up selling the property to herself and her sister, which is contrary to the judgment of the Supreme Court in *Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana & Anr.*, (2012) 1 SCC 656.

Arguments advanced on behalf of the respondent: -

10. On the other hand, Mr. Kirpal makes the following submissions on behalf of the respondent/decreed holder.

10.1. According to Mr. Kirpal, although the agreed timeframe of 10 months, for repayment of Rs. 13.39 crores to the respondent/decreed holder, expired on 24.02.2020, the application for extension of time for due compliance of the same was moved by the appellants/judgement debtors only thereafter, i.e., on 25.02.2020.

10.2. Mr. Kirpal also drew our attention to the prayer clause contained in the application i.e., Ex. Appl. No. 266/2020, whereby extension of time by only six months was sought for compliance of the consent decree. The thrust of Mr. Kirpal's argument was that even though more than six months had elapsed, the respondent/decreed holder had not seen the colour of money.

10.3. The argument advanced, on behalf of the appellants/judgement debtors, that they had a ready and willing buyer in place, is not wholly correct. For this purpose, Mr. Kirpal drew our attention to the proposed schedule [which is appended on page 134 of the convenience compilation]

¹ In short "*Novartis case*"

for payment of Rs. 13.39 crores, which was placed before the learned Single judge by the appellants/judgement debtors, on behalf of the prospective buyer.

10.4. The emphasis was laid on the fact that, the prospective buyer had indicated that, the buyer would have to sell an immoveable property, and secure a bank loan to garner the requisite funds, which would become payable, only if the agreement to sell arrived at between appellant no. 1 and Shri Inder Pal Singh i.e., the prospective buyer reached fruition.

10.5. The timelines contemplated under the SA have two facets. The first facet concerned execution of three separate irrevocable general POAs in favour of the respondent/decreed holder by the appellants/judgement debtors; an exercise which had to be carried out within three days of the respondent/decreed holder paying Rs.10.50 crores to IDFC. The second aspect involved the repayment of Rs.13.39 crores by the appellants/judgement debtors to the respondent/decreed holder, within 10 months, commencing from the date of the payment of Rs. 10.50 crores to IDFC.

10.6. The submission made by Ms. Agnihotri, that since the draft POAs were not presented before the learned Single judge, and therefore, there was a violation of the provisions of Order XXI Rule 34 of the CPC and/or Rule 9 of Chapter XXIV of the DHC (OS) Rules, 2018, is untenable, as Clause 11 of the SA provided that, the SA itself would be treated as the POA, upon failure of appellants/judgement debtors to repay Rs. 13.39 crores to the respondent/decreed holder.

10.6 (a) Therefore, neither the said provisions have any bearing on this case nor can the judgment of this court in the *Novartis* case come in the way of

the relief being granted to the respondent/decreed holder. In any event, the judgment of this court in the *Novartis* case has also no applicability, for the reason that, the fact situation obtaining in the said case, was different than what obtains in the present matter.

10.7. According to Mr. Kirpal, a close scrutiny of the judgment in the *Novartis* case, in particular paragraph 29, would show that the conclusion arrived at by the Court, was pivoted on the fact, that it involved a third party, which had no concern with the original suit action and the obligations adverted to therein had to be discharged *in futuro*.

10.8. Insofar as the argument, which was advanced on behalf of the appellants/judgement debtors, that, POA holders could not sell the property to themselves, according to Mr. Kirpal, was an eventuality with which this Court was not concerned in the present appeal.

Analysis and reasons: -

11. We have heard the learned counsel for the parties and perused the record.

11.1. According to us, what is relevant, are the terms of the SA, which was executed between the parties. The terms of the SA that would have a bearing on the controversy raised on behalf of the appellants/judgement debtors are extracted hereafter:

“10. That simultaneous to payment of Rs. 10,50,00,000/- (Rupees Ten Crores Fifty Lacs Only) to IDFC First Ltd., second party shall be deemed to have delivered actual physical possession of the properties described hereafter to the first party:-

- a) *Basement at Property bearing No D-6/32, Vasant Vihar, New Delhi.*
- b) *Ground Floor at Property bearing No. D-6/32, Vasant*

Vihar, New Delhi.

- c) *Third Floor with Terrace at Property bearing No. D-6/32., Vasant Vihar, New Delhi.*

11. That it has been undertaken by second party that within 3 days of payment of Rs. 10,50,00,000/- (Rupees Ten Crores fifty Lacs Only) by the First Party to IDFC First Ltd. concerned title holders of the second party shall execute and get registered three separate Irrevocable General Power of Attorneys in favour of the First Party/her nominee(s) in respect of the properties described in preceding paragraph of the this compromise i.e. basement, ground floor and third floor with terrace of D-6/32, Vasant Vihar. In case of failure on the part of the second party to get such POAs executed and registered, this document itself shall act as a power of attorney.

12. That it has been mutually agreed that in case second party will pay a total sum of Rs.13,39,00,000/- [This sum being based on the amount being paid by the First. Party I her husband to IDFC First under this agreement, the amount already earlier paid by the first party to the second party, the disputes, litigation compensation etc., and second party will not be entitled to dispute or challenge this repayment amount of Rs. 13,39,00,000] to the first party or her husband Prakash Khatri within a period of 10 months from the date of payment of Rs.10,50,00,000/- (Rupees Ten Crore Fifty Lakhs) by the First Party to IDFC First Ltd., and if this payment is made by demand drafts in the manner indicated hereinafter, then in such an event, as and when the payments are being made by the Second Party to the First Party, the properties shall be released by the first party to the second party in the following manner, in seriatim, else at the expiry of 10 months, the first party shall be entitled to use the POAs on the basis of this settlement, execute sale deeds of the below properties executed in her favour or in favour of her nominee :-

- (a) *Third Floor with terrace at Property bearing No. D-6/32, Vasant Vihar, on payment of one single tranche of Rs.6,30,00,000/- (Rupees Six Crore Thirty Lacs Only);*

- (b) *Ground Floor of Property bearing No. D-6/32, Vasant Vihar, New Delhi upon payment of further single tranche of Rs. 6,30,75,000/-.*
- (c) *Basement of Property bearing No. D-6/32, Vasant Vihar, New Delhi upon payment of further single tranche of Rs. 78,75,000/-.*

*Payments shall be considered to be made in seriatim clauses (a), (b) and (c) above. In case the second party does not pay the above in single tranches, but way of part instalments, then, (i) each instalment shall be considered in seriatim, and all instalments upto Rs. 6,30,00,000 shall first be considered against clause (a) i.e third floor with terrace, and so on; (ii) **if any portion of a tranche remains outstanding upon expiry of 10 months, the first party shall still be entitled to get sale deeds of the subject properties executed using the POAs forming part of this agreement / using this settlement deed as a deemed POA. To illustrate, if the first party has paid Rs. 10 crores by the end of 6 months, then this would mean that 6.30 crores would be adjusted against the first tranche forming part of clause (a) above; while a sum of Rs. 3.70 crores would be only part paid against the second tranche, and Rs. 2.60 crores forming part of the second tranche would be incomplete - in such scenario; the first party will still be entitled to get the sale deeds of ground floor and also of basement executed and registered based on the POAs/based on this agreement as deemed PoA, and within 30 days of such registration, the first party shall refund to the second party the amount part paid under the incomplete tranche i.e. in the illustration given above, a sum of Rs.3.70 crores, without any interest whatsoever, and subject to the second party not raising any challenge to the said sale deed. Since the properties are to be released, in seriatim, it shall not be open to the second party to seek release of papers of the basement simply because a sum of Rs. 3.70 crores has been paid under the second tranche, even though it, is more than the amount of the third tranche.***

13. That time is the essence of this transaction. In case second party fails to make payment of the amount of Rs. 13.39 crores in

*the manner indicated hereinabove to' the First' Party, within the period time referred to hereinbefore, second party would not be left with any right to subsequently insist for payment of the aforesaid amount, and that upon expiry of a period of ten months from the, date of payment of Rs. 10,50,00,000/- (Rupees Ten Crores Fifty Lacs Only) by the First Party to IDFC First Ltd., **First Party would be entitled to get executed and registered sale deeds on the basis of Irrevocable Power of Attorneys referred to above / or on the basis of this agreement as a deemed PoA in respect of the three properties described in paragraph no. 10 and 12 of this compromise in her own favour or in favour of her nominees without there being any requirement of any involvement of any of the member of the second party. No further consideration would be liable to be paid by the First Party to Second Party.***

14. Until all obligations under this agreement are complied with by the Second Party, and until the entire sum of Rs. 13.39 crores is not paid back by the second party to the first party in the matter specified in this agreement, it shall not sell, alienate, mortgage, or enter into any agreement in respect of, or in any manner create any third party interest in respect of the any of the properties which form part of this agreement i.e. Basement, Ground Floor, and Third Floor with. Terrace of D-6/32, Vasant Vihar, New Delhi. Subject, however, that upon payment of the tranches specified in Clause 12, only the respective properties would be released from lien which form the subject matter of the completed tranche. In case of part payment of a tranche, the restraint / lien would not be released until full payment."

[Emphasis is ours]

11.2. A careful perusal of the aforesaid clauses would show that the broad contours of the transactions, which are referred above, are captured in these clauses.

11.3. As noticed above, the respondent/decreed holder was to pay Rs.10.50 crores to IDFC. Upon the said amount being paid to IDFC, the

appellants/judgement debtors were deemed to have delivered actual physical possession of the suit properties (to which we have made a reference above) to the respondent/decreed holder.

11.4. Upon payment of Rs.10.50 crores by the respondent/decreed holder to IDFC, the appellants/judgement debtors had undertaken that, they would, within three days, execute three registered separate irrevocable general POAs in favour of the respondent/decreed holder or her nominee *qua* the suit properties.

11.5. The timeline, as regards repayment of the money by the appellants/judgement debtors, is contained in Clause 12 of the SA. In terms of Clause 12 of the SA, the appellants/judgement debtors were required to pay a total sum of Rs.13.39 crores to the respondent/decreed holder, within a period of 10 months from the date when Rs. 10.50 crores, was paid by the respondent/decreed holder to IDFC.

11.6. It was only upon the aforesaid amount of Rs.13.39 crores being paid, that the respondent/decreed holder was obliged to release the properties in favour of the appellants/judgement debtors. It was also made clear that, in case of failure to adhere to the same i.e., payment of said Rs. 13.39 crores, after the expiry of 10 months, the respondent/decreed holder would be entitled to use the POAs to execute the sale deeds in her favour or in favour of her nominee.

11.7. It is pertinent to note that, as indicated above, in Clause 11 of the SA, the parties, inter alia, agreed to the following:

*“11.....In case of failure on the part of the second party (i.e. the appellants/judgement debtors/judgment debtors) to get such POAs executed and registered, **this document itself shall act as a power of attorney.**”*

[Emphasis is ours]

11.8. The POAs, referred to above, are those *qua* which reference is made in first part of Clause 11 of the SA. There is, in Clause 11, a reference to the fact that, the document i.e., the SA, would act as a POA. A close reading of the terms of the SA would reveal that parties had agreed that if the requisite amount i.e., Rs. 13.39 crores, was not paid, within the timelines set forth in the SA, the SA could be used as a PoA, which, in turn, could be used by the respondent/decree holder to execute a sale deed concerning the suit properties in her favour or in favour of her nominee. Undoubtedly, the appellants/judgement debtors were required to adhere to the timelines set forth in the SA, since time was the essence of the transaction. This aspect of the matter finds reference in Clause 13 of the SA.

11.9. Clearly, the appellants/judgement debtors failed to adhere to the timelines provided in the SA, as noticed above. It is because of this reason that, the appellants/judgement debtors moved an application for extension of time and sought to present a prospective buyer for the suit properties, to enable them to arrange the requisite funds to repay the amounts, which they had undertaken to pay to the respondent/decree holder.

12. In this context, it is important to note two aspects of the matter.

12.1. First, that the application for extension of time, for compliance of their obligation to repay monies as set forth in the SA, was moved, on 25.02.2020 after the timeframe of 10 months had already expired.

12.2. Second, even if we were to take an indulgent view of the fact that, the aforementioned application for extension of time was moved, after the timeline had expired, one cannot ignore the fact that the proposed schedule of payments, which was placed before the court on behalf of the prospective

buyer was iffy and could not have instilled any confidence in the respondent/decreed holder that Rs. 13.39 crores would be repaid to her. This document is appended on page 134 of the convenience compilation. For the sake of convenience and easy reference, the relevant portion of the same is extracted hereafter:

***“PROPOSED SCHEDULE OF PAYMENT IN COMPLIANCE
OF THE SETTLEMENT AGREEMENT DATED 22.04.2019***

<i>Payment</i>	<i>Amount</i>	<i>Tentative Date</i>
<i>1</i>	<i>Rs.20,00,000/-</i>	<i>26.02.2020</i>
<i>2</i>	<i>Rs.7,09,00,000/-</i>	<i>26.05.2020</i>
<i>3</i>	<i>Rs.6,10,00,000/-</i>	<i>26.08.2020</i>
<i>Total</i>	<i>Rs.13,39,00,000/-</i>	<i>6 months</i>

The Buyer would be selling his own residential premises, and taking a bank loan to generate the requisite funds.”

[Emphasis is ours]

12.3. A perusal of the schedule would show that, the prospective buyer did not intend to pay the money in one go. Besides this, the payments were subject to buyer being able to rustle up the funds by selling his own residential premises and taking a bank loan, for the said purpose.

12.4. To our minds, this stance of the prospective buyer injected, if nothing else, an element uncertainty as to, whether or not the requisite amount could be paid to the respondent/decreed holder.

12.5. What made matters worse is, the response we obtained, on a query being put to Ms. Agnihotri, in the course of hearing. Even today, the appellants/judgement debtors are not in a position to discharge their obligation under the SA.

12.6. The fact of the matter is that, the respondent/decreed holder forked out a huge amount i.e., Rs.10.50 crores to free the suit properties from encumbrance, which was held over them by IDFC. Having been put out of pocket, the least that the respondent/decreed holder would have expected was that, the appellants/judgement debtors would repay Rs.13.39 crores, as agreed, within the timeline set forth in the SA and consent decree.

12.7. The timeline has been breached, as indicated above, and even today the appellants/judgement debtors have not been able to show the colour of money to the respondent/decreed holder. Therefore, the argument advanced by Ms. Agnihotri that, extension of time should have been granted, to enable discharge of obligation undertaken by the appellants/judgement debtors under the SA, does not impress us. In our view, the learned single judge has rightly repelled this contention.

12.8. This brings us to the other argument advanced on behalf of the appellants/judgement debtors that, the respondent/decreed holder should have placed the draft of the POAs on record, which would have enabled the appellants/judgement debtors to examine the same, and if necessary, prefer objections before the court.

12.9. The learned Singh judge, in the operative part of the impugned order, has stated that, the SA would operate as a POA. In our view, no fault can be found with the direction issued by the learned Single judge, for the reason that Clause 11 of the SA factored in such an eventuality.

13. It appears that, the parties had anticipated a situation, which involved, the appellants/judgement debtors reneging their obligation to execute three registered separate irrevocable POAs in favour of the respondent/decreed holder or her nominee qua the suit properties, within three days of Rs.10.50

crores, being paid to IDFC.

13.1. Furthermore, according to us, the provisions of Order XXI Rule 34 of the CPC state that, the respondent/decreed holder “may” prepare a draft of the document, in accordance with the terms of the decree and deliver the same to the Court. In our opinion, the word “may” attains criticality in the present case.

13.2. The aforesaid provision takes into account a situation, such as the one, which is present in the instant case, i.e., where the parties have agreed that the draft of PoA is not necessary to be placed before the Court. In our view, in such a situation, the obligation to present a draft document to Court, would not kick-in.

13.3. As noticed above by us, the parties have agreed that the SA would operate as a POA, if the requisite payment is not made by the respondent/decreed holder in the manner prescribed in the SA, and therefore, the respondent/decreed holder chose not to place the draft of the POA, before the court. The learned Single judge has accepted this modality, and issued directions, accordingly. In our view, as indicated above, no fault can be found in such a direction being issued by the learned Single judge.

13.4. The reliance placed on the judgment of the Calcutta High Court in *Daisy Mantosh vs. Kapil Kapoor*, 2001 SCC OnLine Cal 498, wherein, the order of the court below was set aside on account of the judgement debtor not being given an opportunity to verify the draft furnished by the decree holder, for the reasons stated above, would also not help the cause of appellants/judgement debtors.

13.5. Insofar as the argument of Ms. Agnihotri is concerned that, the SA in essence, changed the scope and ambit of the dispute, which was obtaining

between the parties, which had been captured in the suits mentioned above and therefore, the execution route was not available to the respondent/decreed holder - also does not impress us.

13.6. It is rightly pointed out by Mr. Kirpal that, the *Novartis* case involved a compromise, which envisaged obligations, concerning a third party, which was not a party to the suit, and that those obligations were to be discharged in the future. This aspect emerges, if one were to peruse the paragraphs, that were referred to by Mr. Kirpal in the course of his submissions.

13.7. The distinguishing feature between the instant case and the *Novartis* case has been captured, very clearly, in paragraph 29 of the said judgment. The relevant part of paragraph 29 of *Novartis* case is, therefore, extracted hereafter:

“29. The single-most factor which leads me to hold in this case that the decree in Clause 15 is not an executable decree is that it in its sweep also includes breach of terms and conditions of Distributorship and Marketing Agreement to be entered into pursuant to compromise, not between the decree holder and the judgment debtor but between a non-party to the suit and the judgment debtor. The parties could never have intended, also in law of an executable decree on default by judgment debtor of terms of an agreement with a party not a party to the suit or the compromise. Even though the Courts have held that subsequent events can be gone into in execution and can be subject matter of adjudication under Section 47, CPC, but such adjudication also is not possible in the absence of the party to the agreement of which breach is alleged. ...”

[Emphasis is ours]

13.8. In our opinion, no such situation obtains in the present case. The obligations undertaken by the parties are *in praesenti* and not *in futuro*. Therefore, the respondent/decreed holder was right in approaching the

Executing Court for enforcement of the consent decree.

14. This brings us to the last submission advanced by Ms. Agnihotri that, the respondent/decreed holder has executed a sale deed, dated 03.03.2021, in her capacity as holder of a POA, *albeit*, in her favour and in favour of her sister.

14.1. In our view, this aspect of the matter does not concern us, as it does not arise from the impugned judgment. The impugned judgment was delivered on 23.09.2020. The aforementioned transaction dated 03.03.2021, said to have been undertaken, by the respondent/decreed holder, was not in issue, before the learned Single judge.

15. Thus, for the foregoing reasons, we find no merit in the appeal.

16. The appeal is, accordingly, dismissed. Consequently, the pending applications shall also stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

AUGUST 25, 2021

aj

[Click here to check corrigendum, if any](#)