

CR-2341-2023

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Reserved on: 03.11.2023
CR-2341-2023 (O&M)
Date of pronouncement: 29.11.2023**

M/s Metal ARC Agri. LLP

...Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Saurabh Bajaj, Advocate for the petitioner.

Mr. Shivendra Swaroop, DAG, Haryana.

Mr. Puneet Bali, Senior Advocate with
Mr. Vipul Joshi, Advocate;
Mr. Shubhang Tandon, Advocate;
Mr. Vishavjeet S. Beniwal, Advocate;
Mr. Prashant Kumar Kapila, Advocate
for respondent No.3.

HARKESH MANUJA, J.

1. By way of present revision petition, challenge has been made to an order dated 06.04.2023 passed by the Executing Court-cum-Additional District Judge, Faridabad, whereby an application filed at the instance of the petitioner, invoking Order 21 Rule 15 (2) read with Section 151 CPC, in pending execution, with a prayer for protecting and remittance of 11.33% share out of the decretal amount, stands dismissed.

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2. Briefly stated, 15 kanal 10 marla of land situated in village Sarai Khawaja, District Faridabad, was owned by respondent No.3-M/s Hydraulics & Pneumatics (India) Pvt. Ltd. (hereinafter referred to as 'the Company'). Later by virtue of deed executed on 17.06.2013, registered on 22.06.2013, an agreement of limited liability partnership was executed in terms of Section 2(iv) of the Limited Liability Partnership Act, 2008 (hereinafter referred to as '2008 Act'), whereby the legal status of "the Company" was converted into limited liability partnership firm i.e. in the name of M/s Hydraulics & Pneumatics (India) LLP (hereinafter referred to as 'LLP Firm'), with Mr. Anirudh Kumar s/o Brij Raj Kumar, having 11.33 % share therein, besides others.

3. Vide Notifications dated 04.07.2012 and 13.12.2012 issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as '1894 Act') respectively, the above mentioned 15 kanal 10 marla of land owned by the LLP Firm came to be acquired for the purpose of setting up of Metro Stations from Badarpur YMCAAT TESTE Chowk, followed by an award No.13 dated 29.05.2013. Being aggrieved of the market value determined by the Land Acquisition Collector (for short 'the LAC'), the LLP Firm through one of its designated partner, namely, Brij Raj Kumar, invoked Section 18 of 1894 Act, seeking reference for the purpose of enhancement of compensation. The same was determined @

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Rs.48,000/- per acre vide decision dated 20.12.2019 passed by the Reference Court in LAC petition No.04 of 2014. Based on the aforesaid award, the LLP Firm filed an execution petition bearing No.34/2020 on 11.02.2020.

4. During pendency of the aforementioned execution petition, the petitioner i.e. Metal ARCH Agri LLP through its authorized representative 'Mr. Anirudh Kumar' moved an application under Order XXI, Rule 15(2) of CPC praying for protecting his interest under the decree/award dated 20.12.2019 pleading himself to be one of the partners of the decree-holder/LLP Firm. In the said application, the case setup by the petitioner-applicant was that Mr. Anirudh Kumar, who held 11.33 % shares of LLP Firm based on agreement dated 17.06.2013, transferred the same in favour of applicant-petitioner under an agreement dated 17.12.2018. The aforesaid application was contested by respondent No.3 having filed a detailed reply, disputing the factum of execution of the agreement dated 17.12.2018, besides even the availability of remedy under Order XXI Rule 15(2) CPC to the petitioner.

5. The Executing Court-cum-Additional District Judge, vide order dated 06.04.2013 dismissed the application filed at the instance of petitioner while recording that the provision of Order XXI Rules 15 was not available to the petitioner-applicant, which was not a decree-holder as in the present case the decree/award dated 29.12.2019 was

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passed in favour of respondent No.3 being a limited liability partnership firm, the reference petition been filed by it alone through Brij Raj Kumar; one of the designated person and no one else.

6. Impugning the aforementioned order dated 06.04.2013 passed by the Executing Court, learned counsel for the petitioner submits that the provisions of Order XXI Rule 15(2) of CPC are applicable in the facts and circumstances of the present case and the petitioner-applicant has to be treated as decree-holder being one of the partners of the LLP Firm, based on the agreement dated 17.12.2018. In support of his contention, learned counsel refers to paragraph No. 17 of a decision of The Bombay High Court in case of '**IDBI Trusteeship Services Ltd. and another** Vs. **Mid-City Infrastructure Pvt. Ltd. and Others**', 2021(4) PLR 43, which is reproduced hereunder:-

"17. In these circumstances, it is evident that the respondent no.3 appears to have attempted to mislead the court. The reasons given and the submissions advanced are completely unsatisfactory and I am unable to accept the contention of Mr. Naphade that no relief can be granted in these circumstances. Undoubtedly, the respondent no.3 has an interest in these LLPs and which can be subject matter of the charge since he has apparently created a charge in respect of his partnership interest in Mid-City Housing LLP. In this view of the matter, it is evident that the charge can now be created on his interest which has been equated in monetary terms equivalent to the amounts borrowed. The amount borrowed is said to be about Rs.100 crores and in my view, that amount would therefore represent the subject

matter of a charge which at the very least represents the partnership interests of the respondent no.3 in Mid-City Housing LLP. This having been said, I have heard no opposition whatsoever to the amendment sought to the execution application. In my view, therefore, prima facie case is made out for grant of relief and accordingly I pass the following order,

- (i) IA is made absolute in terms of prayer clause (a).*
- (ii) There will be an ad-interim order in terms of prayer clauses (b) and (c).*
- (iii) To the extent it concerns, the partnership interest of respondent no.3 in Mid-City Housing LLP, a charge will attach to the amount of Rs.100 crores borrowed under the Deed of Creation of Charge dated 18th October, 2021 in between respondent no.3 and India Bulls Commercial Credit Limited.*
- (iv) The respondent no.3 is directed to furnish all particulars of the amount of loan received and the date of receipt of the said amount within a period of one week from today.*
- (v) The affidavit shall be filed in court on 8th November, copies shall however be served within one week from today.*
- (vi) Liberty to apply after such reply is filed and in the event it is not so filed.”*

6.1 Learned counsel further refers to Clause 24 of the LLP Firm agreement dated 22.06.2013 to submit that all the partners of respondent No.3 were conferred with rights, title and interest in the assets and property of the LLP Firm in proportion of their contribution and thus, the petitioner-applicant by virtue of having been transferred the shares by Mr. Anirudh Kumar, through supplementary agreement

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dated 17.12.2018 acquired the status of partner and consequently became a joint decree-holder having rights, title and interest in the compensation payable to the LLP Firm. He also refers to page 95 of the paper-book ('Annexure –B') to submit that the petitioner-firm in fact was consisting of Mr. Anirudh Kumar and his wife only and as such there was no doubt about the *bona fide* of transaction-agreement dated 17.12.2018.

7. On the other hand, learned Senior Counsel representing respondent No.3 while referring to Order XXI Rule 15(2) submitted that the said provision was applicable only in a case where the applicant was one of the joint decree-holders or a transferee thereof. Referring to the facts of the present case, he submitted that the petitioner was neither incorporated as one of the partners of the LLP Firm, nor any reference on its behalf was filed thereby conferring rights of a decree-holder upon it. He further points out that in the present case, from a perusal of award it can be traced out that the LLP Firm being the decree-holder, having invoked the jurisdiction of Executing Court for the purpose of filing Exe. No.34 of 2020, anyone else was not entitled to move an application invoking Order XXI Rule 15 of CPC, so as to create an *inter se* partnership dispute or to ask for his entitlement while relying thereon. In support, he placed reliance upon the following judgments, their relevant paragraphs are reproduced hereunder:-

- (i) 'Kirtilal Jivabhai Vs. Chunilal Manilal and another',

-1946 Indian Law Reports (Bombay) Page 234.

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The scheme of the Civil Procedure Code is that it is only a decree-holder who can ordinarily apply for execution of the decree. If there are more than one decree-holders, than under O. XXI, r. 15, it is competent to one of the joint decree-holders to apply for execution. If the decree is transferred either by assignment in writing or by operation of law, the transferee can also apply for execution under O. XXI, r. 16, of the Civil Procedure Code.

It is contended, in the first place, by Mr. Banaji on behalf of the appellant that the decree dated November 13, 1923, was passed in favour of Jivabhai as the karta of a joint Hindu family and that Kantilal being a coparcener in that family was a joint decree-holder and as such he was entitled to apply for execution under O. XXI, r. 15. Now, in the first place, there is nothing on the face of the record to show that Jivabhai was suing the firm of Vadilal Manilal in his capacity as the karta in respect of a joint family debt. Jivabhai is described in the title of the plaint as Jain Hindu inhabitant, a commission agent and shroff carrying on business as such at Pydhonie outside the Fort. But there is nothing to suggest in the plaint that the business he was carrying on was an ancestral business. In the second place in our opinion a decree-holder entitled to execute the decree as such must appear to be a decree-holder on the face of the decree. Whether the decree-holder applies under O.

XXI, r. 10, or under O. XXI, r. 15, the executing Court can only execute the decree provided his name appears as a decree-holder on the face of the decree itself. The executing Court cannot look to anything outside or beyond the decree in order to satisfy itself that the person who is applying for execution is the decree-holder. The very definition of “decree-holder” contained in s. 2, sub-cl. (3), of the Code, makes this clear beyond any doubt.

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*A coparcener in whose favour a decree is not passed can never be a decree-holder. He may become a transferee of the decree by operation of law; and if there are other coparceners in whose favour also the decree becomes transferred, then he may apply as one of the assignees under O. XXI, r. 16, read with O. XXI, r. 15, of the Code. The same view of the law has been taken by Mr. Justice Burn and Mr. Justice Stodart in **Narayanan v. Panchanathan**, and they have expressly dissented from the contrary view taken in **Ramsewakprasad v. Saran Singh**.*

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(ii) Babu Satyendra Narain and others Vs. Wahiduddin Khan and Ors., 1939 SCC OnLine Pat.222, AIR 1940 Pat 472

“2. This rule is confined to holders of a decree, and in my view, there is no difference between the holder of a decree and a decree-holder. The holder of a decree under O. 21, R. 10 must be a person in whose favour a decree has been

passed O. 21, Rule 16 of the CPC, also deals with the persons who may execute a decree.

3. *It provides that where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree ... in the same manner and subject to the same conditions as if the application were made by such decree-holder.*

4. *These are the only two rules dealing with who may execute a decree. Quite clearly the present petitioners do not come within either of the rules. They are no decree-holders within the meaning of that term. Neither are they transferees by assignment in writing or by operation of law. That being so, I cannot see how they can apply for execution of this decree. The executing Court must, as a rule, take the decree as it finds it and can only execute it, if application is made by the decree-holder himself or by some person who is entitled under the code to execute in the same manner as the decree-holder. There is no provision in the Code which allows a person to come forward and say that the decree holder is a mere nonentity and that he (the applicant) is in substance and in fact the holder of the decree.*

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The same view was taken by another Bench of this Court in 17 Pat. 223. In that case Wort J. reviewed the authorities and came to the conclusion that a person, who claimed to be the true owner, could not apply to execute a decree which had been obtained by an alleged benamidar unless there had been an assignment of the decree in writing or by operation of law. Varma J. agreed with the view expressed by Wort J. The matter was again considered in the recent case in 18 Pat. 318. In that case, it was held that the person appearing on

the face of the decree as the decree-holder was entitled to execute the decree, unless some other person could show that he had taken the decree-holder's place by an assignment of the decree or by operation of law, that is by death or succession or in some similar manner. It was further held that in execution proceedings it was not open to the judgment-debtor to assert that the real holder of the decree was any person other than the person named as decree-holder in the decree unless there had been a valid assignment or devolution by process of law.

The view of this Court is similar to that taken by the Madras High Court in 48 Mad. 553, in my view, this Bench is clearly bound by the cases of this Court, to which I have made reference, and accordingly it must be held that the petitioners in this case had no right to execute the decree. For the reasons given, I hold that this petition fails and would discharge the rule. In the circumstances of this case, I would make no order as to costs.”

(iii) Valchand Gulabchand Vs. Manekbai Hirachand,
1953 Indian Law Reports (Bombay) Page 356.

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It is true that under Order 21, Rule 15, Civil Procedure Code, the Court which is directed to execute a decree at the instance of several joint decree-holders is entitled to make an order, which it deems necessary, for protecting the interests of all the persons who have not joined in the application for execution. But such an order can be passed only for the benefit of the decree-holders who have not joined in the application for execution. Under that rule, the Court may allow execution of the whole decree on terms, but it cannot compel one or more of the joint decree-holders to levy

execution for a fraction of the decree. Nor can the Court at the instance of the judgment-debtor be asked to decide a dispute between the decree-holders inter se. If after payment to one of the joint decree-holders it is contended that there has been a satisfaction of the decree to the extent of the share of the decree-holder receiving the payment, the judgment-debtor raises a question not between the parties to the suit or other representatives arrayed on opposite sides but substantially raises a dispute between the parties arrayed on the same side. The executing Court is not competent to decide such a dispute, because it is a question which is essentially foreign to the nature of the execution proceedings. An executing Court cannot be asked to decide a question as to the shares which should be assigned to the individual decree-holders under a joint decree when the decree has not made any such provision. If the executing Court is asked to launch upon such an enquiry and does so proceed to make the enquiry it would in effect be deciding a suit for partition between the joint decree-holders with reference to the property, which is the subject-matter of the decree primarily, and incidentally with regard to other property held jointly on the same tenure or relationship as the property which is the subject-matter of the decree.

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The learned judges who decided that case were of the opinion that the Court was entitled to record satisfaction of the decree at the instance of one of several joint decree-holders, provided that it was for the benefit of all the decree-holders and the extent of the shares of the individuals decree-holders was not in dispute. But they stated the Court ought not to recognize any payment made out of the Court unless made and certified for the benefit of all, at least in cases

where there was a dispute as to the extent of the shares of the individual decree-holders. They further were of the opinion that there was no logical reason why a Court was permitted to recognized payment out of Court to one of several joint decree-holders for his own benefit and not for the benefit of all of any portion of the decree in excess of that to which he is undisputedly entitled, if by reason of the provision of S. 231, (which is equivalent to the provisions of O. XXI R.15 of the present Civil Procedure Code) the Court was not permitted to allow one of several joint decree-holder to obtain execution of the whole decree for his own individual benefit. It is clear that on the authority of the case reported in Tarruck Chunder Bhattacharjee an adjustment of the decree could be recorded only where there was no dispute between the decree-holders as to their shares and the payment was received and accepted for and on behalf of all the decree-holders. Obviously in that case the payment would be deemed to have been received pursuant to an authority held on behalf of all the decree-holders, and the case is, therefore, no authority for the wide preposition suggested by Mr. Nadkarni. It is stated in that case the judgment-debtor must have bona fide paid the money to one of several joint decree-holder and the payment must be duly certified, which could only be where there is no dispute between the decree-holder, and the payment is received for the benefit of all.

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With respect, it is difficult to agree with that view. If the rights among the decre-holder inter se are ascertained or there is no dispute between them as to their shares or rights, the payment to one of the decree-holders may be regarded as a discharge of the decree to the extent of the share of the decree-holder who has received payment but not otherwise.

The executing Court has, however, no jurisdiction to settle the dispute between the decree-holders inter se."

iv) **Shivshankar Gurgar V. Dilip**, (2014) 2 SCC 465.

*"13.2 In our opinion, the order dated 23.11.2005 virtually amounts the modification of the decree and is without jurisdiction on the part of the executing court, therefore, a nullity. It is a settled principle of law that the executing court cannot go beyond the decree. It has no jurisdiction to modify a decree. It must be execute the decree as it is. This Court in **Deepa Bhargava and another** Vs. **Mahesh Bhargava**, held thus: (SCC p. 298, para 9):-*

"9. There is no doubt or dispute as regards interpretation or application of the said consent terms. It is also not in dispute that respondents-judgment debtors did not act in terms thereof. An executing court, it is well known, cannot go behind the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is..."

v) **Deepa Bhargava and another** Vs. **Mahesh Bhargava and others**, (2009) 2 SCC 294.

"9. There is no doubt or dispute as regards interpretation or application of the said consent terms. It is also not in dispute that respondents-judgment debtors did not act in terms thereof. An executing court, it is well known, cannot go behind the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is. A default clause contained in a compromise decree even otherwise would not be considered to be penal in nature so as to attract the provisions of Section 74 of the Contract Act."

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8. I have heard learned counsel for the parties and gone through the paper-book as well as the records. I find substance in the submissions made on behalf of the petitioner.

9. In this case, Executing Court has dismissed the application filed by the petitioner for the following reasons:

- (i) Order XXI Rule 15 of CPC was applicable only where decree was jointly passed and the applicant was one of the joint decree-holder.
- (ii) The Reference Petition was filed merely by respondent No.3 through its designated partner and the award dated 20.12.2019 was passed only in favour of respondent No.3-LLP Firm.
- (iii) Respondent No.3/decreed-holder happened to be limited liability partnership firm; having separate entity being juristic person, distinct from the partners and thus, the petitioner-applicant which came into picture vide agreement dated 17.12.2018 cannot be said to be a decree-holder.

10. In the humble opinion of this Court, the reasons recorded by the Executing Court which have been extracted hereinabove are not in consonance with the relevant provisions of 2008 Act and also the terms of the agreement dated 22.06.2013, which govern the *inter se* rights and liabilities of the LLP firm and its partners. No doubt, under

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2008 Act, any firm incorporated and registered under Sections 11 and 12, as per Section 3(1) is a body corporate and legal entity; separate from that of its partners, yet, as per Section 23 of 2008 Act, the relationship of partners and the mutual rights and duties of a LLP Firm and its partners are governed by the agreement between the partners. The relevant provisions of Sections 3 and 23 of 2018 Act are reproduced hereunder:-

“Section 3 Limited liability partnership to be body corporate:

- (1) A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.*
- (2) A limited liability partnership shall have perpetual succession.*
- (3) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.*

Section 23 Relationship of partners.

- (1) Save as otherwise provided by this Act, the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners.*
- (2) The limited liability partnership agreement and any changes, if any, made therein shall be filed with the Registrar in such form, manner and accompanied by such fees as may be prescribed.*

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- (3) An agreement in writing made before the incorporation of a limited liability partnership between the persons who subscribe their names to the incorporation document may impose obligations on the limited liability partnership, provided such agreement is ratified by all the partners after the incorporation of the limited liability partnership.*
- (4) In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set out in the First Schedule.”*

10.1 Thus, LLP Firm though being a separate entity from its partners, yet the rights of LLP Firm and its partners are governed and regulated by the terms of agreement as regards the mutual rights and liabilities between them. To find out the rights and liabilities *inter-se* the partners and the LLP Firm, involved in the present case, clauses relevant for determination of the present case are reproduced hereunder:-

“Clause 10- Profit Sharing:

The Net Profit & Losses of the Partnership business as per the accounts maintained by the Partnership after deduction of all the expenses relating to manufacturing and/or trading activities of the partnership including rent, salaries, other establishment expenses shall be divided and distributed amongst the Partners in the same ratio or in which they have contributed to the LLP.

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The Capital Profit & Losses arising on the sale of any of the Partnership property shall also be divided & distributed amongst the Partners in the same proportion as above.

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Clause 24.

All the partners hereto shall have the rights, title and interest in all the assets properties in the said LP in the proportion at their Contribution.”

10.2 Equally important, the Executing Court while having rejected the application by recording that the decree was in favour of LLP Firm; a separate legal entity thus not being a joint decree, failed to consider other relevant aspects of the matter regarding cause of petitioners, having filed application under Order XXI Rule 15(2) of CPC being based on supplementary agreement dated 17.12.2018. Record shows that the said document did not find signatures of all the partners of respondent No.3/LLP Firm. The introduction of new partner by the existing one followed by transfer of his/her rights were governed by Clause 21 & 33 (a) (vii) of the said agreement which read as under:

“Clause 21:

No person may be introduced at a new partner without the consent of all the existing partners such incoming partner shall give his prior consent to act as Partner of the LLP.

Clause 33 (a) (vii):

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No Partner shall without the consent of all the other Designated partners obtained in writing for that purpose Transfer his interest in the LLP by mortgage, sale or otherwise.”

10.3 Thus, from the cumulative analysis of two Clauses reproduced hereinabove, it becomes evident that all partners are having right, title and interest in all the assets and properties of the LLP Firm in the proportion of their contribution and even the capital loss and profit arising on the sale of any partnership property has to be divided and distributed amongst the partners in the same proportion. Meaning thereby, that in the given facts, the enhancement granted by the Reference Court vide award dated 20.12.2019, in pursuance of acquisition of the property owned by the LLP firm has to be divided and distributed amongst the partners in the proportion of their contribution in the LLP Firm and therefore, the said award definitely is in the nature of a joint decree conferring and creating rights in favour of all the partners of the LLP Firm. Thus, the individual partners in the present case being joint decree-holders and the beneficiary under the decree have every right to invoke Order XXI Rule 15(2) of CPC so as to protect their interest in the award. Judgments relied in the present case are not applicable, as none of the case relate to the provisions of LLP Act, 2008 which are specific and distinct in nature. The Executing Court failed to consider the relevant Clauses of the agreement dated

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22.06.2013. Accordingly, for the reasons recorded hereinabove, the order dated 06.04.2023 passed by the Executing Court-cum-Additional District Judge, Faridabad, is set aside.

10.4 Since a specific plea, disputing the enforcement of supplementary agreement dated 17.12.2018 has been raised, in the absence of same having been dealt with in detail by the Executing Court, rather than adjudicating upon it, there being no opinion expressed thereupon, the matter is sent back to the Executing Court for its fresh adjudication in accordance with law within a period of two months from the date of receipt of certified copy of this order, the rights of the petitioner being dependent upon the said issue qua valid execution of supplementary agreement dated 17.12.2018. The Executing Court is requested to give opportunity to the parties to produce all the relevant documents as regards the execution of the supplementary agreement dated 17.12.2018. The parties are directed to appear before the Executing Court on 21.12.2023.

11. **Disposed of** in the above terms.
12. Pending application(s), if any, shall stand(s) disposed of.

29.11.2023
Mangal Singh

(HARKESH MANUJA)
JUDGE

Whether Speaking / Reasoned :	Yes	No
Whether Reportable :	Yes	No