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C.R.P.No.4701 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2025

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.4701 of 2017

Messers Krish Technologies
Regd.Office at No.1, Palar Street
(Thirutani Palar Street)
Thirutani Nagar, Zameen Pallavaram
Chennai - 600 117. ... Petitioner

-Vs-

Micronova Singapore Pte Ltd
R.C.No.20040 219 K, Block No.83
06-05, Orchid Park
Yishun Street, 81,
Singapore- 768 446. ... Respondents

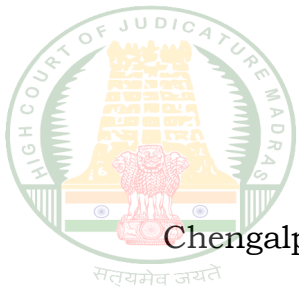
Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the order and decreetal order passed by the Principal District Judge, Kancheepuram district at Chengalpattu in E.P.No.46 of 2015 dated 04.10.2017 in M.C.No.7349 of 2010 on the file of the Subordinate Judge, Singapore.

For Petitioner : Mr.K.Shanmughakani

For Respondent : Mr.D.Baskar

ORDER

This Civil Revision Petition challenges the order dated 04.10.2017 passed by the learned Principal District Munsif, Kancheepuram at



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Chengalpattu in E.P.No.46 of 2015 in M.C.No.7349 of 2010.

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2. E.P.No.46 of 2015 came to be presented before the learned Principal District Judge at Kancheepuram on the strength of a decree obtained in M.C.No.7349 of 2010 dated 15.07.2010. M.C.No.7349/10/M was presented before the Subordinate Court in the Republic of Singapore claiming a sum of US\$20358. It was on the basis of an alleged breach of contract between the parties to this revision.

3. The respondent herein claimed that it is a leading distributor of electronic components to various companies in India and other parts of the world. On the representation of the civil revision petitioner, the respondent had placed orders from Singapore to the petitioner. In terms of the contract, the civil revision petitioner had agreed to supply materials, which answer to a particular standard and specification, within a particular period of time. According to the respondent, though the civil revision petitioner sent the materials to Singapore, they did not answer the specifications, nor was it within the time-line. This had resulted in the rejection of materials by the respondent's customers and also in shortfall of goods. Demanding compensation, the respondent issued a pre-suit notice. The petitioner herein, on receipt of the pre-suit notice, denied the allegations and issued a suitable reply. As the respondent was not satisfied with the reply, he presented the aforesaid suit.



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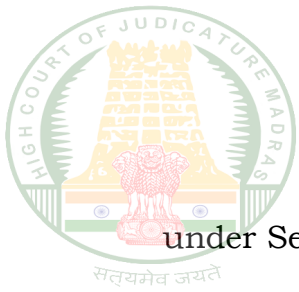
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4. Following the procedure of the Singapore Courts, the Deputy Registrar of that court issued summons to the Civil Revision Petitioner. It is not in dispute that the summons were served. The civil revision petitioner did not enter appearance in Singapore. Invoking Order XIII of the Code of Civil Procedure prevalent in the Singapore during the relevant time read with Form 79, the learned Subordinate Judge in Singapore passed the following order :

"No appearance having been entered by the above named defendants herein, IT IS THIS DAY ADJUDGED that the above named defendant do pay to the Plaintiffs:-

- 1) The sum of US\$20,358.00 to be paid to the Plaintiffs;*
- 2) Interest at the rate of 5.33% per annum on the above sum from the date of Writ of Summons until full payment;*
- 3) Costs of S\$ 1987.80."*

5. As the decree remained unsatisfied, the respondent moved the Principal District Judge by way of execution petition. It is not in dispute, across the Bar, that Singapore, being a reciprocating territory with India, a decree passed by a Court in Singapore can be executed directly without going through the process of conversion of the decree so obtained into a decree passed by the Indian Courts. On being served with the summons in the execution petition, the civil revision petitioner presented an application



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under Section 47 of the Code of Civil Procedure.

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6. The short and simple point that was urged before the Trial Court was that the decree does not comply with the requirements of Section 44A read with Section 13 of the Code of Civil Procedure and therefore inexecutable in India.

7. After hearing the arguments of both sides, the learned executing Judge held,

- (a) It is the duty of the Judgment Debtor to prove that the goods had been supplied by him in Singapore as per the contract.
- (b) As an executing Court, the Court cannot go behind the decree and therefore, "*prima facie*", the decree passed by the Singapore Court is deemed to be a competent one.
- (c) As the petitioner had not proved the lack of jurisdiction by filing documents, the Court is not inclined to accept the submissions of the Judgment Debtor.

However, the specific issue raised was not answered.

8. Consequently, it rejected the objections of the Judgment Debtor and ordered the execution petition. It issued a warrant of attachment of the movables of the Judgment Debtor. Aggrieved by the same, the present civil revision petition.



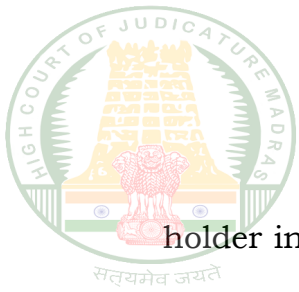
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9. I heard Mr.Shanmugakani for the petitioner and Mr.D.Baskar for the respondent.

10. Mr.Shanmugakani, relying upon several authorities of this Court, drew my attention to Section 44A and Section 13(b) of the Code of Civil Procedure. He urged that, unlike a decree that is passed by an Indian Court, a decree passed by a foreign Court, even if that of a reciprocating territory, would have to comply with the requirements of the aforementioned Sections. Immediately drawing the attention to Section 13(b), he urges that a decree granted by a foreign Court on the basis of a judgment, which has not been given on the “merits of the case”, is inexecutable. Therefore, he pleads the revision be allowed.

11. Per contra Mr.Baskar, drawing my attention to the Code of Civil Procedure of Singapore states that a default judgment in an action for unliquidated damages is specified under Order XIII Rule 2 and the judgment which has been extracted above complies with the requirements of Form 79 of that Code. Therefore, he urges that the judgment that has been passed is in accordance with the laws of Singapore. He relies upon the principle of comity of Court and urges the decree is executable in India. In addition, he states, at the time of filing of the suit before the Subordinate Court in Singapore, the purchase orders that have been given by the decree



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holder in favour of the judgment debtor were filed as documents. Therefore, he urges I should presume that, since a judgment has been passed, there was application of mind by the learned trial Judge prior to granting of the order. He relies upon two judgments viz., ***Dorothy Thomas -vs- Rex Arul (2011 (6) MLJ 475)*** and ***Alcon Electronics -vs- Celem S.A. (2017 (2) SCC 253)*** for this proposition. He states that the revision is bereft of any merits and therefore the revision be dismissed permitting him to execute the warrant of attachment.

12. I have carefully gone through the submissions made by both sides and considered the materials placed on record.

13. The factum that Singapore is a reciprocating territory is not in dispute. Therefore, by virtue of a decree passed by a Court in Singapore, a party need not file another suit to get an executable decree in India. The decree so passed by a Court in a reciprocating territory can straight away be executed in terms of Section 44A. Even to such a decree, under Section 44A(3), the provisions of Section 47 are made applicable. In addition, a discretion is given to the District Court, which is the competent Court to execute a decree passed by a Court in a reciprocating territory, to refuse execution, if it is shown that the decree falls within the exceptions under Section 13(a) to 13(f) of the Code.



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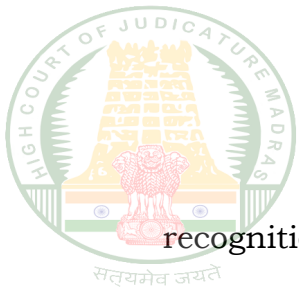
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14. Under Section 13, a foreign judgment is held to be conclusive when it falls outside Clauses (a) to (f). One such category is where the judgment has been pronounced without going into the merits of the case. The submission of Mr. Shanmugakani as extracted above would show that his simple plea is that the judgment of the Subordinate Court at Singapore does not comply with Section 13(b).

15. This, as pointed above, is resisted by Mr. Baskar, pleading that the Deputy Registrar of the Subordinate Court of Republic of Singapore has followed the laws of Singapore, and therefore, no exception can be taken by Indian Courts.

16. A combined reading of Section 13 and Section 44A leads me to the conclusion that if a judgment does not answer the requirement of Section 13(a) to (f), then the District Court / Executing Court can refuse to execute the decree.

17. First, I will deal with the plea of Mr. Baskar that the principle of Comity of Nations would have to be considered by this Court at the time of dealing with an application for execution of a foreign decree. Comity of Courts is one of the principles of Private International Law regarding



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recognition of judgments and decrees. As to how this “Comity” has to be channelized has been laid down under Section 13 read with Section 44A.

The general principles of Private International Law would have to be read along with the Code of Civil Procedure, 1908. Comity of Courts, as a general principle, does not mean that a decree passed by a foreign Court gets the status of a decree passed by an Indian Court under the Code. In order to get the same status, a judgment passed by a reciprocating territory has to answer the requirements of Section 13 read with Section 44A. Therefore, the application of the general principles of comity of Nations stops with the specific provisions of the Code of Civil Procedure.

18. The term “merits of the case” has been troubling the court for quite some time. Sir Robert Phillimore was called upon to decide this issue in the case of **“The Delta” [1876 1 P.D. 393]**. The learned Judge held that where the judgment is rendered *“not having been given on the merits of the case but on the matter of form only”*, it cannot be considered as a decision on merits.

19. This issue came up again before this Court in **D.T.Keymer v. Peruri Viswanadha Reddy** in **CS.No.291 of 1913**. The plaintiff, D.T.Keymer, had obtained a decree in the High Court of Justice in England. It was for a sum of £ 425-17-2. Keymer, the plaintiff, when the suit was pending in England, called upon Peruru Viswanadha Reddy the defendant



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to answer certain interrogatories. The English Judge directed the defendant to answer the interrogatories by 06.05.1913. He passed a further order that in case, the defendant does not respond to the interrogatories by that date, his defence will be struck off and he will be placed in the same position as if he had not defended the case. The judgment of the English Court was reported in **Keymer v. Reddy (1912) 1 K.B., 215.**

20. The defendant did not answer the interrogatories and consequently, the suit came to be decreed. The plaintiff carried the decree to this court and instituted a suit for recovery of money. In this suit, the defendant raised a plea that the judgment was not given on the “*merits of the case*” as required by section 13(b) of the Code of Civil Procedure and therefore, no decree can be granted. This plea was rejected by Justice Bakewell. He observed as follows:

“It is obvious that great injustice might be caused to a creditor, if a defendant could appear in a suit, delay the trial by various dilatory proceedings, and at last to allow judgment go against him by default and then were allowed to plead that there was no decision on the merits and that the original claim was barred by limitation”.

Having come to this conclusion, he decreed the suit based on the judgment and decree of the English Court for a sum of Rs.8649.15.0 at the rate of 6% from 17.10.1913 and costs.



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21. Aggrieved by the said judgment and decree, the defendant preferred an original side appeal. It was heard by Sir John Wallis Kt., CJ. and Seshagiri Ayyar J. The Division Bench held, a foreign judgment under the terms of our law is not conclusive, unless the case be decided on the merits. They pointed out that this was a principle which was prevailing in India even before the Code of Civil Procedure 1877. They relied upon the judgment in ***Sreehuree Bukshee v. Gopal Chunder Samunt (1871) 15 W.R., 500***. It had been ruled in that case that foreign judgments must, in order to be received, finally determine the points in dispute and must be adjudications on the merits. They further added Section 14 of Act VII of 1888 enabled the Indian Courts to enquire whether the judgment of the Foreign Court was passed on the merits of the case.

22. Act VII of 1888 was an Act to amend the Code of Civil Procedure of 1882, Indian Registration Act of 1877 and Indian Limitation Act of 1877. It came into force on 1st July 1888. The relevant portion is extracted hereunder:

“Section 14- Where a suit is instituted in British India on the judgment of any foreign Court in Asia or Africa except a court of Record established by Letters Patent of Her Majesty or any predecessor of Her Majesty or a Supreme Consular Court established by an Order of Her Majesty in Council, the Court in which the suit is instituted



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shall not be precluded from inquiry into the merits of the case in which the judgment was passed.”

The Bench came to the conclusion that as the judgment came to be passed due to the default of the defendant to answer the interrogatories, it was not a judgment on the merits of the case. Consequently, they allowed the appeal.

23. Aggrieved by reversal, Keymer took the matter to the Privy Council. Four Hon'ble members of the Board consisting of Lord Chancellor (Lord Buckmaster), Lord Shaw, Lord Wrenbury and Mr.Ameer Ali heard the appeal. Their Lordships held that the decree of the English Court, which was sought to be enforced in India, had been rendered on account of the default of the defendant and not on the merits. They held, none of the matters in question in the suit was ever considered nor was ever the subject matter adjudicated in the Court in England, since the judgment was given on the footing that the suit had not been defended at all. Therefore, the judgment was not one given on the merits of the case within a meaning of Section 13(b) of the Code of Civil Procedure. Consequently, they dismissed the appeal and confirmed the view of the Division Bench.

24. When the Privy Council having spoken on the issue, one could have expected the matter to have been settled. However, it was not to be. The issue once again arose before this Court in **A.Janoo Hassan Sait v.**



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M.S.N.Mahamad Ohuthu (1924) 20 LW 677. It was a case where the suit had been presented before a Court in Colombo. It was a suit based on promissory notes. Summons were served on the defendant through his agent. As the defendant did not appear, a decree came to be passed. A suit was brought before the II Additional Subordinate Court at Tanjore to recover money due under the decree. The trial court decreed the suit. On appeal, the learned District Judge, Tanjore allowed the same and dismissed the suit. Against this reversal of the decree, a second appeal was preferred to this court.

25. It was heard by a Division Bench consisting of Phillips and Madhavan Nair, JJ. Their lordships distinguished the Privy Council judgment in Keymer's case holding that the foreign judgment, in that case, had been passed for default to answer interrogatories and the said principle will not apply where the entire case proceeded *exparte*. They held that in case of ***exparte*** decree, it must be deemed to have been passed on merits. Having come to that conclusion, they allowed the appeal and decreed the suit as prayed for. This difference that had been drawn between the judgment passed on account of default of the defendant and where the entire proceedings went *exparte* led to cleavage of an opinion in ***R.E.Mahomed Kassim and Company v Seeni Pakir Bin Ahmed and others*** in ***appeal 61 of 2024***. Mr.Justice Krishnan differed from Mr.Justice Venkatasubba Rao. They framed a question namely



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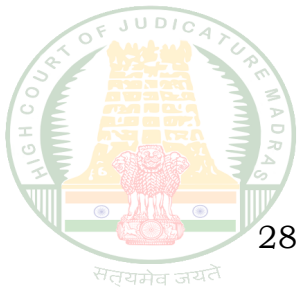


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“Does a suit lie in this country on a foreign Judgment given on default of appearance of the defendant on the plaint allegations without any trial or evidence?”.

26. The matter was placed before the Full Bench consisting of Murray Coutts Trotter C.J., Krishnan and Curgenvén JJ. The reference was answered in ***R.E.Mahomed Kassim and Company v Seeni Pakir Bin Ahmed and others, 1927 (25) LW 307***. The distinction brought forth in ***Janno Hassan Sait***'s case was placed for consideration of the Full Bench by Sir Alladi Krishnasamy Aiyar. He pleaded that in case of judgment, being rendered for default of the defendant, for not answering interrogatories or for being out of time or anything like that, that may be held to be a judgment not on merits. However, if an *ex parte* decree is passed on account of the defendant not appearing at all, then the Court should deem it as if it is a clear intimation by him that he admits the validity of the plaintiff's claim and therefore, such a decree is as good as if the plaintiff has actually proved by evidence.

27. The learned Chief Justice rejected the argument and held that the judgment of the Privy Council in ***Keymer***'s case excludes any such distinction. This view was agreed to by separate and concurrent judgments of Justice Krishnan and Justice Curgenvén. Consequently, the judgment passed in ***Janoo Hassan Sait***'s case was overruled.



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28. The result of this discussion is that a judgment pronounced by a foreign court, even if it is for the default of the defendant or one proceeds *ex parte*, in order to be treated as one on merits, it should have discussed the merits of the case.

29. Five decades later, the principles laid down by the Full Bench came up for consideration before another Division Bench of this Court consisting of Justice Veeraswami (as his Lordship then was) and Mr. Justice Kunahmed Kutti in ***A.Mohammed Sheriff and Company Limited -vs- APN Abdul Jabbar and Others (ILR 1996 (1) Madras 18)***.

30. The facts before the Bench were that the High Court in Singapore had passed a decree, as a matter of course, without any trial and without any evidence. The suit had been decreed by that court, since the defendant, who had been served with summons, did not appear before the court. Following the Full Bench, the Division Bench held that such a judgment is not a one on merits. I should add here that the view taken by Mr. Veerasami, J., was accepted and followed by another Division Bench of this Court in ***RMV Vellachi Achi -vs- RMA Ramanathan Chettiar (AIR 1973 Madras 141)***. [Ramamurthy & Krishnaswamy Reddy JJ.]

31. The aforesaid judgments bind me hand and foot. It could have been sufficient for me to allow this revision petition. However, I still have to consider two judgments cited by Mr. Baskar in order to show how they have



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not taken a different view on Section 13.

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32. The first of the judgment that Mr.Baskar refers to is ***Alcon Electronics -vs- Celem S.A. (2017 (2) SCC 253)***. In that case, the appellant before the Supreme Court had filed an application before the English Court, in a suit, relating to infringement of a patent. In that application, he challenged the jurisdiction of the English Court and included the reliefs that the original claimants / respondents will have to pay costs to it and the same has to be summarily assessed. The High Court of Justice, Chancery Division, Patent Court, rejected this plea and passed a judgment on 19.10.2006, dismissing the plea of the appellant and awarded a costs of £12,229.75. The appellant agreed to pay the costs, but did not do so. United Kingdom, being a reciprocating territory, the execution petition came to be filed before the District Court at Nasik by the successful plaintiff. An objection was raised that the decree of the English Court is inexecutable. This was rejected by the executing Court and confirmed by the Bombay High Court. Consequently, a Civil Appeal was filed before the Supreme Court. The Supreme Court, dealing with Section 13(b) pointed out in Para 15 of the judgment that,

“A judgment can be considered as a judgment passed on merits when the Court deciding the case gives opportunity to the parties to the case to put forth their case and after considering the rival submissions, gives its decision in the form of an order or judgment.”



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33. The proposition of law laid down by the Supreme Court shows that a judgment, in order to be a 'judgment' not hit by Section 13(b), must be one rendered after considering the rival submissions and should be in the form of a judgment. I do not find this position of law laid down by the Supreme Court affecting the validity of the precedents referred to above. On the contrary, it re-affirms the view of the Full Bench in **R.E.Mahomed Kassim's** case and the judgment that has been rendered by the Division Benches of Justice Veeraswami and Justice Krishnaswamy Reddiar. Unless and until the foreign judgment shows application of mind to the rival submissions and also active participation by the Judge, at the time of rendering the judgment, a District Court cannot treat the said judgment as one on merits and as one falling outside of Section 13(b) of the Code.

34. The other precedent referred by Mr.D.Basker is the view taken by Justice V.Ramasubramanian (as his lordship then was) in **Dorothy Thomas -vs- Rex Arul**. This judgment too is also on the similar lines. The learned Judge in Paragraphs 28 and 29 points out that a judgment of the foreign Court, in order to avoid the wrath of Section 13(b) of the Code, must disclose an active participation by the Judge, while considering the reliefs to be granted. He has indicated that the judgment must be one in which there must be an application of mind by the Judge in order to reach the conclusion that he has. Even in India where a judgment is rendered



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without considering the merits of the case, this Court and the Supreme Court have consistently held, it is not a judgment within the meaning of Order XX Rule 6 (See, ***R.Stella v. V.Antony Fracis, (2019) 5 LW 161***).

35. I have already extracted the judgment of the Subordinate Court of Singapore in extenso. A reading of it does not show that the Subordinate Court in the Republic of Singapore had applied its mind or considered the case of the plaintiff on the merits, prior to the coming on the unliquidated damages that the respondent / plaintiff is entitled to. The judgment was rendered, solely on the ground, the defendant had not entered appearance. I hasten to add, I am not sitting on appeal over the judgment passed by the Republic of Singapore. All that I endeavoured to do is to lay the judgment beside Sections 13 and 44A, and to see whether it answers the requirement of the said provisions. Unfortunately, for the respondent, the answer is, it does not.

36. In the light of the above discussion, this revision is allowed. The order of the executing Court is set aside. The execution petition will stand dismissed. Cost is quantified at Rs.10,000/-. It shall be paid by the respondent to the civil revision petitioner.

37. Needless to add, it is always open to the respondent to execute the decree, in the manner known to law, in Singapore. Similarly, it is open to him to file a suit on the basis of the transaction or the decree obtained at Singapore or both and seek for a decree before the Indian Courts.



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To

The Principal District Judge
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V. LAKSHMINARAYANAN, J.

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