

In the High Court at Calcutta

Civil Appellate Jurisdiction

Original Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya

And

The Hon'ble Mr. Justice Supratim Bhattacharya

APOT No. 1 of 2026

with

IA No: GA 1 of 2026

arising out of

EC No. 255 of 2022

India Media Services Private Limited

- Versus -

SBPL Infrastructure Limited

For the appellant : Mr. Krishnaraj Thaker, Sr. Adv.,
Mr. Dhruv Chadda,
Mr. Aurin Chakraborty,
Mr. Pradip Sancheti, ... Advs.

For the respondent : Mr. Jaydip Kar, Sr. Adv.,
Mr. Jishnu Chowdhury, Sr. Adv.,
Mr. Ratul Das,
Mr. Gaurav Khaitan, ... Advs.

Heard on : 21.01.2026, 28.01.2026,
& 04.02.2026

Reserved on : 04.02.2026

Judgment on : 18.02.2026

Sabyasachi Bhattacharyya, J.:-

1. At the outset, it catches our eye that a single appeal has been preferred against several impugned orders. Although we have doubt as to whether the practice and procedure of this Court permits a single memorandum of appeal to be preferred against several impugned orders, since the respondent has not raised any objection in that regard, nor was the appellant put to notice on such issue during arguments, we choose to overlook such technical flaw and take up the appeal itself for adjudication on merits.
2. The present appeal has been preferred by the award debtor in an arbitral proceeding between the parties, challenging the orders dated December 10, 2025 and December 19, 2025 (as modified by order dated December 22, 2025), passed by a learned Single Judge of this Court in connection with EC No.255 of 2022.
3. The appellant in the present appeal initiated an arbitral proceeding, *inter alia* seeking a declaration that a Nomination Agreement dated December 5, 2005 entered into between the parties is null and void and not specifically enforceable at the instance of the respondent, delivery up and cancellation of the said agreement, and consequential reliefs. In the said proceeding, the present respondent entered appearance and took out a counter claim, seeking specific performance of the self-same Nomination Agreement dated December 5, 2005 and consequential reliefs.

4. The said arbitral proceeding culminated in an award dated October 27, 2020, dismissing the statement of claim filed by the present respondent and allowing the counter claim of the present appellant, *inter alia* directing the specific performance of the Nomination Agreement by execution of a sale deed by the claimant/respondent in favour of the respondent/appellant within two months from the date of receipt of the award in respect of the property mentioned in the First Schedule (Schedule Property) as mentioned in the Nomination Agreement on acceptance of the balance sum of ₹14 crore from the respondent/present appellant, as the respondent/appellant had already paid the earnest money of ₹1 crore.
5. Being aggrieved by the award, the present appellant preferred an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “1996 Act”), giving rise to AP (Com) No. 191 of 2024. Simultaneously, an execution case, being EC No. 231 of 2021, was also filed by the appellant, seeking leave to examine the respondent through its officers in accordance with Order XXI of the Code of Civil Procedure, 1908 (CPC) together with the prayer mentioned in Column 10 of the said execution petition.
6. On the other hand, EC No. 255 of 2022 was filed by the award holders/respondent, praying for execution of the arbitral award dated October 27, 2020.

7. By a judgment dated September 24, 2025, the said application under Section 34, bearing AP (Com) No. 191 of 2024 (AP No.54 of 2021), along with EC No. 231 of 2021, were dismissed. Simultaneously, the learned Single Judge allowed EC No. 255 of 2022, directing the petitioner/appellant to strictly comply with the directions mentioned in the arbitral award. In default, the Registrar or his nominated officer, not below the rank of Assistant Registrar, Original Side High Court at Calcutta was directed to execute the Deed of Conveyance in favour of the respondent (SBPL), if the petitioner/appellant failed to do, as directed by the arbitrator in the award, within a fortnight.
8. The appellant has preferred a challenge against the dismissal of the application under Section 34 of the 1996 Act, which is now pending.
9. Subsequent to the judgment dated September 24, 2025, the learned Single Judge passed certain orders in connection with the application for execution of the award, being EC No. 255 of 2022, which are the subject-matter of challenge in the present appeal.
10. Learned senior counsel appearing for the award debtor/appellant argues that the impugned orders were made after the learned Single Judge had become *functus officio*. It is contended that upon having allowed EC No. 255 of 2022, the learned Single Judge had no jurisdiction to pass any further order, save corrections under Section 152 of the CPC or on review, in accordance with order XX Rule 3 of the CPC.

- 11.** In support of such contention, learned senior counsel sites a Full Bench Judgment of this Court in *Mallikarjuna Rao & Others vs. State of West Bengal*, reported at (2016) SCC OnLine Cal 3952, and a decision of the Hon'ble Supreme Court in *State Bank of India and Others vs. S.N.Goyal*, reported at (2008) 8 SCC 92.
- 12.** Learned senior counsel for the appellant refutes the contention of the award holder/respondent to the effect that the impugned orders were merely procedural, being in the nature of extension of time to execute the Deed of Conveyance, and contends that the learned Single Judge accepted the prayer of the Registrar, Original Side and directed him to dispose of the objections raised by the appellant vide order dated December 10, 2025, which were not merely procedural but substantive in nature. Furthermore, the learned Single Judge accepted the prayer of the Registrar and directed him to finalize the conveyance within the time fixed vide order dated December 9, 2025. By the order dated December 22, 2025, the learned Single Judge also directed the Registrar to verify a map forming part of Exhibit C-22 for the purpose of execution of the deed. It is submitted that such orders amounted to substantive adjudications and do not come within the purview of Sections 151 or 152 of the CPC, which power is only vested in the court making the decree and not the executing court. Moreover, no formal written application under the said provisions was filed in the present case.

- 13.** Learned senior counsel appearing for the appellant next contends that the impugned orders are liable to be set aside even otherwise. In the order dated December 10, 2025, it was recorded that from the report dated November 7, 2025 filed by the Registrar, it would appear that the appellant had filed thirteen objections before the Registrar. It is argued that once it was brought to the notice of the learned Judge that such objections were raised, the learned Single Judge ought to have directed the objections to be placed before the competent Court for adjudication in terms of the Order XXI Rule 34(3) of the CPC, read with Chapter XVII Rule 11 of the Original Side Rules (OS Rules) and Appendix E-form 6 thereof. However, instead of doing so, the learned Single Judge granted extension of time and directed the Registrar to dispose of the objections. It is submitted that the impugned orders only take note of the objections having been filed but there was no adjudication on the said objections by the learned Single Judge himself.
- 14.** Monitoring the execution of conveyance, it is submitted, cannot be equated with judicial orders made upon adjudication of objections under Order XXI Rule 34(3), which are appealable under Order XLIII Rule 1(i) of the CPC. The Registrar did not seek any approval of the learned Judge on the draft conveyance.
- 15.** It is argued that the adjudication under Order XXI Rule 34(3), CPC has to be done by the Court itself and cannot be delegated to an officer of the Court, unlike the ministerial act as contemplated in

Order XXI Rule 34 (5), read with Chapter XVII Rule 28 of the OS Rules.

- 16.** It is submitted that the orders of the Registrar have been separately challenged before the Chamber Judge in terms of Chapter VI Rule 15 of the OS Rules and are not the subject-matter of the present challenge.
- 17.** It is next contended that the learned Single Judge recorded in his order dated December 19, 2025 that the Registrar was unable to execute the conveyance, being not able to compare the map provided by the respondent with the draft deed; this is because there was no map on the record either before the Registrar or mentioned in the award or the judgment dated September 24, 2025, nor in the Nomination Agreement, of which specific performance was granted.
- 18.** No reasons were given in the impugned orders justifying the selection of Exhibit C22, which was a part of the arbitral records, particularly in the absence of any mention of the said exhibit throughout the award itself.
- 19.** It is contended that the respondent seeks to blow hot and cold in the same breath by contending that the impugned orders were procedural in nature, but still standing by the introduction of a new document, i.e., Exhibit C22, which was not mentioned in the award of the Learned Arbitrator.

- 20.** Thus, it is argued that the executing court not only went behind the decree (award) but entered into the records of the reference, which were not before the said Court.
- 21.** The learned Single Judge, by the order dated December 22, 2025, directed the Registrar to verify the said Exhibit with the map provided by the respondent and the schedule of the draft as given in the award without making any judicial order, upon verification of the map in Exhibit C-22 himself, nor did the learned Single Judge direct incorporation of the map in Exhibit C-22 in the conveyance. Instead, it was left to the Registrar to verify the map, which was not permissible, since the Registrar was not empowered to discharge any judicial function, his power being limited to the ministerial task of execution of the Deed of Conveyance.
- 22.** It is submitted by the appellant that any omission in an award can only be corrected in terms of the 1996 Act by the Arbitrator himself or, in a limited manner, by the Section 34 Court, and not by the Executing Court. Thus, the directions passed in the impugned orders partake of a substantive character and comprise of contentious issues which were required to be referred to the Judge in Chambers under Chapter XVII, Rule 11 of the OS Rules.
- 23.** There being no timeline stipulated in the initial order disposing of the execution case, dated September 24, 2025, the impugned orders cannot be termed as mere extensions of time, which would be procedural in nature.

- 24.** The setting of a new timeline, it is argued, is contrary to the requirement of Order XXI Rule 34 to CPC, read with Rule 11 of Chapter XVII of the OS Rules, which provides that a minimum of 8 days is to be given and summons in Form VI of Appendix E of the OS Rules is to be issued for a hearing to take place before the Chamber Judge as provided in Serial No.13 of Chapter VI, Rule 11 of the OS Rules.
- 25.** Despite multiple requests being made by the appellant to refer the objections raised by it to the Chamber Judge under Rule 51 of the Reference Rules, the objections were dealt with and rejected by the Registrar himself, without any reference to the court.
- 26.** Learned counsel for the appellant next contends that the respondent has offered to put in the court the sum of ₹ 14 Crore, payment of which was a pre-condition for execution of the conveyance. However, such offer is too late and too little and is contrary to the arbitral award, which requires the sum to be paid prior to the execution of the conveyance.
- 27.** In reply, learned senior counsel appearing for the respondent places reliance on relevant portions of the arbitral award to show that the learned Single Judge acted in consonance of and in furtherance of the same in letter and spirit.
- 28.** In the judgment dated September 24, 2025, which is not under appeal in the present proceeding, the learned Single Judge granted a fortnight's time to execute the Deed of Conveyance in favour of the

respondent; in default, the Registrar was to execute the Deed. A review application has been preferred against the main part of the order dismissing the Section 34 application by the award debtor/appellant, which is pending adjudication before the concerned Judge.

- 29.** The substantive direction on the Registrar to execute the conveyance on the failure of the award debtor to do so, as comprised in the judgment dated September 24, 2025, is now under appeal before the regular court taking up such appeals against execution orders, in APOT No. 91 of 2025. Thus, the said direction is not the subject-matter of this appeal.
- 30.** It is apparent from the impugned order dated December 10, 2025 that it arose at the instance of the Registrar, OS for the purpose of considering a detailed report furnished by the Registrar on November 7, 2025, dealing with the thirteen objections filed by the award debtor/appellant, and explaining why the Registrar could not execute and register the conveyance, seeking extension of the time to finalize and register the Deed of Conveyance. The court, upon consideration of the report and on the request of the Registrar, extended the time to execute and register the conveyance, in terms of the direction dated September 24, 2025, and called for a further report from the Registrar. By the subsequent order dated December 19, 2025, the Court again considered the report submitted by the Registrar, dated December 18, 2025, and taking note of the said

report, further extended the time to execute and register the conveyance till January 7, 2026.

- 31.** The third order dated December 22, 2025, merely corrected certain typographical errors in the order dated December 19, 2025.
- 32.** Thus, it is argued that the substance of the orders dated December 10, 2025 and December 19, 2025 is extension of time for the Registrar to execute and register the conveyance in terms of the parent order dated September 24, 2025. The court did not adjudicate any *lis* between the parties in the said orders and they were merely procedural in nature.
- 33.** Next addressing the issue of *functus officio*, learned senior counsel appearing for the respondent argues that although EC No. 255 of 2022 was allowed in terms of the order dated September 24, 2025, the subsequent orders dated December 10 and December 19, 2025 are merely procedural orders extending the time sought by the Registrar. Thus, there was no adjudication on merits by the impugned orders, which were intended merely to give effect to the award.
- 34.** Learned senior counsel for the respondent contends that the Court has inherent powers to extend time under Sections 148 and 151 of the CPC as well as under Rule 46 of Chapter XXXVIII of the OS Rules in case of procedural matters. In the present case, the Court merely extended the time to enable the Registrar to finalise the draft conveyance according to the Schedule accepted and set out in the

award and also to finalise the map or plan to be annexed thereto, which are all within the domain of the Executing Court.

- 35.** In support of such contention, learned senior counsel cites a decision of the Hon'ble Supreme Court in *Mahanth Ram Das v. Ganga Das*, reported at AIR 1961 SC 882, and *Debabrata Maiti v. The Mallabhum Gramin Bank & Ors.* reported at (2008) 3 Cal LP 85, the latter being a co-ordinate Bench judgment of this Court.
- 36.** Insofar as the plan being annexed to the conveyance is concerned, the respondent submits that the said document formed a part of the records of the Arbitral Tribunal as Exhibit C-22 and was also contained in the original document of conveyance dated July 8, 2010. The Schedule in the award talks about the map/plan which was not annexed to the Nomination Agreement, though the Schedule of the Nomination Agreement referred to the plan. The award debtor was directed to execute conveyance of the same property of which they had obtained a conveyance in execution of an earlier decree passed by the Court. Thus, the executing court neither amended the award nor made any modification to the award but merely implemented it in letter and spirit.
- 37.** While dealing with the objection of the appellant that the execution of the conveyance was in violation of Order XXI Rule 34, CPC, read with Chapter XVII, Rules 11 and 28 of the OS Rules, learned senior counsel for the respondent argues that Order XXI Rule 34 lays down the procedure that the court should follow in having the draft

conveyance executed and confers jurisdiction on the executing court to ensure settling the draft conveyance, consider objections and thereafter to finalize the draft and have it executed and registered. It also specifies that in the event the judgment debtor refuses to obey the decree, the decree holder may prepare a draft of the document in terms of the decree and deliver it to the court.

- 38.** It is for the court, upon considering the objections to the draft by the judgment debtor, to approve or alter the draft as it deems fit.
- 39.** Thereupon, the decree holder is to deliver to the court a copy of the draft with such alteration and subsequently, on compliance with the submission of stamp paper, etc., the draft is required to be executed.
- 40.** In the present case, Order XXI Rule 34 has been substantially complied with. The court had assigned to the Registrar the duty to finalize the draft. It is argued that the provisions of Order XXI Rule 34, CPC do not prohibit the court from undertaking such a course as settling of a draft conveyance requires comparing of the Schedule, looking into the chain deeds, finalizing the averments in relation to the same and incorporation of a habendum clause, which are essentially required to be complied with. In the instant case, the Registrar who was asked to execute the deed was entrusted with the job of looking into such details.
- 41.** Although objections were raised by the judgment debtor before the Registrar, they were mostly on account of jurisdiction and other

issues not related to the Deed of Conveyance itself, except one or two objections touching the title deed. Those objections, raised on the text of the document, were mostly related to typographical errors, which were dealt with by the Registrar in detail and placed before the court by way of reports, which were approved by the court, extending the time for the purpose of execution and registration of the document.

- 42.** It was open to the appellant to approach the court and raise their objections before it in terms of Order 21, Rule 34 (3) of the CPC if they were aggrieved by any of the findings of the Registrar, which was never done by the award debtor/respondent when the matter came up before the court on December 10 and December 19, 2025.
- 43.** Thus, the appellant, having not exercised such right before the court by raising any objection to the document, has waived such right.
- 44.** Since the award debtor/appellant never raised any objection to the draft before the learned Judge, nor sought any alteration in the draft before the court, the court never had any occasion to deal with any such objection.
- 45.** Hence, the appellant is estopped from raising the issue in the present appeal for the first time.
- 46.** Regarding the alleged non-compliance of Chapter XVII, Rule 11 of the OS Rules, it is submitted by the respondent that the notice

under Rule 11 was duly issued by the Registrar, thereby complying with the said provision.

- 47.** The provision of the notice under Order XXI Rule 34 (2) to be returnable before a Judge in Chambers, as provided in Rule 11 of Chapter XVII of the OS Rules, operates only for the purpose of causing the draft to be served on the judgment debtor, together with a notice requiring his objection, if any, to be made within such time as the court fixes in this behalf. In the present case, objections were invited by the Registrar and were subsequently placed before the court from time to time in the form of reports, with the reasoned orders of the Registrar, upon consideration of which the court extended the time for execution of the conveyance. Thus, there was substantial compliance with the said provision of law.
- 48.** Learned senior counsel appearing for the respondent argues that under the scheme contemplated under Order XXI Rule 34, CPC, it is also obligatory for the judgment debtor to raise objection before the court, whereas the court was never appraised of any subsisting objection by the award debtor/appellant after the Registrar disposed of the objections.
- 49.** Chapter XVII Rule 28 of the OS Rules speaks about execution of document by the Registrar, and specifically authorizes the Registrar to do so. Thus, there was no violation of the said provision as well.
- 50.** Learned senior counsel for the respondent further argues that in the memorandum of the present appeal, the only grounds urged are

in respect of the court becoming *functus officio* and the impugned orders being in modification of the arbitral award. None of the other points were urged in the grounds of the appeal, nor feature in the connected stay application. Thus, those grounds are beyond the pleadings contained in the appeal.

- 51.** In fact, the appellant voluntarily filed its objections before the Registrar and never approached the court or applied before it, either on December 10 or December 19, 2025 or at any time prior thereto.
- 52.** Having full knowledge of the draft conveyance which was going to be executed, the appellant appeared before the Registrar.
- 53.** The contention that the objections were dealt with by the Registrar and not by the court was never raised before the learned Trial Judge, nor in the memorandum of the present appeal.
- 54.** Regarding payment, it is argued that the award directs payment of ₹14 crore by the award holder to the award debtor and ₹ 8,15,73,616/- with 18% per annum interest up to the date of payment by the award debtor as cost to the award holder. After calculation of interest up to date, nothing is due and payable by the award holder, since the aforesaid dues more than cancel out each other and tilt in favour of the award holder/respondent. However, without prejudice to such contention, the award holder expresses its readiness and willingness to deposit in the court the entire amount of ₹14 crore, provided the appellant is directed to deposit

the amount of cost, with up-to-date interest, as directed in the award, subject to further directions for adjustment/set-off.

- 55.** It is pointed out that in the meantime the Registrar has executed a Deed of Conveyance in favour of the award holder. Thus, the present appeal only survives on paper.
- 56.** Lastly, it is argued that the present appeal is not maintainable within the meaning of Order XLIII Rule 1 (i), which provides that the judgment debtor raising an objection to the draft of a document or of an endorsement on the conveyance before the court could prefer such appeal.
- 57.** In the instant case, when the Registrar put up the draft along with his report to the court after disposal of the objections, none of such objections were raised or re-agitated before the court at the stage of passing the impugned orders. Having never raised the same before the court, no appeal lies under Order XLIII Rule 1 (i) of the CPC at the behest of the appellant.
- 58.** Upon hearing the arguments of the parties, the first question which falls for consideration is whether the learned Single Judge was rendered *functus officio* after September 24, 2025.
- 59.** It is well settled that an award of specific performance is executory in nature. Even after passing of an award of specific performance, it still remains for the decree to be executed and registered pursuant thereto, only upon which the award reaches its culmination.

- 60.** There are several procedural aspects involved between the passing of the award and the satisfaction of the same by enforcement, by way of execution and registration of a Deed of Conveyance, if the award debtor chooses not to comply with the award, as in the present case.
- 61.** A careful perusal of the judgment dated September 24, 2025 indicates that the substantive portion of the same was dedicated to adjudication of the challenge under Section 34 of the 1996 Act to the main award, which was ultimately dismissed. As a consequence, it was recorded that EC No. 255 of 2022, the application for enforcement of the award, was allowed. However, simultaneously with the said execution case being allowed, the learned Single Judge directed the award debtor/appellant to strictly comply with the directions mentioned in the award dated October 27, 2020. In default, the Registrar or his nominated officer, not below the rank of Assistant Registrar, Original Side, High Court at Calcutta, was directed to execute the Deed of Conveyance in favour of the award holder, if the award debtor failed to do so within a fortnight.
- 62.** It was also recorded that all the costs and expenses for effecting the Deed of Conveyance at the office of the Registrar of Assurance, Hyderabad was to be borne by the award holder.
- 63.** Thus, although the expression “allowed” was used in respect of EC No. 255 of 2022, further directions were passed in respect thereof. Hence, subsequent steps still remained to be completed before the

award was finally satisfied. Unless an award is satisfied, it cannot be said that the execution is complete.

64. Thus, the “allowing” of EC No. 255 of 2022 was merely nominal, contemplating further steps to be taken as per the directions of the executing court.
65. As such, it cannot be said by any stretch of imagination that the executing court became *functus officio* after passing the judgment dated September 24, 2025.
66. In fact, the award debtor/appellant vociferously relies on Order XXI Rule 34, CPC, which itself envisages further steps to be taken subsequent to a decree for execution of a document, taking within its purview several facets, in the event the judgment debtor neglects or refuses to obey the decree. First, the decree holder is required to prepare a draft of the document in accordance with the terms of the decree and deliver the same to the court. Secondly, the court, under sub-rule (2) of Rule 34, is to cause the draft to be served on the judgment debtor, together with a notice requiring his objections, if any, to be made within such time as the court fixes in this behalf.
67. Under sub-rule (3), where objections are made in writing, the court may make such order approving or altering the draft as it thinks fit, whereupon the decree holder is to deliver to the court a copy of the draft with such alterations, if any directed, and thereafter the deed is to be executed.
68. The relevant provisions in such regard are set out below:

Order XXI Rule 34, CPC

34. Decree for execution of document, or endorsement of negotiable instrument.-

(1) Where a decree is for the execution of a document or for the endorsement for a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) Where the judgment-debtor object to the draft, his objections shall be stated in writing within such time, and the court shall make such order approving or altering the draft, as it thinks fit.

4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely:- “C.D., Judge of the Court of (or as the case may be), for A.B. in suit by E.F. against A.B.”

and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

(6) (a) Where the registration of the document is required under any law for the time being in force, the Court, or such officer of the court as may be authorised in this behalf by the Court,

shall cause the document to be registered in accordance with such law.

b) *Where the registration of the document is not so required, but the decree-holder desires it to be registered, the Court may make such order as it thinks fit.*

(c) *Where the Court makes any order for the registration of any document, it may make such order as it thinks fit as to the expenses of registration.*

Chapter XVII, Rule 11, Original Side Rules

11. Issue, service and return of notices.- *All notices under Section 145 or under Order XXI, Rules 2,16,22,34(2) of 37 of the code, shall be issued by the Registrar or Master; notices under Section 145, and under Order XXI, Rules 2, 34(2) and 37 being made returnable before the Judge in Chamber, and notices under Order XXI, Rules 16 and 22, being made returnable before the Registrar or Master. Every such notice shall be returnable on a certain day to be therein mentioned, and shall be served at least eight clear days before such date unless the Registrar or Master shall otherwise order (Forms Nos. 2,3,4,5,6 and 7)*

- 69.** The language of Rule 34(3) of Order XXI, CPC is extremely relevant in the context. Two important aspects of the same are to be noted. First, the scope of objections by the judgment debtor under the said provision is not all-encompassing but is restricted solely to the draft which has been furnished by the decree holder. Secondly, upon such objections being made, the court is not required under the said provision to pass reasoned order or to specifically adjudicate on

such objections but is merely required to make such order as it thinks fit, “approving or altering the draft”.

70. In the present case, all the objections raised by the award debtor/appellant before the Registrar and his decisions thereon were incorporated by the Registrar in his reports, which were duly placed before the court on different occasions. The said objections and the decisions of the Registrar thereon, as part of the reports, are a part of the records of the present appeal and are perused by us as well. The substantial majority of such objections relate to the merits of the award and the jurisdiction of the learned Arbitrator as well as the court, thus falling squarely the outside the limited ambit of Rule 34(3), which envisages only objections to the draft. As opposed to Section 47 of the CPC, which mandates the executing court to determine “all questions arising between the parties to the suit and relating to the execution, discharge or satisfaction of the decree”, in an exercise under Order XXI Rule 34(3), the judgment debtor is only permitted to object to the draft deed submitted by the decree holder and no further. Hence, there is no substantive adjudication involved in such an exercise. The very nature of consideration of objections confined to the draft makes the exercise procedural in character, as opposed to a substantive adjudication on the executability of the decree/award.

71. Hence, even if it were to be assumed that the court itself did not deal with the objections but merely approved the Registrar’s

decision thereon, no prejudice would be caused to the appellant to justify interference by an appellate court.

- 72.** The second component of Rule 34(3) of Order XXII is that the order of the court contemplated therein is merely on the approval or alteration of the draft if the court so thinks fit. Conspicuously, the provision does not mandate the court to adjudicate on the merits of the objections at all or to pass reasoned orders thereon but, upon such objections being placed before the court, to make orders pertaining to the draft, either approving or altering the same, in its discretion. Hence, the very premise of the challenge to the impugned orders is flimsy, since the court, in its limited jurisdiction under Order XXI Rule 34(3), was not required at all to deal with substantive objections to the execution, which would come within the domain of Section 47, CPC and not Order XXI Rule 34 thereof.
- 73.** Rule 11 of Chapter XVII of the OS Rules operates on an entirely different footing and does not speak about the subsequent stage of dealing with the objections raised by the judgment debtor.
- 74.** In terms of the said provision, as applicable in the present context, all notices under Order XXI Rule 34(2) of the CPC were to be issued by the Registrar, being made returnable before the Judge in Chambers. In the present case, the said modality was complied with and even the award debtor/appellant does not complain of the notices not being in form or not being made returnable before the Judge. Rule 11, by itself, does not contemplate any further stage of

what the concerned Judge should do with the notices, once they are made returnable before him.

- 75.** Thus, nothing in Rule 11 of Chapter XVII of the OS Rules requires the court to hear any objection whatsoever.
- 76.** Rule 11 pertains only to the initial stage of notice and provides that the same would be made returnable to the Judge in Chambers – nothing more, nothing less.
- 77.** Hence, the reliance on the said provision by the award debtor/appellant, in its bid to challenge the orders of the learned Single Judge, is entirely misconceived.
- 78.** Rule 28 of Chapter XVII, on the other hand, contemplates acts directed by the court under Order XXI Rule 34(5), CPC to be done by the Registrar, which was fully complied with in the present case.
- 79.** The appellant also relies on Serial No. 13 of Rule 11 of Chapter XVII of the OS Rules which provides that all proceedings in execution or otherwise under a decree or order and business relating thereto are to be disposed of in Chambers by a Judge.
- 80.** The said procedure is omnibus and all-comprehensive in nature and includes not only objections under Order XXI Rule 34(3) but other substantive objections under Section 47, CPC as well. The nature of the two, however, cannot be equated. Whereas Section 47 permits the judgment debtor to raise substantive objections pertaining to the very executability of the decree, Order XXI Rule

34(3) operates within a much lesser compass, confining the objections contemplated therein only to the draft deed.

- 81.** Thus, reference to the said provision is also misplaced.
- 82.** The appellant relies on *S.N.Goyal (supra)*¹, which was rendered in a different context than the present one. The question which was being answered by the Hon'ble Supreme Court in Paragraph 28 of the said report was "When did the appointing authority become *functus officio*". The scope of adjudication therein was the distinction between the effect of a judgment passed by a court/judicial authority and that of a *quasi-judicial* authority. Whereas a *quasi-judicial* authority, it was held, will become *functus officio* only when its order is pronounced or published/notified or communicated (put in the course of transmission) to the party concerned, a Judge was held to become *functus officio* when he pronounces, signs and dates the judgment, subject to Section 152 and the power of review. The distinction between the two was being examined in the said judgment. Thus, the said ratio does not aid the appellant in the present appeal in any manner whatsoever.
- 83.** There cannot be any doubt that a Judge becomes *functus officio* when he pronounces his judgment in open court. However, such proposition is irrelevant in the present context, since in the instant case, the learned Single Judge did not modify or seek to review his

¹ ***State Bank of India and Others vs. S.N.Goyal* reported at (2008) 8 SCC 92**

own judgment dated September 24, 2025 in any manner whatsoever. Rather, by the orders impugned in the present appeal, full and complete effect was sought to be given to the directions passed in the order dated September 24, 2025, in connection with EC No. 255 of 2022. Although it was mentioned in the said judgment that the execution case was thereby “allowed”, the said disposal was merely nominal, since further directions were given to execute the draft decree.

- 84.** As held earlier, an execution case is only concluded when the award sought to be executed is completely satisfied. In the case of an award of specific performance of a contract, such satisfaction occurs only upon the draft deed being finalized, executed and registered. All steps in between, as contemplated in Order XXI Rule 34, CPC, come within the specific domain of the executing court. It is precisely such provision which was exercised by way of the impugned orders passed by the learned Single Judge. Hence, the argument of the appellant is contradictory on such count – on the one hand contending that the executing court became *functus officio* and on the other, that the provisions of Order XXI Rule 34(3) were not complied with despite the executing court being duty-bound in law to do so.

- 85.** In *Mallikarjuna Rao (supra)*², the Full Bench of this Court was considering the procedure for announcing judgments in criminal trials. While doing so, it was held that once a judgment or order is pronounced or assumes its final form, the jurisdiction of the court lapses over that particular judgment or order.
- 86.** There cannot be any quarrel with such proposition. However, the said ratio is not applicable here, since the executing court itself directed in its order dated September 24, 2025 for the draft deed to be executed, in default of the award debtor doing so. As the award debtor chose not to execute the decree in terms of the award, further steps were required to be taken in furtherance of the order dated September 24, 2025 itself, to take the award to its logical fruition. By the orders impugned in the present appeal, the executing court did not tinker with its judgment dated September 24, 2025; rather, the impugned orders were passed in furtherance and to give effect to the directions incorporated in the said judgment.
- 87.** Hence, the said decision also does not have any applicability in the present context.
- 88.** In *Mahanth Ram (supra)*³, the Hon'ble Supreme Court was dealing with a situation where enlargement of time was held to be

² ***Mallikarjuna Rao & Others vs. State of West Bengal* reported at (2016) SCC OnLine Cal 3952**

³ ***Mahanth Ram Das v. Ganga Das* reported at AIR 1961 SC 882**

procedural in nature. In *Debabrata Maiti (supra)*⁴ as well, a co-ordinate Bench of this Court held in similar line. However, the said judgments are not directly applicable in the present case, since we are of the opinion that the orders impugned were not merely restricted to extension of time but also comprised of an exercise of the executing court's powers under Order XXI Rule 34 of the CPC.

89. Even otherwise, the reports filed by the Registrar before the learned Single Judge, which have also been placed before us, contained all the objections raised by the award debtor/appellant and the observations of the Registrar on those.
90. It is a cardinal principle of evidence that official and judicial acts are presumed to have been done properly unless rebutted. All the orders impugned before us indicate that the reports were not only placed by the learned Single Judge but prompted the learned Judge to issue further directions with a view to alter the draft which was initially submitted. As discussed above, under Rule 34(3) of Order XXI, it is not required for the court to adjudicate or pass reasoned *orders on the objections* raised by the award debtor to the draft but only, upon consideration of such objections, to pass necessary *orders approving or altering the draft*. It is evident why the provision is such, since the said provision itself restricts the objections to the draft and the draft alone. Substantive objections to the very execution or executability of the award, on a larger canvass, could

⁴ ***Debabrata Maiti v. The Mallabhum Gramin Bank & Ors reported at (2008) 3 Cal LP 85***

only have been raised within the contemplation of Section 47, CPC before the regular executing court, acting in such capacity, by way of an independent application under Section 47, CPC, and not before the learned Judge in Chambers operating within the parameters of Order XXI Rule 34(3), CPC.

- 91.** Even the award debtor/appellant proceeded on such footing, since, notably, none of the objections were filed before the Judge concerned but were taken out before the Registrar. Nothing prevented the appellant to raise the objections before the learned Judge himself and/or to point out to the learned Judge that their objections were not being addressed properly by the Registrar. However, the appellant was conspicuous by its absence on each of the occasions when the detailed reports containing the objections and the findings of the Registrar thereon were placed before the learned Single Judge and the learned Single Judge passed orders altering the draft, in due deference to the provisions of Order XXI Rule 34(3), CPC.
- 92.** The other facet of challenge is that the map, as contained in Exhibit “C-22” of the arbitral proceeding, was directed to be compared with the draft deed by the learned Single Judge.
- 93.** A mere perusal of the award would clearly indicate the reason for the learned Single Judge doing so. In the ordering portion of the award, the learned Arbitrator allowed the respondent’s prayer for specific performance of the Nomination Agreement by directing the

Claimant (present appellant) to execute the sale deed in favour of the respondent within two months from the date of receipt of the award “in respect of the property mentioned in the First Schedule (Schedule Property) as mentioned in the Nomination Agreement”. The award, immediately thereafter, mentioned the specific schedule of the Nomination Agreement, which also contained a reference to the Plan annexed thereto. Thus, the ordering portion of the award was inextricably linked with the Plan. However, the Plan was actually not there with the Nomination Agreement. In earlier portions of the award, which was before the learned Single Judge, who had also decided the Section 34 application earlier, there was clear reference to the rights which were intended to be conveyed by the deed which was directed to be executed.

- 94.** For example, the award mentioned that “title here means the title of the Claimant in the property. In other words, even if the Claimant has acquired no title over the property by virtue of its decree against Express Group, in the counter-claim, the respondent would not raise such question in terms of its undertaking”.
- 95.** Again, the award observed that “this Tribunal, in order to give effect to the intention of the parties as appearing in the Nomination Clause will direct the Claimant to reconvey whatever right it has obtained by the deed in execution of the decree for sale against the Express Group in favour of the respondent ...”.

- 96.** It was further observed by the Arbitral Tribunal that from the terms and conditions mentioned in the Nomination Agreement, there was no trace of doubt that the object of the parties was to convey the right of the Claimant in the subject-matter of the agreement by virtue of the right accrued in its favour from the decree of sale passed by the Hon'ble High Court of Calcutta against the Express Group.
- 97.** Read in such context, the conveyance was to be executed in favour of the award holder/respondent in terms of the award in spite of whatever right the Claimant/award debtor had obtained by the deed in execution of the decree for sale against the Express Group. Thus, in order to give complete effect to the award in letter and spirit, it was necessary for the draft deed to be compared with the map and the schedule, not only with the award but with Exhibit "C-22" as well, which was the map annexed to the original conveyance deed dated July 8, 2010.
- 98.** Thus, the powers so exercised by the learned Single Judge were well within the periphery of the power vested in him by Order XXI Rule 34(3) of the CPC.
- 99.** The ministerial tasks of comparison between the maps, the schedule and the draft deed as well as other ancillary procedure were left to the Registrar. However, the learned Single Judge did not shirk his duty but duly directed the reports of the Registrar, containing the altered draft deed and including reports as to the comparisons with

the map, etc., to be placed before the court on every occasion. Only after perusal of the reports placed before the Court, as evident from the impugned orders, the orders in respect of alteration of the draft were passed by the Court from time to time.

100. Finally, upon such draft being finalized, it was directed to be executed and registered before the Registrar of Assurances, Hyderabad in terms of the award.

101. Hence, none of the arguments of the appellant are tenable in the eye of law.

102. Insofar as the alleged non-payment of the balance consideration by the respondent is concerned, such objection was never raised before the executing court at all. In any event, there is nothing on record to indicate that the award debtor/appellant complied with its part of the award by furnishing its bank account and/or paying the cost along with interest as directed in the award. Having thus flouted the award in every respect and not having done its part in terms of the award, the mere absence of a direction of prior payment of the balance consideration by the respondent, which might very well have exceeded the dues of the respondent from the appellant, cannot be said to vitiate the impugned orders.

103. In any event, the respondent has shown *bona fides* by offering the balance consideration to be deposited, subject to the appellant depositing its dues in terms of the award, which is perfectly justified.

104.In view of the above, there is no cogent ground for interference with the impugned orders.

105.Accordingly, APOT No. 01 of 2026 is dismissed on contest without any order as to costs, thereby affirming the impugned orders dated December 10, 2025 and December 19, 2025 (as modified by the order dated December 22, 2025) passed in connection with EC No. 255 of 2022.

106.Urgent certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)