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

% *Date of Decision : 11.05.2026*

\+ FAO (COMM) 322/2025

NEW INDIA TIMBER STORE

.....Appellant

Through: Mr. Satvinder Singh, Mr. Gagandeep Singh and Mr. Yash Chopra, Advs.

versus

HSK INFRA PVT. LTD. & ORS.

.....Respondents

Through: Mr. Mayank Bhargava and Mr. Rajdeep Saraf, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

V. KAMESWAR RAO, J. *(ORAL)*

1. This appeal has been filed challenging the order dated 31.07.2025 whereby the application for review of the order dated 28.05.2025 filed by the respondents no. 2 & 3 herein under Section 47 read with Order XXI of the Code of Civil Procedure, 1908 ("CPC") was allowed by the learned District Judge (Commercial Court)-06, South East District, Saket Courts, New Delhi ("Executing Court") by holding in paragraph 24 as under:-

> *"24. Therefore, the application filed by JD No.2 and 3 under Section 47 read with Order XXI CPC is allowed and the order dated 28.05.2025 is recalled and it is held that JD No.2 and 3 are not personally liable for*

the decretal amount and the amount can be recovered by the DH only from JD No.l. Further, the order for attachment of property i.e. registered address of JD No.l company on the Master Data of the JD No.l Company i.e. E-158, Kalkaji, New Delhi is also liable to be reviewed and is recalled accordingly, more so in view of the copy of Sale Deed of the said property in the name of Late Ms. Kirpal Kaur Anand and the Surviving Member Certificate having been placed on record by Ms. Smita Anand who is the daughter and one of the legal heirs of the erstwhile owner of this property, Late Ms. Kirpal Kaur Anand and her name as well as names of JD No.2 and 3..”

2. By order dated 28.05.2025, the learned District Judge had rejected the objections filed by the respondents no. 2 & 3 against the execution petition filed by the appellant by stating as under:-

“Warrants of attachment remained unexecuted with report of having left the premises for 1st and 2nd address and at the 3rd address, JD did not allow execution and obstructed the same. However JD no. 2 and 3 have filed objections against the present execution petition under Section 47 read with Order XXI CPC. JD has also filed audited balancesheet of JD no. 1 for 2023-2024.

JD no. 2 and 3 have submitted in their objections that the registered office of JD is running from E-158, Kalkaji, New Delhi and the property is owned by Sh. Hanwant Singh Anand and the company has no right, title or interest on this property. The decree in question has been passed against all the JDs and the objection taken by JDs during trial was dealt by the court concerned by framing issue no. 4 to that regard. However, the issue was decided against the JD no. 2 and 3 who were defendant no. 2 and 3 before the *concerned court which passed the decree and the judgment for which the execution petition has been filed. No ground is made out to allow the present application and it is dismissed more so because JD no. 1 is having its registered office at the said address.*

Warrants of attachment be issued against registered office of JD no. 1 company. DH to appear before Ld. ACJ for appointment of bailiff on 02.06.2025 and before this court on 09.06.2025. In the meantime JDs are at liberty to settle and pay the decretal amount to DH."

3. The facts to be noted in this case are that the appellant herein had filed a suit against respondent no. 1/HSK Infra Pvt. Ltd. and respondents no. 2 & 3, who are Directors of the said company. The suit was primarily filed by the appellant herein for recovery of an amount of Rs.18,79,648/- along with *pendente lite* and future interest. In the suit, the appellant had claimed itself to be a proprietorship concern dealing in all kinds of decorative veneers, plywood, block board, laminates, etc.

4. The case of the appellant was that the respondents had placed orders with the appellant for supplying certain material, which material was supplied by the appellant. According to the appellant, an amount of Rs. 17,73,256/- was due and payable by the respondents since March, 2022, which was admitted by the respondents. The Trial Court had framed the following five issues:-

"1. Whether the plaintiff is entitled for recovery of the suit amount, as prayed for? OPP.
2. Whether the plaintiff is entitled to claim the interest on the suit amount as prayed, if so, at what rate? OPP.
3. Whether the suit has been instituted by a duly

authorized person ? OPD
4. Whether the suit is bad for mis-joinder of necessary parties? OPD
5. Relief."

5. The Trial Court *vide* judgment and decree dated 04.07.2024 answered issue no. 4, which is relatable to misjoinder of necessary parties against the respondents herein. The findings on this issue are reproduced as under:-

> *"The onus to prove this issue was also upon the defendants who had failed to bring on record an iota of evidence as to how the suit was bad for misjoinder of necessary parties, hence this issue is answered in negative and decided in favour of the plaintiff and against the defendant.*
> *5, Relief."*

6. On issue no. 1, the learned District Judge has stated as under:-

> *"The onus to prove this issue was upon the plaintiff. From the testimony of witnesses as well as material produced on record, it has become evidently clear that no amount of money was ever paid by the defendants to the plaintiff, despite having received the goods of the desired quality and quantity as also admitted by DW-1 during his cross-examination. So far as the inferior quality of goods or loss of contract by the defendants is concerned, no evidence has been adduced in this regard by the defendants. Since the amount against the invoices Ex. PWl/2 (colly) remained unpaid, hence, I have no hesitation in holding that the plaintiff is entitled to the recovery of suit amount i.e. Rs. 17,73,256/-.*
>
> *Therefore, I have no hesitation in holding that plaintiff has successfully discharged the onus of this issue and has proved his entitlement to the recovery of suit amount. Issue is accordingly answered in affirmative*

and decided in favour of the plaintiff and against the defendants."

7. Finally, in paragraph no. 17, the learned District Judge concludes as under:

> *"17. In view of my findings given to issues above, suit of the plaintiff is decreed to the extent of suit amount along with costs and pendente lite and future interest @ 9 percent per annum from the date of filing of the suit till its realization. Decree sheet be drawn accordingly."*

8. It is noted that the judgment/decree dated 04.07.2024 has not been challenged by the respondents.

9. As the judgment/decree was not satisfied, the appellant initiated execution proceedings by filing Execution (Comm.) No. 113/2024. The respondents no. 2 & 3 had filed objections under Section 47 read with Order XXI read with Section 151 CPC to the execution petition.

10. The objection of the respondents no. 2 & 3 was primarily that the subject matter of the suit was between the appellant and the respondent no. 1, which is a company incorporated under the Companies Act, 2013. It was stated that the appellant had illegally impleaded respondents no. 2 & 3; they are neither necessary nor proper parties. It was also stated that the impleadment of respondents no. 2 & 3 was only in the capacity of Directors of respondent no. 1 company. It was stated that it is trite law that the Directors of the company are not liable for the amounts, which are due and payable by the company. The said application was rejected by the Executing Court by order dated 28.05.2025, which we have already reproduced above.

11. The conclusion drawn in the said order by the Executing Court was

that the decree in question was passed against all the Judgment Debtors ("JD") i.e. respondents no. 1 to 3 herein and the objection taken by the JDs during the trial was dealt with by the Court concerned by framing issue no. 4 in that regard.

12. Noting the aforesaid, the Executing Court found no ground to allow the said objections. The order dated 28.05.2025 was sought to be reviewed by way of the review application. It is in the review application that the impugned order dated 31.07.2025 has been passed.

13. The submission of the learned counsel for the appellant is primarily that the Executing Court had erred in allowing the review application when there was no error apparent on the record of the order dated 28.05.2025. He stated that the Executing Court was justified in holding that the Trial Court while deciding the suit had framed the issue on misjoinder of parties and decided the same in favour of the appellant herein against the respondent nos. 2 & 3 and in that sense, the decree has been passed against all the JDs i.e. respondents herein. That being the conclusion of the Executing Court and since the review was filed primarily on the ground that a decree would not be sustainable against the Directors of the company as privity was only between the appellant and the respondent no.1, the Executing Court could not have passed the impugned order. According to him, the contention that the liability of Directors would only arise when they have given an undertaking or have stood as guarantors for the transaction in question, is misconceived, in view of the order dated 28.05.2025.

14. The case of the respondents before the Executing Court was that the Directors of the company are not personally liable for third party contractual

obligation of the company. The property of which attachment was issued was of the respondents no. 2 & 3 and not of the respondent no. 1 and as such, the property could not have been attached only for satisfying the decree in question.

15. Insofar as this appeal is concerned, the submission of the learned counsel for the appellant is that the order dated 31.07.2025 passed by the Executing Court is clearly against the established principles of law inasmuch as Executing Court cannot go beyond the decree passed by the original Court. It can only deal with the execution of the decree presented before it. It is also his submission that the Executing Court has in effect overlooked those principles and passed the order by modifying the terms of the judgment and decree of which execution has been sought. Reliance placed by the Executing Court on the judgments referred to by the counsel for the respondents is totally misplaced as those judgments have no applicability to the facts of this case inasmuch as when a specific issue has been framed on the misjoinder of the parties, more so, at the behest of the respondents herein and the same has been answered in favour of the appellant against the respondents, the Executing Court could not have held that the respondents no. 2 & 3 have no liability or obligation to satisfy the judgment and decree.

16. On the other hand, the learned counsel for the respondents would reiterate the submissions as were advanced before the Executing Court, which resulted in the impugned order. He has relied upon the following judgments in support of his submissions:-

a) ***Rajendra Prasad Gupta v. Prakash Chandra Mishra and Others, (2011) 2 SCC 705.***

b) ***M/s Faith Mecantile Pvt. Ltd. v. M/s. Simbhaoli Sugars Ltd. & Ors., 2018 SCC OnLine Del 10772.***
c) ***Chanumolu Anil Kumar v. Vasu Cotton and Ginning Mills.***
d) ***Mukesh Hans & Anr. v. Smt. Uma Bhasin & Ors., 2010 SCC OnLine Del 2776.***
e) ***Khanna Traders v. Scholar Publishing House P. Ltd. & Ors., 2017 SCC OnLine Del 7684.***
f) ***Hrushikesh Panda v. Indramani Swain and Another, 1986 SCC OnLine Ori 92.***
g) ***Sangeeta Jewels Pvt. Ltd. & Ors. v. Ajay Kumar Jain, ILR (2008) 11 Delhi 638.***
h) ***Lachmi Narain v. Jwala Nath, 1896 SCC OnLine All 56.***
i) ***Someswara Swamy Vari Devastanam v. Dasam Suryanarayana and others, 2003 SCC OnLine AP 1035.***
j) ***Bhavan Vaja and Others v. Solanki Hanuji Khodaji Mansang and Another, (1973) 2 SCC 40.***

ANALYSIS

17. Having noted the submissions made by the learned counsel for the parties and perused the record, the short issue which arises for consideration is whether the Executing Court was right in accepting the review application filed by the respondents no. 2 & 3 and thereby ordering that the personal/inherited properties/assets of the respondents no. 2 & 3 i.e. E-158, Ground Floor, Kalkaji cannot be attached or sold for the satisfaction of the judgment and decree.

18. An issue of misjoinder of parties was raised by respondents no. 2 & 3

in the suit. The said issue was framed and decided against respondents no. 2 & 3 and in favour of the appellant. In other words, the Trial Court has held the respondent nos. 2 & 3 are proper and necessary parties to the suit.

19. Even on issue no. 1, the Trial Court on the merits of the claim has determined the liability on all the defendants, which includes the respondents no. 2 & 3 herein. Concedingly, the aforesaid judgment has not been challenged by respondents no. 2 & 3 and as such, has attained finality. If that be so, the judgment and decree is executable against respondents no. 2 & 3 also. It also follows that the appellant herein has rightly filed the Execution Petition *qua* all the respondents including respondents no. 2 & 3.

20. The issue now is whether the warrant of attachment issued in respect of the property of which respondents no.2 & 3 are said to be the owners, could have been recalled/set aside. The answer has to be in the negative. This we say so because when the decree is *qua* all the defendants i.e., the respondents herein, it cannot be said that the decree is executable only against the respondent no.1 company, atleast in the facts of this case.

21. No doubt, as a general proposition of law, a decree against a company is normally executable only against the company and not against its Directors, as a company is a separate legal entity, different from its Directors. There cannot be any dispute to the proposition of law laid down in the judgments relied upon by the counsel for the respondents in support of the above submissions, but they cannot come to the aid of the respondents, as the instant case stands on a completely different factual footing. At the risk of repetition, we may state that the respondents no. 2 & 3 themselves had raised an objection before the Trial Court contending that there is a

misjoinder of parties. An issue was framed and decided against the said respondents in the judgment and decree dated 04.07.2024, holding that they are necessary parties to the suit. The said judgment and decree was not taken in appeal, and has attained finality. The Executing Court, *vide* order dated 28.05.2025 had in fact noted the same and dismissed the objection raised by the respondents. Additionally, it noted that the registered office of the respondent no. 1 is the address of the property ordered to be attached and sold. If that be so, the Executing Court had no occasion to review the said order and go beyond the judgment and decree.

22. We are also not inclined to accept the submission of the learned counsel for the respondents that it is open to the Executing Court to construe the decree and hold that the decree is executable only against the company and not against the directors. What the Executing Court is duty-bound to examine is the meaning of the words employed in the decree and the essence of the same. It cannot go beyond the decree and hold contrary to what the Trial Court has held.

23. In fact, in ***Bhavan Vaja and others (supra)***, relied upon by the learned counsel for the respondents himself, the Supreme Court has held as under:

> *"20. It is true that an executing court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of that decree. For construing a decree it can and in appropriate cases, it ought to take into consideration the pleadings as well as the proceedings leading up to the decree. In order to find out the meaning of the words employed in a decree the court, often has to ascertain the circumstances under which those words*

> *came to be used. That is the plain duty of the execution court and if that court fails to discharge that duty it has plainly failed to exercise the jurisdiction vested in it."*

24. The Executing Court in the impugned order correctly notes the legal position that the jurisdiction of the Executing Court is limited and it cannot entertain objections pertaining to any potential illegalities committed by the competent Court passing the decree. (***Re: Khanna Traders v. Scholar Publishing House P. Ltd & Ors., 2017 SCC OnLine Del 7684***). However, in contravention of the said legal principle, the Executing Court erroneously proceeds to hold that the decree dated 04.07.2024 insofar as the effect of making respondents no. 2 and 3 personally liable for the decree along with respondent no. 1 is contrary to law and that it is open to the Executing Court to declare that the decree is enforceable against respondent no. 1 alone.

25. In this case, the Trial Court which passed the decree had inherent jurisdiction to decide the claims raised in the suit before it and the legality of its decision could have been challenged by the respondents no. 2 and 3 by filing an appeal. However, respondents no. 2 and 3 elected not to file an appeal and the decree attained finality.

26. The finding of the Executing Court that no decree for recovery of money could have been passed against respondents no. 2 and 3 for the dealings between the appellant and the respondent no. 1, and its declaration holding that respondents no. 2 and 3 are not liable for the decree passed against respondent no. 1 is based on the reasoning that the decree dated 04.07.2024 is erroneous, and not due to lack of inherent jurisdiction of the Trial Court. However, the Executing Court had no jurisdiction to interfere

with the decree dated 04.07.2024 on the ground of errors/illegalities, which falls exclusively within the domain of the Appellate Court. Thus, the order dated 31.07.2025 was passed by the Executing Court in excess of its jurisdiction as it tried to assume the role of the Appellate Court, which is impermissible.

27. The limited scope of the powers of the Executing Court has been recently reiterated by the Supreme Court in ***Maurice W. Innis v. Lily Kazrooni @ Lily Arif Shaikh, 2026 SCC OnLine SC 554*** relevant paragraph of which is as under: -

> *"23. In order to address the controversy arising in this appeal, it would be profitable to first place Section 47 of Code of Civil Procedure which provides for the questions to be determined by the Executing Court. The aforesaid Section 47 CPC is reproduced herein below: —*
>
> *"**47. Questions to be determined by the Court executing decree**: —*
> *(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.*
> *(2) * * * * (omitted)*
> *(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court."*
> *24. A plain reading of the aforesaid provision makes it clear that the Executing Court is empowered to decide questions relating to execution, discharge or satisfaction of the decree and has no jurisdiction to go beyond the decree sought to be executed. In other*

> *words, it has to execute the decree as it is without changing the same. It is settled in law that the jurisdiction of Executing Court is limited to give effect to the decree as passed and not to assume the role of a trial court so as to substitute its own view in place of that expressed under the decree."*

28. We also note that the Executing Court was to pass the impugned order in exercise of its jurisdiction under review. However, we find that the impugned order dated 31.07.2025 has been passed in exercise of powers akin to appeal and not due to any error apparent in the order sought to be reviewed. On the same set of facts and plea, the Executing Court had dismissed the objections vide order dated 28.05.2025 and on same pleas the order was recalled; this is impermissible.

29. We are of the view that the Executing Court, while passing the impugned order failed to look into the meaning and essence of the decree, which is that the decree is to be executed against the all the respondents.

30. In view of the foregoing discussion, the appeal is allowed. The impugned order of the Executing Court dated 31.07.2025 is set aside.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

MAY 11, 2026/sr