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

**Date of Decision: 20<sup>th</sup> August 2025**

+ O.M.P.(EFA)(COMM.) 6/2016

**DAIICHI SANKYO COMPANY LIMITED** ..... Decree Holder

Through: Mr. Arvind K. Nigam, Senior Advocate with Mr. Giriraj Subramaniam, Mr. Nabik Syam, Ms. Samridhi Hota, Mr. Shivam Chanana, Ms. Anindita Barman, Ms. Astha Ahuja, Ms. Shyra Hoon, Mr. Tanmay Arora, Mr. Kunal Chatterji and Mr. Angish Aditya, Advocates.

versus

**MALVINDER MOHAN SINGH AND ORS.** ..... Judgement Debtors

Through: Mr. Harish Salve, Mr. Rajiv Nayyar and Ms. Shyel Trehan, Senior Advocates with Mr. Gaurav Vutts, Mr. Pranav Sarthi, Ms. Krushi Barfiwala, Mr. Hitesh Jain, Mr. Vignesh Raj, Ms. Manjira Dasgupta, Ms. Shivalika Rubrabatla, Ms. Vidhi Jain, Ms. Apoorva Singh and Ms. Prachi Dhingra, Advocates for applicant/One Qube Realtors Pvt. Ltd.

**CORAM:**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**J U D G M E N T**

**ANUP JAIRAM BHAMBHANI J.**

**EX.APPL.(OS) 181/2024**

By way of the present application filed under Order XXI Rules 58 & 59 read with section 151 of the Code of Civil Procedure 1908



(‘CPC’), the applicant – M/s One Qube Realtors Pvt. Ltd. (formerly Ashkit Properties Ltd.) (‘One Qube’) – seeks stay, recall and/or modification of order dated 15.12.2023 made in the present proceedings. The applicant also seeks stay of Warrant of Sale of Property dated 18.01.2024 issued by the learned Civil Judge (Senior Division), Gurugram, Haryana pursuant to the aforesaid order based on a precept issued by this court under section 46 of the CPC in respect of property bearing Plot No. 20, Urban Estate, Sector-18, Gurugram, Haryana (‘subject property’). At present, the subject property is a commercial building known as ‘One Qube’.

2. Notice on this application was issued on 25.01.2024. Additional documents filed by the applicant in support of the application were taken on record *vide* order dated 14.02.2024.
3. *Vide* judgment dated 30.01.2024 passed by a Division Bench of this court in EFA(OS)(COMM) No. 2/2024, the sale of the subject property was restrained until disposal of the present application. Additionally, the applicant was directed to maintain *status-quo* as regards the sale or creation of any long-term lease (exceeding 30 years) in relation to the subject property.
4. The court has heard Mr. Arvind Nigam, learned senior counsel appearing on behalf of the decree-holder; and Mr. Harish Salve, Mr. Rajiv Nayyar, and Ms. Shyel Trehan, learned senior counsel appearing on behalf of the applicant.

### **BRIEF FACTS**

5. The present proceedings arise from a foreign arbitral award dated 29.04.2016 rendered by the International Chamber of Commerce at



Singapore in proceedings filed by M/s Daiichi Sankyo Company Ltd. against several entities, who are now judgment-debtors in the present case. Objections under section 46 of the Arbitration & Conciliation Act, 1996 ('A&C Act') against this foreign award were dismissed by a Predecessor Bench of this court *vide* judgment dated 31.01.2018, which dismissal was upheld by the Supreme Court *vide* order dated 16.02.2018 in SLP (C) No. 4276/2018. The award has accordingly attained finality and is to be executed as a decree of this court.

6. In the course of the execution proceedings, the decree-holder had *inter-alia* sought to attach and property bearing Plot No. 20, Urban Estate, Sector-18, Gurugram, Haryana ad-measuring about 13,519 sq. meters, namely the subject property, towards satisfaction of the award decree.
7. The present application has been filed by a company called M/s One Qube Realtors Pvt. Ltd., which company claims to have purchased the subject property from one M/s Torus Buildcon Pvt. Ltd ('Torus'). The applicant seeks stay, recall and modification of order dated 15.12.2023 passed by a Predecessor Bench of this court, whereby the subject property was 'attached' towards satisfaction of the award decree; and since the subject property is situate outside the territorial jurisdiction of this court, precepts were directed to be issued under section 46 CPC in relation to the subject property. Furthermore, the applicant has also sought stay and setting-aside of Warrant of Sale of Property dated 18.01.2024 issued by the learned Civil Judge (Senior Division), Gurugram pursuant to the precepts so issued by the Predecessor Benches of this court.



### **APPLICANT'S SUBMISSIONS**

8. The applicant's case before this court may be summarized as follows :
- 8.1. The applicant claims that it is *neither* a judgment-debtor *nor* a garnishee *nor* is it in *any way related* to the judgment-debtors or garnishees in the present execution proceedings, which relate to the execution of a foreign arbitral award dated 29.04.2016. The applicant claims to be a 'third-party', who has had nothing to do with the arbitral proceedings or with the arbitral award, which is being sought to be enforced as an award decree by way of the present proceedings.
- 8.2. The applicant claims that it purchased the subject property from Torus *vide* Sale Deed dated 02.08.2017.
- 8.3. The applicant further claims that regardless of the fact that Torus may be one amongst a 'group of companies' and that may be held by some of the judgment-debtors, the fact is that Sale Deed dated 02.08.2017 was executed and the title to the subject property was transferred to the applicant *prior* to *status-quo* order dated 19.02.2018 having been passed in respect of the properties of the judgment-debtors or any other injunction having been issued in respect of the subject property. It is also the applicant's contention that the subject property was *not part of any assurance extended* by the judgment-debtors to this court, whereby the judgment-debtors had assured the court that their properties would be available for satisfaction of the award decree.



- 8.4. The applicant points-out that Torus was not even a party to the present execution proceedings; and it was only *vide* order dated 23.10.2018 passed on an application bearing I.A. No.14551/2018 filed by the decree-holder that Torus came to be impleaded as a party-respondent in the matter for the first time. It is further pointed-out, that yet again, order dated 23.10.2018 impleading the applicant as a party-respondent came to be passed much after the subject property had already been purchased by the applicant from Torus *vide* Sale Deed dated 02.08.2017.
- 8.5. The applicant claims that it was not aware that proceedings were being taken-out to enforce the award decree against the subject property till the Warrant of Sale came to be issued in respect of the subject property on 18.01.2024, which was the first time that the applicant learned of the attachment proceedings.
9. In the above backdrop, the applicant contends that the judgment-debtors and the decree-holder have caused the following orders to be passed by this court in respect of the subject property which are wholly misconceived and illegal:
- 9.1. Order dated 22.03.2021 made on I.A. No. 660/2019, whereby this court attached<sup>1</sup> the subject property for the first time;
- 9.2. Order dated 10.12.2021, whereby this court re-affirmed order dated 22.03.2021, proceeded to issue precepts to the learned

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<sup>1</sup> cf. para 3 of order dated 22.03.2021



District Judge, Gurugram to attach<sup>2</sup> the subject property; proceed to sell the same and remit the sale proceeds to this court. It is pointed-out that order dated 10.12.2021 erroneously recorded that the subject property was owned by one M/s Meadows Buildtech Pvt. Ltd. ('Meadows'), which was not the case;

- 9.3. Order dated 20.10.2023, whereby this court extended order dated 10.12.2021 by another 03 months and erroneously recorded that the subject property was owned by Torus, which was again was not the case as of the date of that order;
- 9.4. Order dated 15.12.2023, whereby this court further extended order dated 10.12.2021 by another 03 months, again erroneously recording that the subject property was owned by Torus; and
- 9.5. Order dated 11.01.2024, passed by the learned Civil Judge, Senior Division, Gurugram, which order referred to order dated 22.03.2021 passed by this court and proceeded to attach the subject property on the erroneous assumption that this court had "... .. *already attached the properties in question*... .." by its order dated 22.03.2021. It is by this order that the learned Civil Judge proceeded to issue the warrant of sale in respect of the subject property.

10. It is argued that, other grounds apart, this court had no power to attach or direct the sale of the subject property since the subject property is

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<sup>2</sup> cf. para 7 of order dated 10.12.2021



situate outside the territorial jurisdiction of this court; and at most, this court could have ‘transferred’ the award decree for execution to the court of competent territorial jurisdiction where the subject property is located.

11. Furthermore, it is argued that the learned Civil Judge, Gurugram has proceeded on the basis that the subject property *already stood attached vide* order dated 22.03.2021 passed by this court, which was not the case, since order dated 22.03.2021 was modified by judgment dated 30.01.2024 passed by a Division Bench of this court in which the Division Bench said the following :

*“12. Therefore, the appeal is disposed of, with the consent of counsel for the parties, with the following directions:*

*(i) The learned Single Judge will afford an opportunity to the contesting respondent, i.e. respondent No.1, to file a reply to the application preferred by the appellant. Mr. Nigam says he would require two (02) weeks.*

*(ii) The application would be listed for directions before the learned Single Judge on Monday, i.e. 05.02.2024.*

*(iii) Till such time the application is not disposed of, the sale of the subject property will not be carried out.*

*(iv) The appellant will also maintain status quo as to sale of the subject property. Also, the appellant will not create a long term lease qua the subject property, exceeding 30 years.”*

12. In support of its claims and contentions, the applicant has drawn attention of this court to the following statutory framework :

12.1. The applicant draws attention to the provision of section 47 of the A&C Act, as amended by Act 3 of 2016 with retrospective effect from 23.10.2015, to point-out that the explanation to



section 47 added by the said amendment provides, that within the meaning of that chapter, “*Court*” means :

*“... .. the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject-matter of a suit on its original civil jurisdiction ... ..”*

- 12.2. It is argued that as a sequitur to the Explanation to section 47, execution proceedings in respect of a foreign award, like the award in question, are required to be instituted before the High Court having jurisdiction to execute such award, which jurisdiction this court lacks.
- 12.3. It is further argued that a court executing a decree (or an award decree) cannot attach immoveable property situate outside its territorial jurisdiction; and the procedure for executing a decree against immoveable property situate outside the territorial jurisdiction of an executing court is contained in section 46 of the CPC, which reads as follows :

**46. Precepts.**—(1) *Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.*

(2) *The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree:*

*Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which*



passed the decree or unless before the determination of such attachment the decree has been **transferred** to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

(emphasis supplied)

12.4. It is submitted that where execution of a decree requires the sale of immovable property situate outside the local limits of the territorial jurisdiction of the court passing the decree, the court which passes the decree is required to *transfer the decree* for execution to another court which has territorial jurisdiction over the property in accordance with section 39 of the CPC, which reads as under :

**39. Transfer of decree.**—(1) *The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court of competent jurisdiction,*—

(a) *if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or*

(b) *if such person has no property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or*

(c) **if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or**

(d) *if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.*



(2) *The Court which passed a decree may of its own motion send it for execution to any subordinate court of competent jurisdiction.*

(3) *For the purposes of this section, a Court shall be deemed to be a court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.*

(4) *Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.*

(emphasis supplied)

12.5. It is pointed-out that section 39(4) CPC was introduced *vide* Act 22 of 2002 with effect from 01.07.2002, to obviate any doubt as to the power of a court to execute a decree against property situate outside its territorial jurisdiction and settles the proposition that nothing in section 39 authorises a court to execute a decree against a property situate outside the local limits of its territorial jurisdiction.

12.6. It is argued that if a court cannot execute a decree against immovable property situate outside its territorial jurisdiction, such court also cannot pass orders of attachment in respect of such property. It is submitted that the law provides a procedure for attaching immovable property, which is contained in Order XXI Rule 54 of the CPC, which reads as follows :

**54. Attachment of immovable property.**—(1) *Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring*



or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

(1-A) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village.

(emphasis supplied)

13. In support of its challenge to attachment of the subject property, the applicant has cited the following judicial precedents :

13.1. **Citibank vs. Indo-American Electricals Ltd.**,<sup>3</sup> which interprets section 39 of the CPC to hold that where immovable property sought to be attached in execution of a decree is situate outside the territorial jurisdiction of the court which passed the decree, that court cannot attach such property but must transfer the decree to the court within whose territorial limits the property is situate. This judgment further clarifies that the word ‘may’ appearing in section 39 is not intended to vest in the court any discretion to either execute the decree itself or to transfer it to

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<sup>3</sup> 1980 SCC OnLine Del 167



another court; and the proper course available to the court is to issue a transfer certificate to a court within the territorial jurisdiction of which the property is situate;<sup>4</sup>

13.2. ***Karam Chand vs. Harwinder Singh***,<sup>5</sup> which held that a precept issued under section 46 of the CPC is merely a request by an executing court to another court to initiate execution proceedings; and on receiving a precept the transferee court is required to attach the property that is subject matter of the precept. It is argued that this judgment lays down that upon receiving a precept, a transferee court *hasto* attach the property in respect of which the precept has been received; and that attachment remains in force for a period of 02 months only, unless extended by the court which had passed the decree, as provided in section 46. It is submitted that after a decree is transferred, the decree-holder is required to file a formal execution petition in the transferee court seeking attachment and sale of a property situate within the territorial jurisdiction of the transferee court;

13.3. ***Mohit Bhargava vs. Bharat Bhushan Bhargava & Ors.***,<sup>6</sup> to argue that section 42 of the CPC provides that a transferee court has the same powers for executing a decree as if it had passed the decree itself, so long as the execution is confined to an asset within its own territorial jurisdiction. It is further

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<sup>4</sup> *Citibank* at para 7

<sup>5</sup> 2013SCC OnLine Del 3506

<sup>6</sup> (2007) 4 SCC 795



submitted that the earlier conflict of views between various courts as to whether it was discretionary on the part of an executing court to proceed to execute its decree against properties outside its territorial jurisdiction *or* to send the decree for execution to the court of competent territorial jurisdiction, has been addressed by the Act 22 of 2002 with effect from 01.07.2002. It is pointed-out that the Legislature adopting a clear position that nothing in section 39 of the CPC would be deemed to authorise the court to proceed with execution of its decree against persons or properties situate outside the local limits of its territorial jurisdiction, leaving the court that passed the decree with no discretion in that regard *except* to transfer the decree for execution to a court of competent territorial jurisdiction;

- 13.4. ***Shaba Yeshwant Naik vs. Vinodkumar Gosalia & Ors.***,<sup>7</sup> to submit that in this case the Bombay High Court has held that a court cannot attach immoveable property which is outside its territorial jurisdiction, and such attachment order, if passed, would be null-and-void and *would not affect the rights of a purchaser of such property*. It is pointed-out that the court has held that having territorial jurisdiction is a condition precedent to a court executing a decree; and that the court has further clarified that if the word ‘*may*’ appearing in section 39 CPC was intended to confer any discretion on the court passing a

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<sup>7</sup> 1984 SCC OnLine Bom 133



decree to transfer *or* not to transfer a decree for execution against immoveable properties outside its territorial jurisdiction, then there was no necessity to make any provision for transfer a decree to another court for execution. It is submitted that the Bombay High Court has ruled that the use of the word ‘*may*’ in section 39 CPC only signifies, that to prevent abuse of the remedy, a court has judicial discretion whether to send the decree for execution to another court or not to send it *but* the court has no discretion to execute the decree itself against immoveable property situate outside its territorial jurisdiction;

- 13.5. ***Rampalli Ramachandrudu vs. Sait Bakraj Gulabchand Firm & Ors.***,<sup>8</sup> to submit that a precept issued under section 46 of the CPC is not a step in the execution proceedings but is merely a step taken to facilitate execution of a decree. It is submitted that even if a precept has been issued, the decree-holder must still apply to the court which passed the decree for transferring the decree to a court having territorial jurisdiction; and thereafter, the decree-holder is required to file an application under Order 21 Rule 1 CPC before the court to which the precept has been directed for appropriate orders. It is accordingly argued, that since in the present case, none of the aforesaid steps have been taken by the decree-holder, the attachment of the subject property and issuance of a sale proclamation in respect thereof

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<sup>8</sup> 1952 SCC OnLine Mad 37



are wholly without jurisdiction, illegal and of no effect or consequence whatsoever.

14. The applicant has accordingly submitted that this court could not have entertained a plea seeking attachment of the subject property, since the property is situate outside its territorial jurisdiction; orders dated 10.12.2021, 20.10.2023 and 15.12.2023 issuing a precept and directing attachment and sale of the subject property are required to be set-aside since they were passed without jurisdiction.
15. To summarize therefore, the applicant's arguments are :
  - 15.1. That this court has no jurisdiction to execute the award decree against the subject property, since the property is situate outside the territorial jurisdiction of this court;<sup>9</sup>
  - 15.2. That by reason of lack of jurisdiction, this court had no power to issue any precept or direction to the learned Civil Judge, Gurugram to attach the subject property or to proceed with sale thereof;<sup>10</sup>
  - 15.3. That a precept or a direction for attachment of immovable property is in any case valid only for 02 months from the date of issuance, unless extended by the court issuing it subsequently, which has not been done in the present case;
  - 15.4. That the decree-holder has neither sought transfer of the decree for execution from this court to the court of competent territorial jurisdiction; nor has it moved any execution petition

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<sup>9</sup> section 39 & Order 21 Rule 54 CPC read with section 47 of the A&C Act

<sup>10</sup> section 46 CPC



before the learned Civil Judge, Gurugram for attachment and/or sale of the subject property; and

15.5. That the learned Civil Judge, Gurugram has proceed to pass order dated 11.01.2024 on the erroneous assumption that this court had already attached the subject property *vide* order dated 22.03.2021; and has issued a sale proclamation on that same erroneous basis.

16. It is accordingly submitted that orders dated 22.03.2021, 10.12.2021, 20.10.2023 and 15.12.2023 passed by this court in the present proceedings deserve to be recalled and set-aside.

#### **DECREE-HOLDER'S SUBMISSIONS**

17. On the other hand, the decree-holder/Daiichi Sankyo Company Limited has sought dismissal of the application, based on the following principal submissions :

17.1. It is submitted on behalf of the decree-holder that the transfer of the subject property in favour of the applicant is part of the judgment-debtors' efforts to prevent sale of assets that the judgment-debtors own and/or control; and that it is another step by the judgment-debtors to defeat execution of the award decree. It is submitted that the applicant – M/s One Qube Realtors Pvt. Ltd. (formally known as M/s Ashkit Properties Ltd.) – has purchased the subject property from M/s Torus Buildcon Private Limited *vide* sale deed dated 02.08.2017 purportedly for a sum of Rs. 126 crores, which is a gross undervaluation of the property. Furthermore, it is contended that 100% shareholding of M/s One Qube Realtors Pvt. Ltd.



was earlier held by M/s Indiabulls Real Estate Ltd.; and 100% shareholding of M/s Indiabulls Real Estate Ltd. has subsequently been transferred to entities controlled by the Blackstone Group Inc. in September 2019.

17.2. It is pointed-out that the foreign arbitral award that is sought to be enforced by way of the present execution proceedings dates back to 29.04.2016; the award has long attained finality; and the execution proceedings have been pending since 2016. It is submitted that the decretal amount initially claimed in execution was about Rs. 3,500 crores; and in or around 2016-17 the judgment-debtors, specifically judgment-debtors Nos.1 and 6, possessed substantial net-worth including significant shareholding in the two main judgment-debtor entities, which was estimated to be over Rs.10,000 crores; and that therefore, judgment-debtors No.1 and 6 had sufficient assets to satisfy the award decree at the time when the present execution proceedings were instituted.

17.3. It is submitted however, that to forestall and evade passing of any attachment or injunction orders in respect of their assets and properties, judgment-debtors No.1 and 6 extended 06 'assurances' to this court, based on which assurances this court exercised forbearance, and no attachment or injunction orders were passed. The assurances that were extended by judgment-debtors Nos. 1 and 6 are the following :

17.3.1. ***1st Assurance*** : Letter dated 24.05.2016 issued by learned counsel for the decree-holder recorded the oral



assurance extended by learned senior counsel for the judgment-debtors to the court at the hearing on 24.05.2016 that the interests of the decree-holder would be protected, and an undertaking was given by learned senior counsel for the judgment-debtors that they would ensure that the decretal sum would always remain available towards satisfaction of the award decree. Though this assurance was not recorded in order dated 24.05.2016, it was made in the course of the present proceedings by learned senior counsel appearing on behalf of the judgment-debtors on that date while the court was considering I.A. No. 6558/2016;

17.3.2. **2nd Assurance** : learned senior counsel appearing on behalf of the judgment-debtors extended another assurance stating that their clients are not selling their assets to any third-parties; and this came to be recorded in order dated 22.08.2016 in the present proceedings;

17.3.3. **3rd Assurance** : then again, learned senior counsel who was appearing for the judgment-debtors reiterated the assurance recorded in letter dated 24.05.2016; and the reiteration was recorded in order dated 23.01.2017 in the present proceedings;

17.3.4. **4th Assurance** : going a step further, it came to be recorded in order dated 06.03.2017, that the learned senior counsel appearing for the judgment-debtors had assured the court that the judgment-debtors would seek



permission from this court before changing the status of *any unencumbered assets* as disclosed by M/s Oscar Investments Limited ('OIL') and M/s RHC Holding Private Limited ('RHC'), which companies were also judgment-debtors;

17.3.5. **5th Assurance** : as recorded in order dated 19.06.2017, learned senior counsel appearing on behalf of OIL and RHC extended a further assurance that none of the assets of the said companies would be encumbered, nor would they alter the shareholding of the said companies;

17.3.6. **6th Assurance** : as recorded in order dated 21.06.2017, learned senior counsel appearing on behalf of OIL and RHC further assured the court that notwithstanding any transaction, OIL and RHC would maintain between them an amount equivalent to the decretal amount, by way of assets available to the decree-holder.

17.4. It has been pointed-out on behalf of the decree-holder that the 1st, 2nd, and 3rd assurances referred-to above were general assurances made on behalf of judgment-debtors Nos. 1 and 6 in relation to their *entire estate* covering all their movable and immovable assets; and the 4th, 5th, and 6th assurances related to the movable assets and interests of judgment-debtors Nos. 1 and 6 in OIL and RHC.

17.5. It is pointed-out that the aforesaid 06 assurances came to be recorded in judgment dated 24.04.2023 made by this court, in which, while dealing with an application seeking withdrawal of



funds which were remitted to this court, it was recorded that the undertakings were taken on board to ensure that the liabilities on the part of the judgment-debtors flowing from the arbitral award were met.<sup>11</sup>

17.6. Thereafter the matter went before the Supreme Court; and while dealing with the issue of contempt of court committed by the judgment-debtors *vidé* its judgment dated 15.11.2019 the Supreme Court noted as follows :

*“43. We would, therefore, not read the orders of this Court in isolation but along with the five solemn assurances and undertakings given before the High Court. Directions given by this Court and the orders passed were in light of the fact that the contemnors always projected that the said assurances and undertakings were binding and adhered.”*

(emphasis supplied)

17.7. It is contended on behalf of the decree-holder that in contemptuous disregard and violation of the 06 assurances extended to this court, as noted by the Supreme Court in its judgment dated 15.11.2019, the judgment-debtors proceeded to deplete their assets in various companies, which compelled the decree-holder to commission KPMG to examine the shareholding and cross-shareholding of the judgment-debtors in various companies in order to trace their assets in various downstream companies. Pursuant thereto KPMG rendered report dated October 2018, tracing-out the web of companies controlled by judgment-debtors Nos. 1 and 6 through their

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<sup>11</sup> cf. para 68 of judgment dated 24.04.2023



private limited company M/s Shimal Healthcare Private Ltd.; and it transpired that Torus was only the alter-ego of judgment-debtors Nos. 1 and 6.

17.8. Subsequently, the decree-holder preferred I.A. No.14551/2018 in the present proceedings, placing before this court the complete report prepared by KPMG; and being persuaded that judgment-debtors Nos. 1 and 6 were depleting their assets, this court passed order dated 17.12.2018 restraining judgment-debtors Nos. 1 and 6 *and all entities mentioned in that application, including Torus*, from alienating any of their assets. Explaining the discrepancy in order dated 17.12.2018 however, learned senior counsel for the decree-holder has submitted that, erroneously, in the said order *M/s Torus Buildcon Private Limited* came to be mentioned as *M/s. Meadows Buildtech Pvt. Ltd.*

17.9. Substantiating their submission that Torus is nothing but the alter-ego of the judgment-debtors, the decree-holder points-out that this fact stands admitted by judgment-debtors Nos. 1 and 6 in the following documents :

17.9.1. In order dated 22.03.2021 it is recorded that judgment-debtors Nos. 1 and 6 admit that Torus is their group company;

17.9.2. In proceedings relating to M/s Fortis Healthcare Limited ('FHL'), in order dated 19.04.2022 passed by the Securities & Exchange Board of India ('SEBI') under section 11 of the Securities & Exchange Board of India



Act, 1992 ('SEBI Act'), *Torus is described as an 'intermediate conduit entity', which was controlled by the judgment-debtors, which order has not been challenged by the judgment-debtors.*

17.9.3. In proceedings relating to M/s Religare Enterprises Limited ('REL'), in order dated 31.10.2022 passed by the SEBI under section 15 of the SEBI Act, *Torus has been described as a 'conduit entity' that "... ...was part of an elaborate scheme of diversion and misutilisation of funds... ...", which order has again not been challenged.*

17.9.4. In judgment dated 24.04.2023, which also relies upon the aforesaid SEBI orders, this court has observed that "*... ... SEBI also holds that MMS and SMS constituted the controlling mind and will of these related entities... ...*"<sup>12</sup>; MMS and SMS being a reference to judgment-debtor No.1 and judgment-debtor No.6 respectively.

18. In response to the legal objections raised by the applicant, the decree-holder has responded as follows :

18.1. The decree-holder argues that this court has territorial jurisdiction to pass orders for attachment and sale of the subject property, seeking to support that submission on the following basis :

18.1.1. It is submitted that where the properties of a judgment-debtor are situate in different territorial jurisdictions,

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<sup>12</sup> cf. para 65



*concurrent execution* is permissible in exceptional circumstances; and in such situation, the court which passed the decree, namely, in the present case this court, *retains control over the execution proceedings*. Attention in this behalf is drawn to the judgments in ***Saroda Prosaud Mullick vs. Luchmeeput Sing Doogur***<sup>13</sup> and ***Maha Raja of Bobbili vs. Rajah Narasaraju Peda Baliara Simhulu Bahadur Garu & Anr.***<sup>14</sup>

18.1.2. Relying on a Full Bench decision of the Patna High Court in ***Radheyshyam vs. Devendra***,<sup>15</sup> it is submitted that even otherwise, where a decree is transferred for execution to another court, the “... .. *transferor Court retains jurisdiction to execute the decree except to the extent that jurisdiction to execute the decree has been given to the transferee Court.*”<sup>16</sup>

18.2. Most importantly, it is argued that in the present case, *vide* judgment dated 22.09.2022 passed in ***Daiichi Sankyo Co. Ltd. vs. Oscar Investments Ltd. & Ors.***,<sup>17</sup> the Supreme Court has placed several assets and properties situate in different territorial jurisdictions for disposal before this court; and though the decree-holder is simultaneously pursuing execution

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<sup>13</sup> 1872 SCC OnLine PC 8

<sup>14</sup> 1916 SCC OnLine PC 45

<sup>15</sup> 1951 SCC OnLine Pat 89

<sup>16</sup> cf. page 83 of *Radheyshyam*

<sup>17</sup> (2023) 7 SCC 641



proceedings in multiple jurisdictions in India, this court continues to remain *in-seisin* of the matter.

- 18.3. It is accordingly submitted that in this case, the decree-holder has been permitted to pursue simultaneous execution proceedings in different territorial jurisdictions, and yet, this court is clothed with the power to issue precepts (under section 46 of the CPC) to ensure that the assets situate outside its territorial jurisdiction are attached; and this court does cease to be *in-seisin* of the present execution proceedings merely because limited execution proceedings are taking place simultaneously in other territorial jurisdictions.
- 18.4. It is submitted that it must not be ignored, that as of date, the judgment-debtors owe about Rs. 5000 crores to the decree-holder under the award decree, whereas the decretal-holder has so far recovered less than Rs.100 crores.
- 18.5. Insofar as the 06 assurances extended by the judgment-debtors are concerned, it is submitted that these assurances may be broadly divided into 02 parts : (i) the first set of 03 assurances, which covered the movable and immovable assets of judgment-debtors No.1 and 6; and (ii) the second set of 03 assurances which covered the shareholding of judgment-debtors Nos.1 and 6 in two listed companies namely OIL and RHC.
- 18.6. It is argued that it is now settled, that the corporate veil cannot be used to commit illegalities or to defraud people, and it has been held by the Supreme Court in *Delhi Development*



***Authority vs. Skipper Construction Co. (P) Ltd. &Anr.***<sup>18</sup> that “... .. *The fact that Tejwant Singh and members of his family have created several corporate bodies does not prevent this Court from treating all of them as one entity belonging to and controlled by Tejwant Singh and family if it is found that these corporate bodies are merely cloaks behind which lurks Tejwant Singh and/or members of his family and that the device of incorporation was really a ploy adopted for committing illegalities and/or to defraud people.*”

18.7. Reference was also drawn in this behalf to the ruling of the Bombay High Court in ***Bhatia Industries & Infrastructure Ltd. vs. Asian Natural Resources (India) Ltd. & Anr.***,<sup>19</sup> where it has been held that *corporate veil can be pierced in execution proceedings* and the court may examine whether corporate bodies are mere cloaks to conceal the actual individual.<sup>20</sup>

18.8. It is submitted, that in fact in the present case, it stands admitted that Torus is the alter-ego of judgment-debtors Nos.1 and 6; and despite the solemn assurances and undertakings extended by the said judgment-debtors to this court, they have dissipated their assets in order to defeat the award decree.

18.9. It is reiterated that formal orders of attachment or sequestration were not passed by this court to protect the decree-holder *based only* on the assurances and undertakings offered by the

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<sup>18</sup> (1996) 4 SCC 622

<sup>19</sup> 2016 SCC OnLine Bom 10695

<sup>20</sup> cf. paras 19 & 20



judgment-debtors. It is pointed-out that the assurances and undertakings offered by the judgment-debtors were *in relation to their entire asset base and therefore apply without restriction or qualification, including to the assets of 'Torus'*.

18.10. Besides, it is argued that Torus itself is also bound by the assurances and undertakings in another manner, namely that in affidavit dated 14.03.2017 filed by judgment-debtor No.14 (OIL) and judgment-debtor No.19 (RHC) they have represented that the debt of Rs.126 crore owed by Torus to OIL and RHC was an unencumbered asset, which was available in favour of the decree-holder. It is submitted that this sum of Rs. 126 crores is also the sale consideration, as *declared* by Torus, for which the subject property was sold by Torus to One Qube *vide* sale deed dated 02.08.2017, alluding to a collusive transaction.

18.11. The argument on behalf of the decree-holder therefore is, that since the subject property was part of the assurances and undertakings extended by the judgement-debtors to this court, the sale consideration received by Torus from One Qube under sale deed dated 02.08.2017, namely the sum of Rs. 126 crores, would also be covered by the assurances and undertakings. It is pointed-out that the status of the subject property could not have been altered or changed without the prior permission of the court in view of order dated 06.03.2017. Further, it is submitted that since the subject property was the *only tangible asset* of Torus and was covered by undertaking dated



06.03.2017 given by the judgment-debtors, it could not have been alienated without prior permission of this court.

19. Other things apart, the decree-holder has also challenged the *bona-fidés* of the applicant; and has disputed its claim that merely because it is part of the well-known financial entity called the Blackstone Group, the applicant is a *bona-fidé* purchaser of the subject property. The decree-holder has challenged the *bona fidés* of the applicant on the following basis :

- 19.1. That sale deed dated 02.08.2017, by which the applicant acquired the subject property, was executed at a time when 100% shareholding of the applicant was owned by M/s Indiabulls Real Estate Limited ('IREL'), which company was fully aware of the pendency of the execution proceedings concerning the judgment-debtors and was also aware of the fact that Torus was the alter-ego of judgment-debtors Nos.1 and 6. For this reason, the applicant's contention that 100% of its shareholding is now owned by the Blackstone Group, which (latter) entity was not aware of any undertakings or assurances extended by the judgment-debtors, is nothing but a ruse; and the correct position is that the Blackstone Group became 100% shareholder of the applicant only in September 2019, *i.e.*, much after sale deed dated 02.08.2017 had been executed. It is further pointed-out that notwithstanding the change in the shareholding of the applicant, it is the applicant that is seeking to protect the subject property from attachment and sale based on its title,



while at the same time hiding behind a façade of the Blackstone Group.

19.2. To substantiate the submission that IREL was fully aware of the execution proceedings concerning the judgment-debtors, as also of the fact that Torus was the alter-ego of judgment-debtors Nos.1 and 6, the decree-holder points to the following circumstances :

19.2.1. IREL, which was at the relevant time a 100% shareholder of One Qube, is part of the Indiabulls Group; and another company of that group, viz. Indiabulls Housing Finance Limited ('IHFL') had filed EA No.1132/2019 and EA No. 885/2019 in the present proceedings seeking modification of *status-quo* order dated 17.12.2018, by which order the subject property had been enjoined from alienation. It is accordingly contended that the Indiabulls Group was fully aware of the *status-quo* order and about the pendency of the present proceedings.

19.2.2. In its pleadings, IHFL has acknowledged that Torus was wholly owned and controlled by judgment-debtors Nos. 1 and 6 by stating that "*The Respondent No. 28 submits in the ordinary course of business from time to time, IHFL had granted loans to RHC Holdings Pvt. Ltd., R.S. Infrastructure Pvt. Ltd., and Torus Buildcon Pvt. Ltd., all entities which are controlled by Malvinder Mohan Singh and Shivender Mohan Singh (ex-promoters of Fortis*



*Healthcare Limited). IHFL had in total extended loan facilities for an amount of Rs. 1386 crores to these entities.”*

19.3. In its judgment dated 15.11.2019, arising from the contempt proceedings instituted against the judgment-debtors, the Supreme Court has found that IHFL was made aware of the pending execution proceedings on 16.08.2017.<sup>21</sup> The decree-holder further contends that sale deed dated 02.08.2017 is riddled with inconsistencies, which show the collusion between the applicant and the judgment-debtors for the following reasons :

19.3.1. The applicant's then group company, viz. IHFL, had extended loans to companies owned and controlled by the judgment-debtors, including to Torus, in the cumulative sum of about Rs.1386 crores; and the subject property was offered as collateral against such loans. However, despite IHFL having a registered charge over the subject property, with an outstanding amount of Rs.616 crores recoverable from the judgment-debtors, IHFL permitted One Qube, one of its sister companies, to execute a sale-deed which narrates that the subject property is free from all encumbrances.

19.3.2. The subject property was purchased by Torus in 2008 for Rs.101 crores but was sold by Torus to the applicant

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<sup>21</sup> cf. para 22 of judgment dated 15.11.2019



in 2017, *i.e.* about 09 years later, *only* for Rs.126 crores, which is evidently a highly discounted price. Furthermore, the subject property came to be transferred to the Blackstone Group in 2019 as part of sale of an ‘enterprise’ comprising 03 properties, for an aggregate enterprise value of about Rs.3100 crores, but the sale price of the subject property individually is declared *only* as Rs.126 crore, which is evidently too small a proportionate value for the subject property.

20. The decree-holder has further argued that the existence of sale deed dated 02.08.2017 cannot come in the way of the present execution proceedings, since that sale-deed is either void *or* voidable, *or* in the alternative, it must be ignored. The decree-holder explains this submission in the following manner:

20.1. It is argued that any rights or claims arising from an act that violates an undertaking furnished to court, *viz.*, a contemptuous act, cannot be legally recognized; and since sale-deed dated 02.08.2017 was executed in breach of multiple assurances offered by the judgment-debtors to this court, the document is *void* in law. In support of this submission, reliance has been placed on the decision of the Supreme Court in ***Balwantbhai Somabhai Bhandari vs. Hiralal Somabhai Contractor***<sup>22</sup> and

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<sup>22</sup> 2023 SCC OnLine SC 1139, paras 69 & 72-73



***Vidur Impex and Traders Pvt. Ltd. & Ors. vs. Tosh Apartments Pvt. Ltd. & Ors.***<sup>23</sup>

20.2. Pressing its alternate argument that the sale deed is *voidable*, the decree-holder has drawn attention to the provisions of section 53 of the Transfer of Property Act, 1882 ('TPA'), which reads as under :

**53. Fraudulent transfer.**—(1) *Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.*

*Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.*

*Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.*

*A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.*

(2) *Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.*

*For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.*

It is argued that section 53 of the TPA gives to a creditor the right to challenge a transaction as voidable if the creditor

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<sup>23</sup> (2012) 8 SCC 384, para 42



can show that the transaction was premised on an intent to defeat the creditor. It is contended that though section 53 allows the transferee to raise a defense of ‘good-faith’ and ‘consideration’ and formally envisages that a suit be filed by a creditor, this position stands inverted when section 53 is applied to execution proceedings. It has been argued that section 53 TPA can be taken as a defence by a decree-holder in response to an application filed by a judgment-debtor under Order XXI Rule 58 CPC, as has been held by the Karnataka High Court in *S.K. Gangadhara vs. Ramachandra*.<sup>24</sup> The decree-holder has further argued that the transaction comprised in sale deed dated 02.08.2017 was a device to defeat the decree-holder’s claim to the subject property, which is also evident from the subsequent admission of the concerned parties, as well as from the findings recorded by SEBI in its orders dated 19.04.2022 and 31.10.2022 referred-to above, where the SEBI has concluded that Torus was an artifice and device used by the judgment-debtors as an “*intermediate conduit entity*” and as part of an elaborate scheme of diversion and mis-utilisation of funds.

20.3. Lastly, the decree-holder has contended that sale deed dated 02.08.2017 may be *ignored* by this court based on the doctrine of *lis pendens*, viz., the fact that the sale deed was executed during the pendency of the present proceedings. It is argued

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<sup>24</sup> (2015) 3 KCCR 2449, paras14-16



that the defence of being a *bona-fidé* purchaser is not available to the applicant since the doctrine of *bona-fidé* purchaser is not a defence to *lis pendens*. It is explained that section 19(b) of the Specific Relief Act, 1963 ('Specific Relief Act') which contemplates that a plea for specific performance of a contract is not tenable against a purchaser who has purchased a property *bona-fidé*, for valuable consideration, and without notice of the encumbrance on the property, only comes into effect prior to initiation of litigation; but after commencement of litigation, the concept of *lis pendens* under section 52 TPA applies. It is argued that the alienation of immovable property *pendente lite* is to be ignored by the court and it is immaterial whether the alienee had notice of pending litigation or otherwise. The decree-holder has sought to support this submission based on the decisions in *Guruswamy Nadar vs. P Lakshmi Amma*.<sup>25</sup> and *Ram Peary & Ors. vs. Gauri & Ors.*<sup>26</sup>

21. The last argument proffered by the decree-holder is that the link between the applicant/One Qube, IREL and IHFL is clear – 100% shareholding of One Qube was owned by IREL, which is a group company of IHFL. One Qube came to be sold to the Blackstone Group only in 2019, and therefore in 2017, when the sale-deed was executed, One Qube was part of the Indiabulls Group of companies.

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<sup>25</sup> (2008) 5 SCC 796

<sup>26</sup> AIR 1978 All 318



22. The Indiabulls Group, in particular IHFL and IREL, had knowledge of the passing of the arbitral award, since OIL and RHC had made the requisite disclosures in that behalf to the Bombay Stock Exchange way back on 04.05.2016; and at the very least, IHFL definitely had knowledge of the matter as of 16.08.2017, since in its judgment dated 15.11.2019 the Supreme Court has recorded to the effect that IHFL had been informed of the execution proceedings.
23. The decree-holder therefore argues, that from the facts and circumstances of the case and from the run of events, it is evident that the sale of the subject property by Torus (the alter-ego of judgment-debtors Nos.1 and 6) to One Qube (a group company of the Indiabulls group) was an act on the part of the judgment-debtors to dissipate their assets in order to defeat the award decree, despite repeated assurances and undertakings extended to this court, as also despite the orders and directions contained in Supreme Court orders dated 15.11.2019 and 22.09.2022 in contempt proceedings initiated against the judgment-debtors.
24. In the circumstances, it is prayed that the application under consideration be dismissed; the subject property be attached and sold in execution of the award decree through the agency of the court of competent territorial jurisdiction.

### **DISCUSSION & CONCLUSIONS**

25. Though, learned senior counsel appearing for the parties have made elaborate submissions in support of their respective contentions, upon a careful consideration of the legal position obtaining in the matter, this court is of the view that a fundamental issue must be decided



before any further directions relating to the subject property can be passed. In fact, that vital issue would decide whether *any* further directions in relation to the subject property *can at all be passed* by this court.

26. The issue is of the powers that vest in this court under the CPC, in particular under Order XXI thereof, relating to execution of decrees. The relevant provisions read as follows :

### **Section 39**

**39. Transfer of decree.**—(1) *The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court of competent jurisdiction,*—

(a) \* \* \* \* \*, or

(b) *if such person has no property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court,*  
or

(c) *if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or*

(d) *if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.*

(2) *The Court which passed a decree may of its own motion send it for execution to any subordinate court of competent jurisdiction.*

(3) *For the purposes of this section, a Court shall be deemed to be a court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.*



*(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.*

## **Section 46**

**46. Precepts.**—(1) *Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.*

(2) *The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree:*

*Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.*

## **Order 21 Rule 58**

**58. Adjudication of claims to, or objections to attachment of, property.**—(1) *Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:*

*Provided that no such claim or objection shall be entertained—*

(a) *where, before the claim is preferred or objection is made, the property attached has already been sold; or*

(b) *where the Court considers that the claim or objection was designedly or unnecessarily delayed.*

(2) *All questions (including questions relating to right, title or interest in the property attached) arising between the parties to*



**a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.**

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,—

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(b) disallow the claim or objection; or

(c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

(emphasis supplied)

27. On a plain reading of section 39, it is seen that if a decree directs, or if the execution of a decree requires, the sale of an immovable property situate outside the local limits of the territorial jurisdiction of the court which passed the decree, such court is mandated to send it for execution to another court of “competent jurisdiction”, namely to the court within whose territorial jurisdiction the concerned immovable



property is situate. Section 39(4) expressly bars a court which passed the decree to execute it against any property situate “*outside the local limits of its jurisdiction*”.

28. Furthermore, the very device of issuing a precept created in section 46 CPC is postulated on the circumstance that in the course of execution proceedings, the executing court may find that some immovable property that is required to be attached in execution of the decree is situate outside its territorial jurisdiction. In such circumstance, section 46 empowers the court to issue a precept to any other court “*which would be competent to execute such decree*”, namely, the court within whose territorial jurisdiction the immovable property is situate; and to direct that court to attach “*any property belonging to the judgment-debtor and specified in the precept*”.
29. Upon receiving such precept, the court to which the precept is addressed is mandated to proceed to attach the property that is subject of that precept. However, an attachment made pursuant to a precept cannot continue for more than 02 months *unless* the period of attachment is extended by the court which passed the decree *or* the decree is transferred to the court of competent territorial jurisdiction by the court that passed the decree. Subject to the aforesaid, the court to which a precept is addressed or a decree is transferred can take forward the execution proceedings in relation to immovable property situate within its territorial jurisdiction. Section 46 also provides that the decree-holder may apply to the court to which a precept has been sent, seeking an order for the sale of immovable property within its territorial jurisdiction.



30. However, an added complication arises when one seeks to apply the phrase “*attach any property belonging to the judgment-debtor*” that appears in section 46(1) CPC, in a case where there is a dispute as to whether that property at all belongs to the judgment-debtor. This issue finds its answer in Order XXI Rule 58(2), since it says that “*All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.*”
31. So, what would be the correct course of action where a party objects or disputes that a property that is sought to be attached in execution, belongs to it; *and* that the property is not liable for attachment for certain reasons put-forth by the objecting party; *and* that property is situate *outside* the territorial jurisdiction of the court that has passed the decree? In such circumstances, since a separate suit is barred under Order XXI Rule 58, would the court that passed the decree be empowered to adjudicate the objection in the execution proceedings in relation to immovable property situate outside its territorial jurisdiction?
32. The above queries are answered by the Supreme Court which has interpreted the scheme of sections 39 and 46 CPC in *Mohit Bhargava* in the following way:

*“7. There cannot be any dispute over the proposition that the court which passed the decree is entitled to execute the decree. This is clear from Section 38 of the Code which provides that a decree may be executed either by the court which passed it or by the court*



to which it is sent for execution. Section 42 of the Code indicates that the transferee court to which the decree is transferred for execution will have the same powers in executing that decree as if it had been passed by itself. A decree could be executed by the court which passed the decree so long as it is confined to the assets within its own jurisdiction or as authorised by Order 21 Rule 3 or Order 21 Rule 48 of the Code or the judgment-debtor is within its jurisdiction, if it is a decree for personal obedience by the judgment-debtor. But when the property sought to be proceeded against, is outside the jurisdiction of the court which passed the decree acting as the executing court, there was a conflict of views earlier, some courts taking the view that the court which passed the decree and which is approached for execution cannot proceed with execution but could only transmit the decree to the court having jurisdiction over the property and some other courts taking the view that it is a matter of discretion for the executing court and it could either proceed with the execution or send the decree for execution to another court. But this conflict was set at rest by Amendment Act 22 of 2002 with effect from 1-7-2002, by adopting the position that if the execution is sought to be proceeded against any person or property outside the local limits of the jurisdiction of the executing court, nothing in Section 39 of the Code shall be deemed to authorise the court to proceed with the execution. In the light of this, it may not be possible to accept the contention that it is a matter of discretion for the court either to proceed with the execution of the decree or to transfer it for execution to the court within the jurisdiction of which the property is situate.

“8. Pending a suit, the court approached with the suit, may have jurisdiction to order attachment of a property even outside its jurisdiction. In execution, under Order 21 Rule 54 of the Code, it may also have jurisdiction to order attachment of the property prohibiting the judgment-debtor from transferring or charging the property in any way when it exercises its jurisdiction over the judgment-debtor though not over the property itself. It could in such a case issue a precept in terms of Section 46 of the Code and thereupon, the court to which the precept is sent, has to actually attach the property in the manner prescribed. Section 136 of the



*Code provides for an order of attachment in respect of a property outside the jurisdiction of the court and sending the order of attachment to the District Court within whose local limits the property sought to be attached is situate, as provided for therein. But Section 136 clearly excludes execution of decrees from within its purview. An execution against immovable property lying outside the jurisdiction of the executing court is possible in terms of Order 21 Rule 3 of the Code which governs a case where the particular item of immovable property, forms one estate or tenure situate within the local limits of jurisdiction of two or more courts, and one of those courts is approached for execution of the decree against that property. In a case where Order 21 Rule 3 has no application, the position seems to be that if a decree-holder wants to proceed against a property situate outside the jurisdiction of the court which passed the decree, he has to get the decree transferred to the appropriate court for execution on moving the executing court in that behalf. Whatever doubts there might have been earlier on this question, must be taken to have been resolved by the introduction of sub-section (4) of Section 39 of the Code which is a mandate to the executing court to desist from proceeding against a property situate outside its jurisdiction, unless it be a case coming under Order 21 Rule 3 of the Code.”*

(emphasis supplied)

33. In view of the articulation of the law by the Supreme Court as referred to above, it is clear that the only correct, legal course of action for this court in the present case is the following :
- 33.1. Though this court has passed the award decree, and the principal execution proceedings are pending before this court, since the subject property is situate outside its territorial jurisdiction, this court is *not* empowered to attach the subject



property.<sup>27</sup> Instead, the law empowers this court to issue a precept<sup>28</sup> to the court within the territorial jurisdiction of which the subject property is situate, directing *that court* to attach the property. This was the basis of orders dated 10.12.2021, 26.04.2022, 20.10.2023 and 15.12.2023 passed by this court in the present proceedings, by which precepts were issued earlier;

33.2. Pursuant to a precept issued, the court of competent territorial jurisdiction is required to attach the subject property. However, the attachment so made would be valid only for 02 months, whereafter the attachment would lapse. There is however no bar in law for this court to issue fresh precepts, thereby extending the attachment made by the court of competent territorial jurisdiction for further periods of 02 months (at a time);

33.3. The law further requires the decree-holder to file *separate execution proceedings* before the court of competent territorial jurisdiction, seeking the sale of the attached property through the agency of *that court*, which execution proceedings could carry-on *simultaneously* with the execution proceedings pending before this court in relation to other assets of the judgment-debtors;

33.4. If a party – say, the applicant/One Qube in the present case – not being a judgment-debtor, claims itself to be title-holder of

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<sup>27</sup> cf. section 39(4) CPC

<sup>28</sup> cf. section 46 CPC



the subject property and raises an objection<sup>29</sup> that the property is not liable to be attached and sold since the title-holder of the property is not liable for the award-decree, such objection is required to be adjudicated by the court which has attached the subject property, viz. the court of competent territorial jurisdiction, which court would also be empowered to decide the dispute as to the title to the subject property *in the execution proceedings filed by the decree-holder and not by way a separate suit.*

34. As a sequitur to the above, in the circumstances obtaining in the present matter, this court is persuaded to issue the following directions :

34.1. A precept is hereby issued under section 46 of the CPC to the learned District & Sessions Judge, Gurugram, Haryana to attach property bearing Plot No. 20, Urban Estate, Sector-18, Gurugram, Haryana. The Registry is directed to ensure that the precept is communicated to the concerned court *expeditiously* through all modes, in the prescribed format;

34.2. As permissible under the Proviso to section 46 of the CPC, the decree-holder is at liberty to file appropriate execution proceedings and to seek further action in relation to the subject property before the court of competent territorial jurisdiction, which court shall proceed with the matter in accordance with law;

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<sup>29</sup> cf. Order XXI Rule 58CPC



34.3. In view of the fact that while disposing-of the execution first appeal bearing EFA(OS)(COMM) No. 2/2024, *vidé* its order dated 30.01.2024, the Division Bench of this court had restrained the sale of the subject property and had also directed the applicant – M/s One Qube Realtors Pvt. Ltd. (formerly Ashkit Properties Ltd.) – to maintain *status-quo* as regards sale of the subject property and to not create any long-term lease exceeding 30 years *qua* the subject property during the pendency of the present application, it is hereby directed that the applicant shall stand *restrained* from selling, transferring, alienating or creating any third-party rights, titles or interests, in or to, the subject property (*other than* a lease for a term not exceeding 30 years). This restraint order is necessary to prevent the future course of action being rendered infructuous and shall remain in force *for a period of 02 (two) months from today*. Needless to add that the court of competent territorial jurisdiction shall be at liberty to pass any other or further orders or directions relating to the subject property in the execution proceedings, as may come to be filed by the decree-holder before that court.

35. The application is disposed-of in the above terms.

**ANUP JAIRAM BHAMBHANI, J.**

**AUGUST 20, 2025**

ds/ss