



2026:DHC:9124



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

Date of decision: 06th OCTOBER, 2026

IN THE MATTER OF:

CNR No. DLHC010260792022

+ **EX.P. 56/2022, EX.APPL.(OS) 3172/2022, EX.APPL.(OS) 1200/2024, EX.APPL.(OS) 1958/2024**

OZONE SPA PVT LTD

.....Decree Holder

Through: Mr. Rajesh Mahindru, Advocate.

versus

CO-INCEPT HOSPITALITY PVT LTD & ORS.

.....Judgement Debtors

Through: Ms. Sanjela Gupta, Advocate for JD-2 and JD-3.

Dr. Amit George, Mr. Kunal Kher,
Ms. Rupam Jha, Mr. Manju Gautam,
Advocates for JD-4.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present Petition is filed on behalf of the Decree Holder seeking execution of the decree dated 19.07.2018 for an amount of Rs. 1,19,43,000/- passed by this Court in Suit being CS (COMM) 870 OF 2018.
2. Facts leading up to the filing of the present petition are as follows:
 - i. Decree Holder (DH) and the Judgment Debtors (JDs) entered into a franchise agreement on 28.12.2013 for 10 years whereby Franchiserights were granted to JDs to run GYM, Spa, and Salon from the premises, being, A-36, Vishal Enclave, Rajouri

Signature Not Verified

Signed By: HARSHOM
SINGH KIRMOOLIYA
Signing Date: 13.10.2026
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Garden, New Delhi-110027 under the trademark/propriety name of DH's client brand name i.e., OZONE(oz03ne).

- ii. An amendment to the Franchise Agreement was passed on 28.12.2013 subsequent to which the parties entered into a supplementary agreement on 05.11.2015, wherein it was agreed that the terms of the earlier Franchise Agreement and the Supplementary Agreement will be binding on the parties.
- iii. The JDs, in accordance with the Franchise Agreement dated 28.12.2013 were operating health club, fitness center, spa, salon and beauty parlor from the premises. Due to the Supplementary Agreement dated 05.11.2015, JD No.1 was obligated to pay royalty fees of Rs. 1,50,000/- plus service tax and all other applicable taxes irrespective of the gross revenue receipt generated by the JD No.1 till the currency period of the Franchise Agreement dated 28.12.2013.
- iv. Certain disputes arose between the parties. Consequently, the Decree Holder approached this Court by way of filing a Suit for recovery of Rs. 2,53,66,750/- and permanent injunction, being CS (COMM) 870/2018. In the *interregnum*, the parties entered into a Settlement Deed on 05.07.2018 and an Application under Order XXIII Rule 3 CPC was filed in the aforementioned Suit whereby this Court *vide* Order dated 19.07.2018 decreed the Suit in terms of the said Settlement Deed which forms the part of the Decree dated 19.07.2018.
- v. It is the contention of the Decree Holder that JDs committed a material breach of the Settlement Deed dated 05.07.2018 as the



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JDs have failed to issue post-dated cheques on 01.02.2020, and also failed to pay royalty fees of Rs. 75,000/- w.e.f. 01.04.2020 till the filing of the present Petition. It is further stated that the JDs had terminated the Settlement Agreement dated 05.07.2018 by closing the outlet without even issuing notice to the DH. It is the contention of the DH that such conduct of JDs amounts to breach of the Settlement Agreement dated 05.07.2018 as well as the Decree dated 19.07.2018.

vi. It is stated by the DH that the JDs are liable to pay Rs. 1,19,43,000/- in terms of the Decree dated 19.07.2018 which was passed on the basis of the Settlement Agreement dated 05.07.2018.

3. Objections/Reply to the present Petition has already been filed by Judgment Debtors No. 2, 3 & 4.

4. Be that as it may, Learned Counsel for JD No 4 in his objections has raised an issue of maintainability of the present Petition on the ground that the amount sought to be recovered by way of the present petition is less than Rs. 2 Crores which is the pecuniary jurisdiction of this Court, and therefore, this Court does not have the jurisdiction to entertain the present Petition.

5. For adjudicating the present matter on the ground of maintainability raised by the JD No.4, this Court reserved the present matter on 07.08.2026.

6. Learned Counsel for the Decree Holder have argued that the Suit was filed for recovery of Rs. 2,53,66,750/- on account of breach of the Franchise Agreement dated 28.12.2013. In the *interregnum*, the parties entered into a Settlement Deed on 05.07.2018 and an Application under Order XXIII Rule 3 CPC was filed in the aforementioned Suit whereby this Court *vide* Order



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dated 19.07.2018 decreed the Suit in terms of the said Settlement Deed which forms the part of the Decree dated 19.07.2018.

7. It is stated by the Decree Holder that on combined reading of Sections 37 and 38 CPC, it can be inferred that the Court passing the decree shall have jurisdiction to execute the said decree even if the pecuniary limit of the Decree Court has been altered. It is the contention of the Decree Holder that Section 12(1)(a) of the Commercial Courts Act, 2015 applies only to any application, appeal or suit, however, the same is not applicable on execution proceedings as the same is governed by the relevant provisions of the CPC. It is also the contention of the Decree Holder that Section 16 of the Commercial Courts Act also specifies that the CPC is to be amended to the extent Commercial Courts Act do so and, therefore, in view of no explicit provisions governing procedure for execution, the same shall be governed by the provisions of the CPC.

8. *Per Contra*, Learned Counsel for the Judgment Debtor No.4 has submitted that since the Suit was a commercial suit, therefore, Sections 38 and 39 CPC are not applicable in view of Section 12 read with Section 21 of the Commercial Court Act. It is also the contention of the Judgment Debtor No.4 that the “specified value” of the present execution petition is less than Rs. 2 Crores which is the stipulated value for commercial disputes entertainable by the Commercial Division of this Court.

9. It is also stated by the Learned Counsel for the Judgment Debtor No.4 that Section 38 CPC cannot be applied to the disputes which are governed by the Commercial Courts Act. Therefore, in case of any discrepancy or conflict among the two legislations, Commercial Court Act shall prevail, as the said Act is a special legislation. It is further contended by the JD No.4



that Sections 7 and 12 of the Commercial Courts Act, read with Section 21 of the Commercial Courts Act, restricts the jurisdiction of the Commercial Division of this Court to entertain only those suits, applications, and appeals which satisfy the specified value i.e. 2 crores. It is stated that the Application for execution in order to be maintainable before this Court, should also satisfy the said specified value.

10. To substantiate the arguments advanced by the Judgment Debtor No.4, reliance is placed upon a Judgment passed by the Division Bench of this Court in Asian Patent Attorneys Assn. (Indian Group) v. Registrar General Delhi High Court, 2026 SCC OnLine Del 360.

11. The short question which requires consideration at this juncture is that whether the decree under execution is maintainable or not as the amount sought to be recovered is less than the pecuniary jurisdiction of this Court.

12. At the outset, it is apposite to reproduce Sections 37, 38, and 39 CPC herein, which reads as under:

“37. Definition of Court which passed a decree.—The expression “Court which passed a decree,” or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,—

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.



[Explanation.—The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.

38. Court by which decree may be executed.—A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

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 not 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.] ”

13. The Division Bench of this Court in Gulab Chand Sharma v. Saraswati Devi, **1974 SCC OnLine Del 202** explained the purport of Section 37, 38 and 39 CPC. The relevant paragraphs are reproduced as under:

“In support of the first contention it was submitted that the decree passed by the Division Bench must be taken to be the decree which the Court of first instance should have passed if it had decided the case correctly. The application (I.A. No. 469 of 1973) was required to be moved in the trial Court regardless of the fact that at the time the said application was made a change had occurred in its pecuniary jurisdiction because a Court does not cease to exist by the pecuniary limits of its jurisdiction being altered. Strenuously contending that when a decree for redemption is passed by an appellate Court, execution application is required to be made not to that Court but to the court of first instance and urging that the more reasonable view would be that the proceedings in



the appellate Court stood terminated with its decree and any further order which the parties required in order to give effect to their rights as settled by the decree, should be obtained from the Court of first instance on which would devolve the duty of making such an order if a correct decree had been passed in the first instance. Strong reliance was placed on Sheonarain v. Chuni Lal, 23 ILR Allahabad 88 (1), Venkata Krishna Ayyar v. Thiagaraya Chitti, 23 ILR Madras 521 (9) and Ram Dhani Sahu v. Lalit Singh, 31 ILR 328 (3). It was contended that the Court of first instance taking note of the change in its pecuniary jurisdiction would have forwarded the application to this Court for execution in compliance with the provisions of section 39 of the Code. The said procedure having not been adopted, the proceedings taken in this Court, goes the argument, stood vitiated and the final decree passed was of no consequence to base a follow-up action on it.

With a view to appreciating the contention of the appellant, it would be appropriate to note the provisions of sections 37, 38 and 39 of the Code.

Section 37 defines the “Court which passed a decree”. It envisages that the said expression or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include—

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction the court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the court which, if the suit wherein the decree was passed was instituted at the time of making the



application for the execution of the decree, would have jurisdiction to try such suit.

Section 38 provides that a decree may be executed by the court which passed it, or by the Court to which it is sent for execution.

Section 39 provides for transfer of decree and is as follows:—

“39(1). The Court which passed a decree may, on the application of the decree holder, sent it for execution to another Court—

(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 not property within the local limits of the jurisdiction of the court which passed the decree to satisfy such decree and has property within the local limits of the jurisdiction of such other property, 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.



A reading of clause (a) of section 37 of the Code admits of no difficulty. The question, however, arises what is meant by the expression “where the court of first instance has ceased to exist” contemplated by clause (b) of the said section. The said expression, without doubt, envisages the “abolition or total extinguishment” of the court which passed the decree. In other words, what is required to attract the first part of clause (b) of section 37 is the complete abolition of the court and not the mere alteration in its pecuniary or territorial jurisdiction. The expression “where the Court of first instance has ceased to have jurisdiction to execute the decree envisaged by the second part of clause (b) of section 37, obviously refers to such a decree where the Court loses jurisdiction to execute the decree according to its tenor. In other words where the court has lost jurisdiction to execute the decree in the manner prayed for, such as if the decree is sought to be executed against a person who actually and voluntarily resides or carries on business or personally works for gain within the local limits of the jurisdiction of another court, or the person against whom the decree is sought to be executed has not property within the local limits of the jurisdiction of the Court which passed the decree to satisfy such decree but has property within the local limits of the jurisdiction of another court or in a case where the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the court which passed the decree. In such cases provision is made in section 39 of the Code empowering the court which passed the decree to send it for execution to another court. A combined reading of sections 37 and 38 of the Code makes it clear that a decree may be executed by the court which passed it or by the court to which it is sent for execution. That being the position in law, the court which actually passes the decree does not lose its



jurisdiction to entertain execution petition by reason of the subject-matter thereof being transferred subsequently to the jurisdiction of another court in which event normally resort has to be made to the procedure contemplated by section 39 of the Code. However, with a view to safeguarding the rights acquired under the decree passed by a court which ceases to have jurisdiction to execute it according to its tenor provision has been made in clause (b) of section 37 of the Code enabling the decree-holder to make an application for execution either to that court or to the court which, if the suit wherein the decree was passed was instituted at the time of making application to execute it, would have jurisdiction to try the suit.

There are authorities in support of the proposition that the court which actually passed the decree does not lose its jurisdiction to entertain the execution petition notwithstanding the fact that its pecuniary jurisdiction had been altered. The court does not cease to exist merely because of the change in its pecuniary jurisdiction (See Abdus Sattar v. Mohini Mohan Dass, AIR 1933 Cal 684 (5); Suryanarayan Aggarwal v. Maheshwar Keot, AIR 1950 Assam 115 (4); Chaudhri Raghunandan Singh v. Narain Dass Balkishan Dass, AIR 1960 All 730 (6); and Masrab Khan v. Debnath Mali Abdur Mali, AIR 1942 Cal 321 (7).”

14. The Co-ordinate Bench of this Court in Pearey Lal and Sons (Pvt.) Ltd vs M/s Jamuna Properties (P) Ltd. and Ors., 2004 SCC OnLine Del 11 has held as under:-

“7. Coming to the question of transfer of Execution application on revision of pecuniary jurisdiction or the Court ceasing to have jurisdiction, reference is invited



to a decision of Division Bench of this Court in *Gulab Chand Sharma v. Saraswati Devi* reported at ILR (1975) 1 Delhi 345 : (AIR 1975 Del 210). The Division Bench considered the provisions of Sections 37, 38 and 39 of the Code of Civil Procedure. For facility of reference, provisions of Sections 37, 38 and 39, CPC, are reproduced hereunder:—

37. Definition of Court which passed a decree.— The expression “Court which passed a decree”, or words to the effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,-

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

(Explanation.— The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.)

38. Court by which decree may be executed.— A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.



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.)



8. The Court considering the effect of Section 37(a), CPC, held that the expression “where the Court of first instance has ceased to exist” without doubt envisages “the abolition or total extinguishment of the Court which passed the decree”. Further, to attract first part of Clause (b) of Section 37, what is required is the complete abolition of the Court which passed the decree and not mere alteration in its pecuniary or territorial jurisdiction. The expression “where the Court of first Instance has ceased to have jurisdiction to execute the decree” as envisaged by second part of Clause (b) of Section 37, obviously refers to such a decree where the Court loses jurisdiction to execute the decree according to its tenor. Mr. Valmiki Mehta, learned senior counsel for decree holder submits that in view of the above dictum of the Division Bench, there can be no doubt that the Court which passed the decree, in this case being the High Court, does not lose the jurisdiction to execute the same because of the increase in pecuniary jurisdiction.

In view of the judgment in the case of Gulab Chand Sharma, AIR 1975 Del 210 (supra) it cannot be said that this Court has lost its pecuniary jurisdiction to execute the decree and all pending executions are automatically liable to be transferred to the District Courts. The first question is accordingly answered in the negative.”

15. On careful examination of the afore-stated provisions and the law laid down by this Court, it can be inferred that Section 37 CPC clearly defines the expression “Court which passed the decree”. The said expression as per the provision includes the decree passed by the Appellate Court in exercise of the appellate jurisdiction, decree passed by the Court of the first instance, and where the Court of the first instance has ceased to exist or to have



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jurisdiction to execute the decree because of the circumstances mentioned in the Explanation to Section 37 CPC. It can be said that the expression “Court which passed the decree” assumes in itself a decree which is passed by the Court of first instance, however, the same has ceased to exist in entirety which is possible only after extinguishment of the claims decided in the decree under execution. It can be said that the extinguishment of the claims shall render the Court of first instance as non- existent and not the alteration of the territorial or pecuniary jurisdiction of the Court of first instance. Section 38 of the CPC grants the power to execute the decree to the Court which has passed such decree or to the Court to which the decree has been transferred for execution.

16. Adverting to matter in hand, the facts reveals that though the Suit was initially filed as a Commercial Suit, however, the same was filed for recovery of Rs. 2,53,66,750/- which is above the pecuniary threshold of this Court. However, the dispute got settled *vide* a Settlement Agreement dated 05.07.2018 in terms of which the decree under execution was passed. The decree is for Rs. 1,19,43,000/- which is less than Rs.2 crores. In the opinion of this Court, the same does not bar this Court from executing the said decree on the ground that the amount sought to recovered is less than the pecuniary jurisdiction of this Court as the Suit filed was for the amount more than the pecuniary limit of this Court. Section 38 of the CPC clearly stipulates that the decree can be enforced by the Court which has passed the decree or by the Court to which the decree has been transferred for execution. In the present case, the Court which has passed the decree is this Court and therefore, the same does not loose jurisdiction merely on account of change in pecuniary jurisdiction. Further, the said rationale derives its



strength from the Explanation to Section 37 which clearly provides that even if the Court of first instance loses its jurisdiction due to change in area under which the subject matter of the decree is situated, however, the same does not bar such Court from executing the decree which has been passed by it irrespective of the territorial jurisdiction. The contention that alteration in pecuniary limit of the court which passed the decree would also take away the power of such Court to execute the said decree cannot be accepted.

17. Further, reliance placed by the Judgment Debtor No.4 upon a Judgment passed by the Division Bench of this Court in Asian Patent Attorneys (supra) is also completely misconceived as the said Judgment does not deal with the situation which arises in the present case. The said Judgment deals with an Administrative Order dated 17.11.2016 which directed the Registry of this Court to not entertain the execution petitions in which the decree passed by this Court is for a value less than Rs. 2 Crores. The Division Bench in the said Judgment quashed the Administrative Order dated 17.11.2016 and categorically observed that the question to entertain such execution petitions which are seeking to enforce a decree of a value less than 2 crores passed by this Court should be decided by the Court which hears it on the judicial side. Moreover, no opinion was rendered by the Division Bench *qua* the maintainability of execution petitions which sought to enforce a decree for a value less than 2 crores passed by this Court and the same was left open for this Court to decide as when such petition comes for hearing on the judicial side.

18. Another contention raised by the Learned Counsel for the Judgment Debtor No.4 is that the present decree was passed in a Commercial Suit and therefore the same can only be executed under the provisions of the



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Commercial Courts Act and not the CPC. There is no quarrel with the said provision. Section 16 of the Commercial Courts Act states that in a trial of a commercial dispute of a specified value, the provisions of CPC as amended by the Commercial Courts Act shall apply. Sections 37 and 38 CPC, therefore, apply to the decrees passed under the Commercial Courts Act. This Court has the jurisdiction to entertain Suits which are above Rs.2 crores and only this Court can execute a decree in a Suit which was filed in this Court for a value more than Rs.2 crores but the decretal amount is less than Rs.2 crores.

19. In view of the above, the challenge to the maintainability of the present petition is rejected.

20. List on 14.10.2026 before the Roster Bench.

SUBRAMONIUM PRASAD, J

OCTOBER 06, 2026
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