IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO.5306 OF 2025
IN
COMM EXECUTION APPLICATION NO.19 OF 2025



**Manjeet Singh T. Anand** …Applicant / Petitioner/Judg. Creditor

*Versus*

**Nishant Enterprises HUF Thru. Its Karta & Anr.** …Respondents/ Judg. Debtors

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Mr Rashmin Khandekar with Mr. Jamsheed Master with Mr. Anand Mohan and Mr. Aniket Worlikar for the Decree Holder.

Mr. Prathamesh Kamat (Thru V.C.), with Mr. S.B. Rao i/b. Mr. Gauri Rao for the Respondent No.1.

Dr. Sanjay Jain, Mr. Nakul Jain, Mr Sankalp Anantwar and Mr. Ronak Mistry i/b. SMA Law Partners for Respondent No.2 and Applicant in IA No.2485 of 2024.

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CORAM : R.I. CHAGLA J.

Reserved on : 25TH AUGUST, 2025.
Pronounced on : 8TH JANUARY, 2026.

ORDER :

1. By this Interim Application, the Applicant / Decree Holder has sought interim relief in aid of enforcement of the final Arbitral Award dated 30th November, 2023 passed by the Sole

Arbitrator ("the Award").

2. By the said Award, the Sole Arbitrator has awarded a principal decretal sum of INR 12,52,53,938/- and interest on the principal decretal sum at 10% p.a. from the date of the Award (i.e. 30th November, 2023) till actual payment against the Respondent No.1 and costs of INR 22,25,000/- against the Respondents.

3. The Respondent Nos.1 and 2 have filed a joint / common Petition under Section 34 of the Arbitration Act (Commercial Arbitration Petition No.149 of 2025), challenging the Award. By an Order dated 22nd April, 2025 read with Order dated 29th April, 2025, the execution of the said Award was stayed to the limited extent of paragraph 176(c) of the Award i.e. to the extent of "costs" component of the Award of INR 22,25,000/- conditional upon a 100% deposit of that sum, which deposit was thereafter made. Resultantly, the amount of INR 14,79,71,228/- under the Award remains admittedly unsatisfied and outstanding. There is no stay on recovery of the said amount.

4. This Court by an order dated 21st January, 2025 passed

in the above Execution Application, directed the Respondent No.1 to file an Affidavit of Disclosure of assets / income. Respondent No.2 deposing and acting on behalf of Respondent No.1 as its *karta*, filed an Affidavit of Disclosure dated 21st February 2025.

5. The Applicant had filed an Affidavit in Reply dated 5th March 2025 in order to show how the Affidavit filed by Respondent No.2 (deposing on behalf of Respondent No.1) makes disclosures which are deliberately selective, insufficient, incomplete and non-compliant.

6. It is the case of the Applicant that the Affidavit of Disclosure shows that Respondent Nos.1 and 2 have clearly been siphoning / dissipating / diverting / stripping Respondent No.1 of assets / value during the pendency of the legal proceedings with an intent to defeat the Award, which the Applicant claims highlights its case for reliefs against Respondent No.1 / 2. Further, the Applicant claims that Respondent No.1's Affidavit of Disclosure, even if taken on face value shows on admission that Respondent No.1 does not even have assets worth 5% of the decretal sum.

7. The Applicant has referred to an Order dated 5th May 2022 passed under Section 17 of the Arbitration Act against both Respondents and by which, the learned Sole Arbitrator had directed the Respondents to furnish security worth INR 4 Crores. The said Order was never challenged and in order to comply with the same, title deeds to immovable properties owned by Respondent No.2 worth about INR 4 Crores came to be voluntarily / jointly deposited by the Respondents with the learned Tribunal thereby securing the claim against Respondent No.1 as well as Respondent No.2, to the extent of about INR 4 Crores. This security was thereafter brought into this Court pursuant to directions passed vide Order 26th June, 2024 in this very Interim Application. The Applicant claims that the said property / security is *custodia legis* lying with this Court and liable to be proceeded against in execution of the Award.

8. The Applicant has contended that the Award for sum of INR 14,79,71,228/- remains to be enforced against the Respondents. Even if the immovable properties lying with this Court as security as well as Respondent No.1 HUFs disclosed assets are applied towards recovery of the decretal sum under the Award, there is a clear shortfall of about Rs.10 Crores, even on a rough and ready

calculation based solely on admitted facts. The Applicant contends that from the Respondent No.1's own case, the Award admittedly, cannot be satisfied by Respondent No.1's HUF without recourse to the *Karta* i.e. Respondent No.2's other personal assets. The Applicant submits that it is trite law that in a situation such as present ad-interim / interim reliefs in aid of enforcement (viz. disclosure as well as injunction against both Respondents) are liable to be granted as a matter of course in a post Award situation to secure the decretal sum so that the Applicant / Award Creditor is not left holding a mere paper decree.

9. The Respondents have resisted the Interim Application by raising a preliminary objection on lack of territorial jurisdiction of this Court because none of the assets disclosed by Respondent No.1 – HUF are situated within Mumbai. Whereas Respondent No.2 (i.e. *Karta* of Respondent No.1 – HUF) has raised the preliminary objection viz. that his personal assets cannot be proceeded against in execution even for unsatisfied debts of Respondent No.1 – HUF.

10. The first of the preliminary objections raised i.e. of Respondent No.1 – HUF on lack of jurisdiction is taken up for

consideration.

11. Mr. Prathamesh Kamat, the learned Counsel appearing for the Respondent No.1 – HUF has submitted that this Court lacks the territorial jurisdiction to entertain the present Execution Application preferred by the Applicant / Judgment Creditor in view of Sections 38 and 39 of the Code of Civil Procedure (CPC), 1908. He has referred to these provisions which provide for Court by which the decree may be executed and transfer of decree respectively. He has submitted that in the present case the Award is sought to be executed by invoking Section 36 of the Arbitration Act as it is a deemed decree by legal fiction. He has submitted that on reading of the provisions of Sections 38 and 39, for an Executing Court to exercise jurisdiction, it is imperative that the Respondents against whom execution is sought to be executed, reside or have assets within the jurisdiction of the Execution Court.

12. Mr. Kamat has submitted that the Respondents admittedly reside in District Thane, and the Applicant / Judgment Creditor wishes to proceed or seek to attach the assets which are also in District Thane. He has referred to the Affidavit of Disclosure dated

21st February, 2025 which shows that Respondent No.1 does not own any immovable property within the jurisdiction of this Court. All movables and bank accounts disclosed show that they are in Bhiwandi, District Thane. Thus it is evident that the Respondent No.1 – HUF as well as assets against whom the Applicant / Judgment Creditor wish to proceed, reside and / or are situated in District – Thane which is outside the jurisdiction of this Court.

13. Mr. Kamat has submitted that it is the case of the Applicant / Judgment Creditor that the arbitration was held in Mumbai, therefore, this court would be the 'Court' within the meaning of Section 2(1)(e) of the Arbitration Act. Further, that this Court has jurisdiction to entertain the present Execution Application. He has submitted that these contentions of the Applicant / Judgment Creditor are utterly fallacious. He has submitted that the Arbitration Act is in itself a complete code. The word "Court" as defined under Section 2(1)(e) is not applicable to Execution Proceedings, as after the Arbitration Award, the proceedings are terminated in terms of Section 32 of the Arbitration Act and execution is severed and the umbilical cord is snapped with the passing of the Award by the Arbitral Tribunal.

14. Mr. Kamat has submitted that at this stage the status of a 'decree' is granted to an Arbitration Award under Section 36 of the Arbitration Act which says that "to be enforceable in accordance with the provisions of CPC in the same manner as if it were decree of the Court" means that once the Arbitration Award becomes a decree, the execution of the same shall be in terms of CPC, as it becomes a decree within CPC. Therefore Section 2(1)(e) which defines Court is irrelevant for the purpose of executing an Award or for the Executing Court to have territorial jurisdiction. This is evident from the judgment of the Delhi High Court in ***Daelim Industrial Co. Ltd. vs. Numaligarh Refinery Ltd***[1]**.** He has in particular placed reliance upon paragraph 17 – 20, 24-28 of the said judgment. He has submitted that the issue involved in the present case and issue involved in that case are identical and this is evident from a reading of paragraphs 1, 3, 4, 6 to 9 of the said judgment.

15. Mr. Kamat has also placed reliance upon the judgment of the Supreme Court in ***Sundaram Finance Ltd. vs. Abdul Samad & Anr***[2]**.,** wherein the Supreme Court has categorically upheld the view taken by the Delhi High Court in ***Daelim (Supra).*** He has submitted

1 Delhi High Court, Coram : Justice Rajiv Sahai order dated 13th March, 2009.
2 (2018) 3 SCC 622.

that paragraph 1 of the said judgment shows that an identical issue involved in the present case, was an issue which was squarely before the Supreme Court. He has in particular placed reliance upon paragraphs 17, 18, 19 and 21 of the said judgment. The Supreme Court upheld the view of the Delhi High Court in ***Daelim (Supra)*** and the views of the High Courts of Kerala, Madras, Rajasthan, Allahabad, Punjab and Haryana and Karnataka.

16. Mr. Kamat has placed reliance upon the judgment in the case of ***Poonawalla Housing Finance Ltd. vs. Babu and Anr***[3]***,*** and in particular paragraphs 1, 3, 4, 5, 6, 8, 9 and 11. In paragraph 8 of the said judgment, the Supreme Court has relied upon ***Sundaram Finance Ltd. (Supra)*** and held that it is settled principle of law that Award needs to be executed by such Court within whose jurisdiction the assets of the award debtor are located. Further, there is no requirement anymore to obtain a transfer of the decree from the Court having jurisdiction over arbitral proceedings to the Court which has jurisdiction over the award debtor or their properties.

17. Mr. Kamat has placed reliance upon the judgment of the

3 (2022) SCC OnLine Cal 4646.

Calcutta High Court in ***MSTC Ltd. vs. Krishna Code (India) Ltd***[4] at paragraphs 1, 2 and 7. He has also placed reliance upon the judgment of the Delhi High Court in ***Continental Engineering Corporation vs. Sugesan Transport Ltd***[5], at paragraphs 1, 8 to 14. He has submitted that similar views were also taken by the Delhi High Court in ***Mohan Investment and Properties Pvt. Ltd. vs. Sai Aaina Farms Pvt. Ltd***[6]***,*** at paragraphs 8, 10, 11 and 38 and in ***Matrix Partners Indian Investment Holdings LLC & Ors. vs. Shailendra Bhadauria and Ors***[7]***,*** at paragraphs 13, 14, 24 to 32. He has submitted that above quoted judgments have clearly held in favour of the Respondent No.1 and that the Applicant / Judgment Creditor has not distinguished or much less dealt with said judgments during the course of the arguments.

18. Mr. Kamat has submitted that the aforesaid views of the High Courts of Delhi and Calcutta have been followed by this Court in ***Sara Chemicals & Consultants vs. Ogene Systems (I) Pvt. Ltd***[8]***.*** This Court has held that if no movable or immovable properties are

4 (2019) SCC OnLine Cal 7293.
5 (2022) SCC OnLine Del 4728.
6 (2022) SCC OnLine Del 592.
7 (2021) SCC OnLine Del 4917.
8 (2020) SCC OnLine Bom 5474.

situated within the jurisdiction of the Executing Court, the matter will have to be relegated to the Court where the assets are situated. He has in particular placed reliance upon paragraphs 3 to 8 of the said judgment.

19. Mr. Kamat has submitted that this Court vide Order dated 21st January, 2025, following the principle of the judgment in ***Sara Chemicals (Supra)*** had directed disclosure of assets by Respondent No.1 to ascertain the issue of jurisdiction. He has relied upon paragraph 6 of the said Order, wherein it is held that the issue of jurisdiction to entertain the Execution Application shall be determined on the next date after considering the Disclosure Affidavit.

20. Mr. Kamat has submitted that in view of there being no assets (even post disclosure) being available or held within the territorial jurisdiction of this Court, it is clear that this Court lacks the territorial jurisdiction to entertain the present Execution Application.

21. Mr. Kamat has submitted that the judgments relied upon by the Applicant / Decree Holder are not applicable. He has

submitted that the Applicant has relied upon the judgment of ***Global Asia Venture Company vs. Arup Parimal Deb and Ors***[9]***.*** This judgment though considered the judgment of the Supreme Court in ***Sundaram Finance (Supra)***, it considered the same from the perspective of Section 42 of the Arbitration Act. Further, this judgment did not consider the judgment of the Delhi High Court in ***Daelim (Supra)*** nor did it consider the fact that ***Daelim (Supra)*** in categorical terms was upheld by the Supreme Court in ***Sundaram Finance (Supra).*** He has submitted that in any event the view taken in this judgment is contrary to the view taken by this Court in ***Sara Chemicals (Supra)*** and also not in consonance with the law laid down by the Supreme Court in ***Sundaram Finance (Supra).***

22. Mr. Kamat has submitted that the judgment of the Full Bench in ***Gemini Bay Transcription Pvt. Ltd. Nagpur vs. Integrated Sales Service Ltd.***[10]***,*** has to be considered holistically. He has referred to paragraph 14 of the said judgment. He has submitted that the said paragraph indicates that an Award has to be executed as per the provisions of the CPC to which provisions of Section 38 and 39 of the CPC would be applicable. Therefore, for the purposes of Executing

9 (2018) SCC OnLine Bom. 13061.
10 2018 (2) Mh.L.J. 329.

Court to effectively proceed with execution, it is imperative that the test under Sections 38 and 39 of the CPC are satisfied. He has submitted that the judgment of the Full Bench has been misread by the Applicant to suggest that the Court under Section 2(1)(e) of the Arbitration Act can in fact be invoked to execute the Award. He has submitted that this Court held that once an Award had been passed, the same shall be governed by the provisions of CPC. He has submitted that on a harmonious reading of the Arbitration Act and CPC qua the execution proceedings, it is clear that the Execution Proceedings has to pass the litmus test of territorial jurisdiction and it nowhere means or is understood to say that the provisions of Sections 38 and 39 of the CPC would become otiose or meaningless. He has submitted that the Full Bench contemplates two options, (a) either to file Execution Application before the Court where the assets of the debtor is situated or (b) to approach a 2(1)(e) Court first, only to request the Court to transfer the decree to the Court having jurisdiction. He has submitted that this is evident from paragraph 18 of the ***Gemini Bay (Supra).***

23. Mr. Kamat has submitted that the judgment of the Delhi High Court in ***Gujarat Jhm Hotels Ltd. vs. Rajasthali Resorts and***

***Studios Ltd.,***[11] which has been cited by the Applicant also contemplates a similar position. This is evident on reading paragraph 46 of the said judgment which reads as "The learned Judge also held that such a party cannot be compelled to first approach the '2(1) (e) Court' and thereafter be forced to approach the local Court for execution of the Award."

24. Mr. Kamat has submitted that it is trite law that the judgment of a coordinate bench is binding and there is no conflict of law, as the Supreme Court has already settled the law in this regard that for Execution Proceedings post arbitration Award, the same has to be decided in terms of Sections 38 and 39 of the CPC.

25. Mr. Kamat has placed reliance upon the judgment of the Supreme Court in ***Amazon.com NV Investment Holdings LLC vs. Future Retail Ltd. & Ors***[12]***,*** at paragraphs 82 to 87. He has submitted that the said judgment shows that the view in ***Daelim (Supra)*** is not disturbed. This causes doubts on the correctness of the other set of judgments which take a contrary view.

11 2023 SCC OnLine Del 161.
12 (2022) 1 SCC 209.

26. Mr. Kamat has submitted that the contention of the Award Debtor that ***Daelim's*** reasoning is based on Section 42 of the Arbitration Act is a misnomer. He has submitted that the judgments in ***Daelim*** and ***Sundaram Finance Ltd.*** inter alia proceed on the basis that under Section 32 of the Arbitration Act, once an award is passed, the relationship of Court under Section 2(1)(e) of the Arbitration Act is snapped.

27. Mr. Kamat has submitted that on a plain reading of the judgments it is clear that Section 42 of the Arbitration Act was not the basis for the conclusion in those judgments. Non applicability of Section 42 was merely an additional point.

28. Mr. Kamat has submitted that the security provided by Respondent No.2 in the form of title documents of land, is also situated outside the territorial jurisdiction of this Court. Thus, the security would not confer jurisdiction as apparently, security and execution are two different aspects and cannot be overlapped. He has submitted that in execution under Section 36 of the Arbitration Act, it has to pass the litmus test of territorial jurisdiction provided under Sections 38 and 39 of CPC.

29. Mr. Kamat has submitted that this Court is required to hold that it has no jurisdiction to entertain the present Execution Application and the same be relegated to the Court of appropriate jurisdiction where the assets are situated.

30. In so far as the other preliminary objection which has been raised by the Respondent No.2 viz. that the personal assets of Respondent No.2 (i.e. *Karta* of Respondent No.1 – HUF) cannot be proceeded against in execution even for unsatisfied debts of Respondent No.1 – HUF, Mr. Sanjay Jain, the learned Counsel for the Respondent No.2 has made submissions.

31. Mr. Jain has referred to operative part of the Award of the learned Sole Arbitrator. He has submitted that learned Arbitrator has not granted an Award of Rs.12,52,53,938/- against the *Karta* and the Co-parcener/s despite specific prayer sought for in the statement of claim. This part of the Award is only against the Respondent No.1 – HUF. This can be contrasted with the Award of sum of Rs.22,25,000/- which is by way of costs granted against the HUF and *Karta,* described as Respondents.

32. Mr. Jain has submitted that by the instant Execution Application, the Applicant seeks to enforce the entire Award against the Respondent No.1 – HUF as well as Respondent No.2 – *Karta* on the basis that for any decree passed against the HUF, the *Karta* of such HUF is personally liable to satisfy the Award i.e. it becomes *Karta's* personal liability. He has submitted that the HUF is a corporate personality. In the eyes of law it is treated / recognized as a juristic entity / corporate personality as opposed to a partnership firm, which is treated as a compendium of person.

33. Mr. Jain has submitted that Mitakshara and Dayabhaga are two primary schools of Hindu Law. These two schools of Hindu Law govern, *inter alia,* a range of issues about property inheritance and succession in Hindus to a significant extent. Mitakshara school is prevalent in North, West and South. According to Mitakshara school of Hindu Law, all the property of the Hindu Joint Family is held in collective ownership by all the Coparceners in a corporate entity. He has placed reliance upon the judgment in the case of ***State Bank of India vs. Ghamandi Ram***[13]***,*** where the Supreme Court has held that a Coparcenary under the Mitakashara school of law is a creature of law

13 (1969) 2 SCC 33.

and cannot arise by act of parties except on adoption. The adopted son becomes a Co-parcener with his adoptive father as regards the ancestral properties of the latter.

34. Mr. Jain has submitted that the Supreme Court in ***Ghamandi Ram (Supra)*** quoted with approval the observations in the case of ***Sundaram Maistri vs. Harasimbhulu Maistri***[14]***,*** which follows the observations of this Court in ***Gasavant Balsavant vs. Narayan Dhond Savant***[15]. It was held therein that the Mitakshara doctrine of joint family property is founded upon the existence of an undivided family and possession of the property by such corporate entity.

35. Mr. Jain has also placed reliance upon the judgment in the case of ***Vineeta Sharma vs. Rakesh Sharma & Ors.***[16]***,*** which has held that the Hindu branch of dharma is influenced by theological tenets of the Vedic Aryans and what is not modified or abrogated by the legislation or constitutional provisions still prevails. The Supreme Court has quoted with approval the judgment in case of ***Bhagwan Dayal vs. Reoti Devi***[17]***,*** wherein it held that coparcenary is creature of

14 1901 SCC OnLine Mad 91.
15 1883 SCC OnLine Bom 1.
16 (2020) 9 SCC 1.
17 AIR 1962 SC 287.

Hindu law and cannot be created by an agreement of parties except in case of reunion and that it is a corporate body.

36. Mr. Jain has also placed reliance upon the judgment of the Supreme Court in ***Revanasiddappa and Anr. vs. V. Mallikarjun & Ors***[18]***.,*** where the Supreme Court has held that Mitakashara law is founded on a community of interest which entails that the ownership of coparcenary property vests in the whole body of coparceners jointly, though the interest keeps fluctuating until partition.

37. Mr. Jain has relied upon the judgment of the Supreme Court in ***M. Siddiq*** (***Ram Janambhumi Temple – 5 J.***) ***vs. Suresh Das***[19]***,*** wherein the concept of Hindu law being corporate entity is explained. He has in particular placed reliance upon paragraphs 108 to 116, 126 and 127 of the said judgment.

38. Mr. Jain has submitted that in the Statement of Claim, the Applicant has sought relief against the Respondents as well as coparcenar/s of the HUF, jointly and severally. He has submitted that in the Execution Application, though the Award had granted money

18 (2023) 10 SCC 1.
19 (2020) 1 SCC 1.

award against the Respondent No.1 – HUF for a sum of Rs.12,52,53,938/- together with interest thereon at 10% pa, the Applicant has sought to enforce this Award against the HUF as well as *Karta* (in his personal capacity) despite the Arbitral Tribunal having declined the Award against the *Karta.* He has submitted that the Applicant thus seeks enforcement of the said Award against the *Karta's* personal assets in absence of a personal decree passed against the *Karta.*

39. Mr. Jain has submitted that the principle of *res judicata* would apply in the present case. He has submitted that once the matter is finally decided by the competent Court, no party can reopen it in a subsequent litigation. *Res Judicata* serves to prevent multiplicity of proceedings and to protect parties from being vexed twice for the same cause. A thing judged cannot be re-opened for adjudication.

40. Mr. Jain has relied upon judgment of the Supreme Court in ***State of U.P. vs. Nawab Husain***[20] wherein it is held that a cause of action which results in a judgment must lose its identity and vitality

20 (1977) 2 SCC 806.

and merges in the judgment when pronounced. It cannot thereafter survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of *res judicata*. He has submitted that in the instant case, the cause of action alleged in the Statement of Claim was against the HUF and the Karta (jointly and severally), but on publishing of the Impugned Award against only the HUF, that cause of action against the HUF and the Karta has been lost and merged into the Award against the HUF only, thus, the cause of action, if any, doesn't survive against the Karta.

41. Mr. Jain has relied upon the judgment of the Supreme Court in the case of ***Gulabchand Chhotalal Parikh vs. State of Gujarat***[21] wherein the five Judge Bench of the Supreme Court held that general principles of *res judicata* can bar the consideration of matters directly and substantially in issue with those, which had been earlier and after full contest, decided on merits by a competent court in any other proceedings. He has also relied upon ***Hope Plantations Ltd. vs. Taluk Land Board***[22]**.** The Supreme Court held that the rule of *res judicata* prevents the parties to a judicial determination from

21 AIR 1965 SC 1153.
22 (1999) 5 SCC 590.

litigating the same question over and over again even though the determination may even be demonstrably wrong.

42. Mr. Jain has submitted that Section 11 of the CPC prescribes certain parameters which when met could qualify as *res judicata.* Explanation V appended to Section 11 provides that any relief claimed in the Plaint which is not expressly granted by the decree, shall, for the purposes of this Section, be deemed to have been refused. He has submitted that where a relief is sought but not expressly granted in a proceeding will bar the person from claiming such relief on the principles of being hit by *res judicata.*

43. Mr. Jain has submitted that an Arbitral Tribunal is a private adjudication forum chosen by the parties as distinguished and opposed to a State administered adjudication system. The result of adjudication by an Arbitral Tribunal is not a decree that is passed by the Civil Court i.e. a State administered adjudication system. The Award passed is treated to be akin to a Decree only for the purposes of enforcement. He has in this context placed reliance upon the judgments of the Supreme Court in ***Md. Army Welfare Housing***

***Organization vs. Sumangal Services Ltd***[23]***; Amazon.com NV Investment (Supra); Vidya Drolia vs. Durga Trading Corporation***[24]***; Paramjeet Singh Patheja vs. ICDS Ltd***[25] and ***S.V. Samudran vs. State of Karnataka***[26].

44. Mr. Jain has submitted that it is improper for the Applicant to now seek enforcement of the Award against Respondent No.2 (that too personally) when the Award is against Respondent No.1 – HUF.

45. Mr. Jain has submitted that the Executing Court cannot go behind and beyond the decree. The majority of the operative part of the Award is against the Respondent No.1 – HUF and it is only the costs which have been awarded against the Respondents (HUF and *Karta*). This being the admitted position, the Applicant cannot go behind / beyond the Award to make the *Karta* personally liable for satisfaction of the amounts awarded other than costs. The personal liability of a person shall not arise in case of absence of personal decree against such a person. The logic is if there is no decree against

23 (2004) 9 SCC 691.
24 (2021) 2 SCC 1.
25 (2006) 13 SCC 322.
26 (2024) 3 SCC 623.

a person there is no liability of such person.

46. Mr. Jain has relied upon ***Vikram Anilkumar Patel vs. Pravinchandra Jinabhai Patel***[27], wherein this Court has held that Section 47 of the CPC has the basic limitation not to travel behind the judgment and decree. The Executing Court has no right to vary the terms of the decree, howsoever erroneous it may be. The Executing Court cannot add or alter the decree and cannot add relief not granted by the decree.

47. Mr. Jain has place reliance upon ***Pradeep Mehra vs. Harjivan Jethwa***[28], wherein the Supreme Court has quoted with approval the decision in ***Dhurandhar Prasad Singh vs. Jai Prakash University***[29]. The said decision holds as under:

> "24. ..... ***The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus, it is plain that executing court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and a nullity, apart from the ground that the decree is not***

27 2024 SCC OnLine Bom 1120.
28 2023 SCC OnLine SC 1395.
29 (2001) 6 SCC 534.

> ***capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing***"

48. Mr. Jain has also relied upon the judgment of this Court in ***Mitsui OSK Lines Ltd. vs. Orient Ship Agency Private Ltd***[30]**,** wherein it was held that by allowing the Award Holder to execute the Foreign Award against the additional Respondents by making them personally liable, the Executing Court would indeed be proceeding behind and / or beyond the decree.

49. Mr. Jain has submitted that the HUF has been treated as a distinct person under the CPC as well as other statutes. He has submitted that HUF is a corporate / juristic personality in the eyes of law. He has placed reliance on Order XXX Rule 10 of the CPC which provides for a Suit against any "person" carrying on business other than his own name, or HUF carrying on business under any name, may be sued in such name or style as it were a firm, and insofar as the nature of such case permits, Rule 10 Order XXX shall apply. He has relied upon the judgment of Privy Council in ***Amar Nath vs. Firm***

30 2020 SCC OnLine Bom 217.

***of Hukam Chand – Nathu Mal***[31] (also referred as "Gokal Chand case"). He has submitted that in the ***Gokal Chand case,*** one of the members of HUF took up occupation as a member of the Indian Civil Service and the question before the Privy Council was whether the salary of the member could be considered as part of assets of the HUF. The Privy Council held in the affirmative on the reasoning that the occupation was not on a 'science' or 'specialized education'.

50. Mr. Jain has submitted that statutory recognition of nature and complexities of HUF is found in the Statement of Objects and Reasons to the Indian Partnership Act, 1932, which effectively recognizes that the Legislature does not intend to get involved into the path of litigation against the HUF. He has in particular placed reliance upon Clauses 14 and 15 of the Statement of Claim.

51. Mr. Jain has also placed reliance upon the Twenty-Seventh Report of the Law Commission of December, 1964, where two amendments were suggested in context of HUF into the CPC. These suggestions were incorporated into CPC by amendment in 1976. To avoid conflict of decisions if 'person' under original Rule 10

31 1921 SCC OnLine PC 8.

would include HUF, Rule 10 of Order XXX of CPC was amended to separately include HUF. The amendments made it clear that 'HUF' and 'a person carrying on business in a name or style other than his own name' are different persons.

52. Mr. Jain has referred to Rule 50 of Order XXI of CPC, wherein it is clarified that this Rule would not apply to a decree passed against the HUF by virtue of provisions of Rule 10 of Order XXX. He has submitted that though 'person' is not defined under the Arbitration Act, 'person' under Clause (42) of Section 2 of the General Clauses Act, 1897, is defined as *"person" shall include any company or association or body of individuals, whether incorporated or not"*. In Salmond's Jurisprudence, Salmond defines 'person' as 'any being whom the law regards as capable of rights and duties' or as 'a being, whether human or not', of which rights and duties are the attributes. He has referred to ***Ramanlal Bhailal Patel v. State of Gujarat***[32]**,** wherein the Supreme Court was dealing with the interpretation of 'person' under the Gujarat Agricultural Lands Ceiling Act, 1960 and has applied Salmond's Jurisprudence. He has in particular placed reliance upon paragraphs 16 and 17 of the said

32 (2008) 5 SCC 449

judgment.

53. Mr. Jain has submitted that there are numerous statutes, in the Indian legal system which recognize the HUF as a distinct personality unless provided expressly. This is also inferred from Section 464 of the Companies Act, 2013, which carves out a HUF carrying on business irrespective of the number of members. Section 464(1) operates as an overarching provision of law prohibiting association or partnership exceeding prescribed number with the result being such persons could only operate by incorporation of a company. However, this provision is not applicable to HUF.

54. Mr. Jain has submitted that the Supreme Court in ***Kapurchand Shrimal vs. Tax Recovery Officers***[33] had dealt with the warrant / recovery certificate issued by the Income Tax against the *Karta* for a tax default committed by the HUF. In this case, the Court observed that the HUF is treated and recognized as a distinct entity which is distinct from its members and the *Karta* is not liable for penalty for the default of the HUF. The Supreme Court further observed that legislature did not make any provisions for making the

33 1969 72 ITR 623.

*Karta* liable for the liability of the HUF unlike Section 179 of the Income Tax Act, 1961 which makes a special provision rendering the Directors of a company in liquidation jointly and severally liable for tax dues.

55. Mr. Jain has distinguished the judgments relied upon by the Applicant in support of their case that the *Karta* is also personally and un-limitedly liable for the Decree passed against the HUF as well as on jurisdiction of this Court to entertain or try the instant Execution Application. He has submitted that a ratio of the judgment is something it decides on the basis of the facts involved in that case. Even a fact which is different from the facts of the judgment cited would make a world of a difference and will render the case cited inapplicable. He has submitted that the Star Judgment cited by the Applicant is of the Delhi High Court in ***A. Khandelwal & Sons (HUF) vs. Saradar Mall Ashok Kumar (HUF)***[34]. He has submitted that the Delhi High Court ascertained that the HUF in question is not merely HUF, but a firm. In this context, the Delhi High Court noticed that as regards the legal settled position i.e., a decree against the HUF (***not a HUF firm***) is only executable against the assets of the HUF and not

34 2009 (107) DRJ 583.

personal liability of the Co-parcener of the HUF. The Court then framed that the question as to what would be the position if the HUF is carrying on business / trade what is commonly known as a "HUF Firm". The Delhi High Court held that in a decree passed against the HUF firm which exhibits itself as a partnership firm, all constituents of a trading HUF Firm are liable personally for the decree passed against the Firm i.e., HUF firm. He has submitted that in the present case it is not Applicant's case that that *Karta's* HUF is a firm or that the *Karta* has represented the HUF to be a trading / business firm. Thus, the judgment in the case of ***A. Khandelwal (Supra)*** is of no assistance to the Applicant.

56. Mr. Jain has also distinguished the judgment cited by the Applicant in ***Shiv Bhagwan Moti Ram Saraogi vs. Omkarmal Ishar Dass and Ors***[35], in particular paragraphs 34, 35 and 40. He has submitted that observations of the Court in the judgment is based on the premise that the nature of the *Karta's* role being in the partnership firm switches from *Karta* of the HUF to a Partner of the partnership firm and on account of the provisions of the Indian Partnership Act, 1932, the liability of the partners in respect of a

35 (1951)SCC OnLine Bom 122.

Decree passed against the partnership firm is also personal decree against the partners. The Court considered the position of holding out of the co-parceners in the context of a HUF firm in business / trading and observed that the liability of such HUF Firm extends personally to the Karta. He has submitted that thus, the ratio of this decision will not apply in any case.

57. Mr. Jain has also distinguished the other judgments cited by the Applicant viz. ***Yeshvant Dattaraya vs. Shripad Sadashiv***[36]***; Kishan Gopal vs. Surajmal***[37] and ***Khairati Ram vs. Firm Balak Ram Mehr Chand***[38], on facts as in those cases the decree had already been passed against the *Karta.* He has submitted that this common thread is missing in the instant case. There is no personal decree against Respondent No.2 – *Karta.* Absence of this aspect makes all the judgments inapplicable to the facts of the instant case. He has submitted that what is deciphered from the judgments cited is that if personal liability is sought against the *Karta* of a HUF, there should be a personal decree passed against the *Karta*, in absence thereof, the HUF itself being a juristic entity / corporate entity is capable of a

36 1945 SCC OnLine Bom.108.
37 Rajasthan Law Weekly (RLW) 1964.
38 Vol XIII ILR dated 21st August, 1959.

decree being enforced against it.

58. Mr. Jain has also distinguished the judgment cited by the Applicant in the case of ***Mulgund Co-Operative Credit Society vs. Shidlingappa Ishwarappa Mavi***[39]**.** He has submitted that the ratio of this judgment is in fact against what is argued by the Applicant in the present case. The Court has differentiated between a Decree passed against the manager of a joint family representing the estate and a personal decree passed against the manager. The question whether the decree against the Manager of the joint family would bind its coparcener or not had been decided in that case. The ratio of that case is not applicable in the present case.

59. Mr. Jain has submitted that the judgment relied upon by the Applicant viz. ***K.R. Arumugam and Ors. vs. Semmalar and Ors***[40]**,** is rendered under Section 100 of the CPC. It is observed that joint HUF is a patriarchal organization and the head of the family is known as *Karta.* He has submitted that he is the senior most member and head of the family and that *Karta* enjoys immense powers in respect of management of affairs of the family and its property. In

39 1941 Bom. ILR 682.
40 2019 SCC OnLine Mad 8924.

this context the Court observed the *Karta* incurs unlimited liability and is representative of the family in all affairs. He has submitted that this case has remotely nothing to do with the question involved in this Execution Application i.e. in absence of a personal decree against the *Karta,* can the decree against the HUF executed against the *Karta* in his personal capacity.

60. Mr. Jain has submitted that the Applicant has during the concluding argument sought and pressed for appointment of Court Receiver in respect of the property as more particularly mentioned in Exhibit "B" to the Interim Application. He has submitted that the title documents in respect of the properties mentioned hereinabove were deposited before the learned Arbitrator at the interim stage by Respondent No.2. However, the learned Arbitrator after adjudication of the Applicant's claim has not granted any substantial award against Respondent No.2 in his personal capacity. The only award granted against Respondent No.2 was an amount of Rs.22,25,000/- (Rupees Twenty Two Lakhs Twenty Five Thousand Only) to be paid by Respondent Nos.1 and 2 jointly towards cost of arbitral proceedings and which Respondent No.2 has already deposited as directed by the learned Arbitrator in the Award dated 30th

November, 2023 with this Court in Interim Application (L) No. 18885 of 2024 (I.A. No. 2726 of 2025) in Comm. Arbitration Petition No. 149 of 2025 preferred by the Respondents under Section 34 of the Arbitration and Conciliation Act, 1996. Therefore, no case has been made out for appointment of Court Receiver in respect of the properties mentioned in Exhibit "B".

61. Mr. Jain has accordingly submitted that the personal assets of the Respondent No.2 – *Karta* cannot be proceeded against in execution, particularly, when there is no decree / award against the Respondent No.2 in his personal capacity other than, the costs awarded against the Respondents, which Respondent No.2 has deposited in this Court.

62. Mr. Rashmin Khandekar, the learned Counsel for the Applicant has dealt with the preliminary objections. There is much merit in his submission. With regard to the first of the preliminary objections which has been raised by Respondent No.1 viz. to the maintainability of this proceedings on the ground that there are no assets shown to be situated within this Court's jurisdiction, it would be pertinent to note that the Applicant has sought execution of an

award passed by the Arbitral Tribunal. This Court is undisputedly the 'seat' Court under Section 2(1) (e) (i) of the Arbitration Act and being the Seat Court cannot be divested of jurisdiction regardless of where the assets are located. The Respondents have also admitted in paragraph 9 of the common Section 34 Petition that this Court is the Seat Court within the meaning of Section 2(1) (e) (i) of the Arbitration Act, and within whose jurisdiction the arbitral proceedings have been held and the Award passed. Further, the Respondents have never disputed either in pleadings or in oral arguments the factual position that the seat of arbitration is Mumbai or that this Court is the "Seat" Court.

63. It is settled law that merely because the Award Creditor has an option/ choice to also file execution proceedings directly before a Court where the assets of the Award Debtor may be located, does not in any way take away the Award Creditor's right to approach the Seat Court seeking execution and / or interim reliefs in aid of execution. This has been laid down in the judgment of the Full Bench of this Court in ***Gemini Bay (Supra),*** wherein it has been held that an Award made under Part 1 of the Arbitration and Conciliation Act, 1996 can be executed not only by the Court as defined by

Section 2(1)(e)(i) but also by the Court to which it is sent for execution under Sections 38 and 39 of the CPC. Thus, the Award Creditor is vested with an additional option to directly execute the Award where the assets are located.

64. The Full Bench decision has taken note of the judgment of the Supreme Court in ***Sundaram Finance Ltd. (Supra)*** at paragraph 28, wherein it is held that there is no requirement for obtaining a transfer of the decree from the Court which would have jurisdiction over the arbitral proceedings. The Respondents' argument is on the misconceived premise that the Supreme Court's observation in ***Sundaram Finance Ltd. (Supra)*** that there is "no requirement" of first filing in the Seat Court, means that Award Creditor can no longer file for execution / reliefs in aid of execution in the Seat Court at all. This is completely contrary to the express language of the Supreme Court in ***Sundaram Finance Ltd. (Supra)*** and also contrary to the Full Bench decision which holds that the Award Creditor has option to file for execution not only before the "Seat" Court but also before any Court where the assets may be located.

65. The jurisdictional objection raised by the Respondent

No.1 herein was considered and emphatically rejected by the learned Single Judge of this Court in ***Global Asia Venture Company (Supra)*** after applying the Full Bench's view in ***Gemini Bay (Supra)*** and after specifically considering the purport of the Supreme Court judgment in ***Sundaram Finance Ltd. (Supra).*** Further, an attempt had been made on behalf of Respondent No.1 to suggest that the judgment of the Supreme Court in ***Amazon.com NV Investment Holdings LLC (Supra)*** has diluted ratio of ***Global Asia (Supra).*** This argument is misconceived since in ***Amazon.com (Supra),*** the Supreme Court clarified that it is not commenting one way or another on the law laid down in ***Global Asia (Supra)*** because the entire line of ***Sundaram Finance Ltd. / Gemini Bay / Global Asia*** did not concern the issue under consideration in ***Amazon.com (Supra)*** at all. This is apparent from paragraphs 86 and 87 of ***Amazon.com (Supra)***. It has been held in paragraph 87 that ***Global Asia (Supra)*** inter alia dealt with proceedings filed under Section 36 of the Arbitration Act, and no opinion on their correctness has been expressed.

66. The jurisdictional objection of the Respondents has therefore been squarely considered and rejected by several Courts since at least 2018 including the Full Bench of this Court in ***Gemini***

***Bay (Supra)*** which applied / interpreted the view of the Supreme Court in ***Sundaram Finance Ltd. (Supra)*** and as upheld / expounded upon thereafter by this Court in ***Global Asia (Supra)***.

67. The judgment of the Delhi High Court in ***Daelim (Supra)*** relied upon by Respondent No.1 has been appropriately explained by the subsequent judgment of Delhi High Court in ***Gujarat Jhm Hotels Ltd. (Supra).*** The Delhi High Court in the subsequent judgment has clearly upheld the ***Gemini Bay / Global Asia*** interpretation. This is evident from paragraphs 15, 45 – 47 of the said judgment. The Delhi High Court has accepted the view that the "Seat" / 2(1) (e) (i) Court is never divested / denuded of jurisdiction even post-award and that ***Daelim*** / ***Sundaram Finance*** rulings intended to offer more choices to the Award Creditor for smooth / expeditious enforcement – without in any way taking away the right / option of approaching the "Seat" Court for enforcement / reliefs in aid of enforcement. The judgment in ***Gujarat Jhm (Supra)*** had been thereafter followed by the Delhi High Court in ***Ravi Sawhney vs. Ramesh Kohli***[41]***.*** This has also followed the view of this Court in ***Global Asia (Supra)*** as regards the continuing jurisdiction of the Seat Court in execution.

41 Ex. Appl. (OS) 461 of 2021 dated 31st January, 2023.

68. In the judgment relied upon by the Respondent No.1 viz. ***Sara Chemicals (Supra),*** it has been held by this Court that any Executing Court must first pass immediate interim reliefs of injunction and disclosure in a post-award situation as a matter of course in order to protect the decretal interest of the Award Creditor, notwithstanding potential objections to jurisdiction which can only be adjudicated upon a full disclosure by all Respondents. Further, this Court in ***Sara Chemicals (Supra)*** has neither noticed the binding decision of ***Gemini Bay*** and ***Global Asia*** nor have these decisions been discussed. It is only been held in that case that the parties would be heard on the jurisdictional objection after the appropriate disclosure Affidavit is made. Thus, the Respondents attempt to portray the said decision in ***Sara Chemicals (Supra)*** as taking anything but a pro-enforcement stance is entirely without merit.

69. I find no merit in the jurisdictional objection of Respondent No.1 as this Court possesses jurisdiction to pass reliefs in view towards / in aid of execution as sought herein. Accordingly, this jurisdiction objection is rejected.

70. The jurisdictional objection raised by Respondent No.2

i.e. on the ground that the Respondent No.2 being *Karta* of Respondent No.1 – HUF, his personal assets cannot be proceeded against in execution even for unsatisfied debts of the HUF is now taken up for consideration.

71. It is pertinent to note that there is no dispute whatsoever and it is in fact an unequivocally admitted case that Respondent No.2 is the *Karta* of the Respondent No.1 – HUF. Further, Respondent No.1 is an HUF that carries on business, and in that sense is a trading HUF. The learned Sole Arbitrator has recorded the fact that "The Respondents are engaged in undertaking and executing construction works contracts". This observation of the learned Sole Arbitrator is pertinent in view of the defence taken by Respondent No.2 that a *Karta* has personal liability only when the HUF is a "trading" HUF which carries on business. While it is trite law that Respondent No.2 *Karta's* liability is unlimited regardless of whether or not the Respondent No.1 HUF is a trading HUF / HUF which carries on business, this enquiry in the present case is irrelevant / academic because in the present case it is an admitted position that the Respondent No.1 – HUF is one that carries on business of construction works contracts.

72. Further, it is settled law that the *Karta's* liability for unsatisfied debts or dues of the HUF is "personal" and "unlimited". The contention on behalf of the Respondents that Respondent No.2 - *Karta* has no liability save and except for the costs component of the Award is *ex-facie* without merit and merely a brazen attempt to ring-fence Respondent No.2's assets from being applied to enforcement of the Award so that the Applicant is left holding a mere paper decree.

73. The authorities cited by the Respondent No.2 in support of their submission that an HUF is a "separate entity' or akin to a 'body corporate' are in the context of ordinary coparceners. The entire discussion on HUF being a 'separate entity' or akin to a 'body corporate' for some limited purposes comes into the picture only for purposes of taxation or at most where liability beyond even the *Karta* i.e. extending to ordinary coparceners is sought to be affixed. This would not be applicable in the present case where the execution of the Award is sought against *Karta* in his personal capacity.

74. Further, the Respondents contention of issue of estoppel / *res judicata* are also without merit. The Respondent No.2 has contended that the claim was made against both the Respondents

in the arbitration but granted only against Respondent No.1 and therefore rejected against Respondent No.2. This has not been discussed in the Award and in any event, the issue of whether a *Karta's* assets can be reached in execution by virtue of operation of principles of Hindu Law was never and could never even arise for consideration before the Arbitral Tribunal.

75. It has been held by this Court in ***Mulgund Co-Op-Credit Society (Supra)*** that once it is admitted as a matter of fact that the Respondent is *Karta,* the decree can be enforced against the assets of the *Karta.* Further, in ***Shiv Bhagwan Moti Ram Saraogi (Supra),*** Division Bench of this Court noticed the law laid down in ***Mulgund Co-Op-Credit Society (Supra)*** and proceeded to clearly recognize the "personal" as well as "unlimited" liability of a *Karta,* by virtue of the unique / special status of the *Karta* in the HUF which is unlike other ordinary coparceners. This is evident from the paragraph 34 of the said judgment. The Division Bench discussed a further aspect i.e. situations where personal liability could be extended even beyond that of the *Karta* and also to other ordinary coparceners, where a partnership is entered into between the HUF / *Karta* on the one hand and a stranger / outsider on the other. While in the present case,

there is no need to go into the further aspect, except to note that, the Court was conscious of applying of the principles which stem from the special status of the *Karta* under Hindu Law to the question of which assets may be "reached" in execution. The Court was careful in repratedly drawing a distinction between the special status of the *Karta* and that of other / ordinary coparceners by pointing out that the liability of the former is personal, whereas the latter is generally only to the extent of their share in the coparcenary property.

76. The Delhi High Court in ***A. Khandelwal & Sons (Supra)*** has held that it is settled position of law that the *Karta's* liability is always personal. The *Karta* always remains liable even to the extent of personal assets and the only question to be looked into on facts is when this personal liability could also be extended to other ordinary coparceners. This is evident from paragraph 12 of the said judgment. The Delhi High Court has placed reliance upon ***Mulgund Co-Op-Credit Society (Supra)*** and ***Shiv Bhagwan Moti Ram Saraogi (Supra)*** at paragraph 19 of the said judgment.

77. The Respondent No.2's attempt to distinguish the judgment of the Delhi High Court on the ground that the Delhi High

Court was considering a HUF firm which is a separate entity is misconceived. A reading of the judgment in ***A Khandelwal (Supra)*** clearly shows that the term "HUF Firm" is merely used by the Court to refer to the circumstance of an HUF "carrying on business" as opposed to an HUF which does not carry on any business.

78. In any event, in the present case, it is evident that the Respondent No.1 HUF can be considered as an HUF Firm carrying on business. Respondent No.2's entire argument attempting to distinguish the said judgment is not only misconceived in law, but also false on facts.

79. The Applicant has also relied upon the judgment of the Madras High Court in ***K. Arumugam and Ors. (Supra)*** which also supports the position that *Karta's* position is 'unique' and his liability 'unlimited' as is evident from paragraphs 31 and 32 of the said judgment.

80. The Respondent No.2 has not been able to show a single authority which contradicts the settled law laid down by the various Courts viz. that the *Karta* of the HUF is personally liable to satisfy the

Award made against the HUF. The Respondent No.2 has misread the judgments relied upon by the Applicant which supports the Applicant's case and the attempt to distinguish these judgments is demonstrably incorrect, on the ground that they concern HUF Firm, is misconceived, particularly, in view of the HUF firm being nothing but a HUF carrying on business which in any event in the present case, the Respondent No.1 – HUF is such a HUF firm.

81. The judgments cited by Respondent No.2 have no reference to *Karta* at all and do not discuss or notice (let alone distinguish or contradict), the clear law on the special status / liability of *Karta* cited by the Applicant.

82. The judgments which have been relied upon by Respondent No.2 are not relevant to the present case as no legal principle has been shown to have been laid down in any of Respondent No.2's cases which in any way either applies to this case, or deals with the specific aspect of a *Karta's* liability for unsatisfied debts of a HUF. The judgment in ***Ram Janmabhoomi (Supra)*** upon which the Respondent No.2 has relied has no application to the issue of *Karta's* liability in execution. The constitutional Bench in the

judgment had sounded a clear word of caution against any over-broad or general proposition of rights / liabilities being inferred merely because terms such as 'juristic personality' or 'legal personality' may attach to an entity under Hindu Law in certain contexts. The Court has emphasized the importance of context in deciding rights / liabilities, and in paragraph 127, has categorically held that "conferral of juristic personality does not automatically grant an ensemble of legal rights".

83. In the Full Bench decision of the Punjab and Haryana High Court in ***Khairati Ram & Anr. (Supra)*** it has been held that although the HUF is included in the expression 'person' as defined in the Indian Income Tax Act, it is not a juristic person for all purposes. The *Karta* counts as one person. He himself is liable to the extent of his coparcenary property as well as his personal property but the other members of the family are liable only to the extent of their coparcenary share. Thus, the Full Bench clearly recognizes that a *Karta* is personally liable for unsatisfied debts of an HUF by virtue of his *sui generis* status and that an HUF is a juristic person only in certain contexts and in a limited sense, such as for the purpose of taxation.

84. In ***Yeshvant Dattaraya (Supra),*** this Court has held that the ordinary rule of Hindu Law is that it is only the manager or the managing member of the joint family business who is personally liable with regard to the debt contracted for that particular joint Hindu Family business. Paragraph 4 of the said judgment reads as under:-

> *"4. The distinction between a partnership firm and a joint family business is too well, known and too fundamental to need any repetition or emphasis; whereas one arises from contract, the other is the result of status. Whereas in the case of a contractual partnership each partner is the agent of the other and each partner is personally liable, in the case of a joint family business, as I have just said, ordinarily only the managing member is personally liable. Further it has got to be remembered that in the case of a joint Hindu family business, the karta has the right without consulting the other coparceners to contract debts on behalf of the business and to be in complete control of the business and the other coparceners are bound by these acts on the part of the karta. Therefore it can be well understood why Hindu law has restricted the liability of the coparceners other than that of the manager only to their interest in the joint family assets and has not foisted upon them a personal liability. The manager is personally liable because it is his contract and he is in charge of the business and is in control of it. This principle has been very well enunciated in a*

> *recent decision of the Madras High Court in I.L.R. (1940) Mad. 10122. In that case Wadsworth, J. and Patanjali Sastri, J. came to the conclusion that a coparcener could not be made personally liable except on the ground of implied partnership or estoppel by holding out or ratification; and whether an inference can be drawn as to implied partnership or estoppel must depend upon the nature and extent of the participation of the coparcener in the business.[…]"*

85. Further, in the Division Bench of the Rajasthan High Court in ***Kishan Gopal (Supra)*** reference has been made to ***Chennana Gowd vs. Official Receiver, Bellary***[42] where it was laid down that in the joint Hindu Family business those members who do not partake in the direction of a joint family business will not be personally liable for the debts of those members who actually conduct the business and that only those members are personally liable who are in control and management of it.

86. The argument of Respondent No.2 on *res judicata* and issue *estoppel* (on the basis that reliefs were sought but not granted against Respondent No.2 in the arbitration) are totally without merit. Neither *res judicata* nor issue of *estoppel* have any applicability in the present case at all. The present proceedings are execution

42 AIR 1940 Mad. 241.

proceedings unconcerned with the affixing of any contractual liability. Further, the issue of Respondent No.2's liability as *Karta* of the Hindu Family by operation of Hindu Law for unsatisfied debts of the Respondent No.1- HUF was never raised before the learned Arbitrator and the learned Arbitrator never had occasion to consider the issue of whether Respondent No.2 is personally liable as *Karta* of Respondent No.1 – HUF in execution of the resulting award when the Respondent No.1 HUF was unable to satisfy the Award. Respondent No.1 – HUF is admittedly unable to satisfy the Award. This issue is unique / peculiar to the post-award and execution stage, and hence it could never have been a question in the arbitration. The two proceedings are totally different in substance as well as form. Accordingly, the contention of Respondent No.2 based on issue *estoppel / res judicata* / constructive *res judicata* are liable to be rejected.

87. The Respondent No.2's contention based on Order XXX Rule 10 and Order XXI Rule 50 are clearly without merit since they entirely rely upon the artificial distinction drawn between "HUF" and "HUF Firms" which as already held is misconceived / irrelevant and in any event an academic question in the present case where the

Respondent No.1 – HUF admittedly is one that carries on business. In any event, this Court has inherent power as a Court of record and equity, as also power under Section 47 of the CPC to determine all questions arising between the parties "relating to the execution, discharge or satisfaction of the decree". This includes the question of law as to whether under Hindu Law, a *Karta* has personal / unlimited liability in execution when the Respondent No.1 – HUF is admittedly unable to satisfy the decretal debt. The answer to this issue is in the affirmative as evident from the clear line of authorities.

88. Accordingly, there is no merit in this preliminary objection raised by the Respondent No.2 in resisting the Interim Application.

89. In these circumstances, the Interim Application is liable to be allowed.

90. Regarding the immovable properties / securities already lying *custodia legis* as common security for the Respondents' liability, in respect of which reliefs are required to follow as a matter of course, it would be necessary to appoint a Court Receiver to secure

possession and thereafter for sale of the immovable properties to which title deeds are already deposited in this Court under Order dated 26th June, 2024. This Court as Executing Court has the power under Section 51(d) of the CPC to do so.

91. In these circumstances, there shall be grant of prayer Clause (b) of the Interim Application. Accordingly, the Court Receiver of this Court is appointed as receiver of the immovable properties whose title deeds are deposited in this Court in order to secure the Applicants claim with all powers under Order XL Rule 1 of the CPC including the powers to take physical possession thereof and to sell the said properties on such terms as this Court may deem fit and proper and deposit the proceeds of the same to the credit of the Execution Application. At present the Court Receiver shall take physical possession of the immovable properties whose title deeds have been deposited in this Court and shall file a report to that effect within a period of four weeks from uploading of this Order.

92. In addition, there shall be grant of prayer Clause (e) of the Interim Application. The Respondent Nos.1 and 2 are directed to disclose by way of Affidavits of Disclosure all assets i.e. movable and

immovable held by the Respondent Nos.1 and 2. Respondent No.1 though having filed Affidavit of Disclosure is yet to make full and complete disclosure and shall do so. There shall be also a grant of prayer Clause (f) by restraining the Respondents / Judgment Debtors, their servants, agents, co-parceners, assigns or any other person acting for and on behalf of the Judgment Debtors from in any manner, directly or indirectly dealing with or disposing of, alienating, selling, transferring, assigning, encumbering, parting with possession of or creating any third party right in respect of any of its movable and / or immovable property and any other assets including properties disclosed in the Affidavit(s) by the Judgment Debtors.

93. Prayer Clause (g) of the Interim Application is at this stage premature, considering that the Respondent No.2 has yet to disclose their assets and liberty is granted to the Applicant to renew this prayer in fresh Interim Application depending on disclosure made by the Respondent No.2.

94. The Respondents are in addition to the above disclosure which have been directed to be made shall in terms of Prayer Clause (h) disclose in their Affidavits of Disclosure, their income tax returns

for the last three financial years along with bank statements for last one year.

95. The Affidavits of Disclosure as directed shall be filed by the Respondent Nos.1 and 2 within a period of four weeks from the uploading of this Order.

96. The present Interim Application is accordingly disposed of. There shall be no order as to costs.

[ R.I. CHAGLA J. ]

97. After pronouncement of the Order, the learned Counsel for the Respondent No.2 has applied for stay of this Order.

98. Considering that award had been passed way back on 30th November, 2023 which is being executed, the application for stay is rejected.

[ R.I. CHAGLA J. ]