

Com.Ex. 286/2024

Orders

I have heard both sides on main petition.

The counsel for the JDR has submitted that, the entire decretal amount with accrued interest has been already deposited as per the decree of this court. Therefore there is no any balance amount. Hence, prayed to close the execution petition.

The Advocate for the DHR has relied the Judgment reported in ***1984 (Supp) Supreme Court cases Forasol V/s Oil and Natural Gas Commission***

24. In an action to recover an amount payable in a foreign currency, five dates compete for selection by the Court as the proper date for fixing the rate of exchange at which the foreign currency amount has to be converted into the currency of the country in which the action has been commenced and decided. These dates are:

(1) the date when the amount became due and payable;

(2) the date of the commencement of the action;

(3) the date of the decree;

(4) the date when the Court orders execution to issue and

(5) the date when the decretal amount is paid or realized.

40. We have spent some time in ascertaining the English law on the subject by reason of the absence of any authority of any Indian court on this point and because the learned Single Judge has based his decision on the Miliangos case while the Division Bench of the Delhi High Court has based its on the Jugoslavenska case. Further, the English decisions referred to by us are of courts of a country from which we have derived our jurisprudence and a large part of our laws and in which the judgments were delivered by judges held in high repute. Undoubtedly, none of these decisions are binding upon this Court but they are authorities of high persuasive value to which we may legitimately turn for assistance. Whether the rule laid down in any of these cases can be applied by our courts must, however, be judged in the context of our own law and legal procedure and the practical realities of litigation in our country. When a foreigner has to receive a sum of money which should justly be payable to him in a foreign currency and, because of the default of the paying party, seeks to recover its payment through the court, the first question which arises is whether a court in India would have jurisdiction to pass a decree for a sum expressed in a foreign currency. Though on principle there is no reason why a court should not be able to do so no court can pass a decree directing a defendant to do an impossible or an illegal act and in view of the provisions of our Foreign Exchange Regulation Act, 1973, and the restrictions contained therein on making payments in a foreign currency, if a decree were to be passed *Simpliciter* for a sum expressed in a foreign currency, it would be to direct the

defendant to do an act which would be in violation of the Foreign Exchange Regulation Act, 1973. Such a decree can, therefore, only be passed by making the payment in foreign currency subject to the permission of the foreign exchange authorities being granted. If however, the authorities do not grant permission for payment of the judgment debt in foreign currency, it would not be possible for the defendant to make such payment, resulting in the decree becoming infructuous and the plaintiff getting nothing under it. The view of Lawton L.J. in the Schorsch Meier case that the plaintiff should be given judgment in the form in which he asked for it and must be left to extricate himself from the intricacies of the law relating to execution and exchange control does not commend itself to us for it does not appear to us to be conducive to the ends of justice. The court must, therefore, provide for the eventuality of the foreign exchange authorities not granting the requisite permission or even if such permission is given, the defendant not paying the decretal debt, or not wanting to discharge the decree by making payment in foreign currency or in Indian rupees. This can only be done by the decree providing in the alternative for payment of a sum of money in Indian rupees, which will be equivalent to the sum decreed in foreign currency. It is but just that a man, who is in law entitled to receive a sum of money in a foreign currency, should either receive it in such currency or should receive its equivalent in Indian rupees. It is here that the question of the date which the court should select for converting foreign currency into Indian rupees arises. The court must select a date which puts the plaintiff in the same position in which he would have

been had the defendant discharged his obligation when he ought to have done, bearing in mind that the rate of exchange is not a constant factor but fluctuates, and very often violently fluctuates, from time to time. With these considerations in mind, we will now examine the feasibility of the several dates set out by us at the beginning of our discussion on this point.

53. This then leaves us with only three dates from which to make our selection, namely, the date when the amount became payable, the date of the filing of the suit and the date of the judgment, that is, the date of passing the decree. It would be fairer to both the parties for the court to take the latest of these dates, namely, the date of passing the decree, that is, the date of the judgment.

In **1994 Supp (1) SCC 644 between Renusagar Power Co. Ltd. vs. General Electric Co.**, wherein Hon'ble Supreme Court held in

109. In the instant case, there is no dispute that the money of account as well as the money of payment is the same, namely, U.S. dollar. Here, the question of convertibility from U.S. dollars to Indian rupees arises in the context of enforcement of the award of the Arbitral Tribunal which is in U.S. dollars. We are, therefore, required to examine the position under the Indian law with reference to conversion of foreign currency into Indian currency at the stage of enforcement of a judgment or award in foreign currency.

146. In the result, C.A. Nos. 71 and 71-A of 1990 and C.A. No. 379 of 1992 direction that in terms of the award an amount of US \$ 12.333.355.14 is payable are dismissed and the decree passed by the High Court is affirmed with the by already been paid by Renusagar in discharge of the decretal amount and the

balance amount payable by Renusagar under the decree is US \$ 6,043,555.14 which amount on conversion in Indian rupees at the rupee-dollar exchange rate of Rs 31.53 per dollar prevalent at the time of this judgment comes to Rs 19,05,53,293.56. Renusagaradeill be liable to pay future interest @ 18 per cent on this amount of Rs 19,05,53,293.56 from the date of this judgment till payment. The parties are left to bear their own costs.

The Advocate for JDR has relied the Judgment reported in **2018 (7) SCC 479 Meenakshi Saxena and Anr V/s ECGC Ltd** wherein Hon'ble Supreme Court held in

21. In a contractual matter, when the decree is silent with regard to the reckoning date of conversion of foreign currency in to Indian rupees, what would be the methodology to be followed by the executing court is no more res integra, as this court has an occasion to deal with elaborately in the case of Forasol v. ONGC, 1984 (Supp.) SCC 263, the facts of that case revolved around a contract entered into between ONGC and Forasol for carrying out structural drilling in relation to the exploration of oil in the Jaisalmer area. The contract mandated a part payment in the foreign currency i.e., French francs. Due to belligerent situation prevalent between India and Pakistan in 1965, the contract was suspended. In the meanwhile the Indian currency was devalued resulting in Forasol claiming higher conversion rate. As the dispute was not settled, the matter was referred to an arbitration. For the present, it is sufficient to note that by the award of the arbitrator/ Umpire mandated conversion at the rate of FF 1000 equal to 1517.80 instead of exchange rate of FF 1.033 equal to Re. 1.000. The aforesaid award was filed before the Delhi High Court, which accordingly passed the decree on 07.05.1975 without any objections from the parties as to the form.

23. This Court recognized the principle that a determination of relevant date for conversion of currency would first take place in accordance with the contractual provision and thereafter, if such explicit determination is not available, then the court would have to determine the best possible date.

24. Further this court recognized the discretion of the Court to select the relevant dates and pointed out some of them in the following manner-

24. In an action to recover an amount payable in a foreign currency, five dates compete for selection by the Court as the proper date for fixing the rate of exchange at which the foreign currency amount has to be converted into the currency of the country in which the action has been commenced and decided. These dates are:

- (1) the date when the amount became due and payable;
- (2) the date of the commencement of the action;
- (3) the date of the decree;
- (4) the date when the Court orders execution to issue; and
- (5) the date when the decretal amount is paid or realised.

25. In a case where a decree has been passed by the Court in terms of an award made in a foreign currency a sixth date also enters, the competition, namely, the date of the award. The case before us is one in which a decree in terms of such an award has been passed by the Court.

26. In the light of the ratio laid down by this court in determining the relevant date for conversion of currency, the first procedure to be adopted by the court is to decide the

same in accordance with terms of the contract, if such a clause is not available in the agreement then the courts have to determine the best possible date, then this court went ahead and dealt with the procedure to be adopted. But in the present facts that exercise is not relevant as there is a specific clause in the agreement i.e clause 17 which deals with rate of interest. The clause clearly says that currency should be converted into rupees at the bank buying rate of exchange at Mumbai on the date of relevant shipment.

The suit is partly decreed by this court in Com.O.S. No. 6700/2003 and the plaintiff is entitled to recover of Rs. 1,08,06,702.63 (DM 414, 432.80 (EURO 211,896.13) towards freight cost for re-export of goods and sum of DM 213,325.1 (EURO 109,071.38) (Rs.55,62,640.03) towards balance claim amount of admitted sum of DM 680,000.00, with future interest 8.5% p.a., from the date of suit till realization of amount.

On the basis of the said decree amount the DHR has filed this present petition to execute decree and claiming the following prayer.

1. The attachment and sale of movables in possession of the Judgment Debtors as detailed below in Schedule-A
2. Attachment of such other immovable properties and movables of Judgment Debtors, the details of which may be furnished by the Decree Holder at a subsequent stage.

3. Arrest and detention of Judgment Debtor Nos. 2 and 3, who are the Partners of Judgment Debtor No. 1, in civil prison.

4. Release of Rs. 90,03,200/- (deposited by the Judgment Debtors before this Hon'ble Court in furtherance of Order dated 26.06.2008 in C.R.P. No. 460/2005, along with accrued interest.

5. Release of Rs. 90,00,000/- deposited by the Judgments Debtors before this Hon'ble Court on 09.11.2023 vide Demand Draft bearing No. 531036 drawn on ICICI Bank, Jayanagar Branch.

I have carefully gone through the Judgment relied by both the parties wherein it is clear that, the plaintiff has filed this suit for recovery of amount of EURO 757,885.42 together with interest thereon at the rate of 8.5% per annum from 15.09.2003 till payment are more particularly set out in the particulars of claim. The amount has been calculated by the plaintiff in Indian Currency at Rs. 3,86,52,156.42 and he has paid the court fee on the basis of Indian Currency for Rs. 4,00,386/-. As per the Judgment of the Hon'ble Supreme Court in **Forasol (supra)** as by considering parameter and also Judgment of the Hon'ble Supreme Court in **Renusagar Power Co. Ltd. (supra)**. And in recent Judgment of the Hon'ble Supreme Court in **Meenakshi Saxena and Anr (supra)** wherein para 26 was held by relying **Forasol (supra) and Renusagar Power Co. Limited (supra)**, 26 it was held as under:

26. In the light of the ratio laid down by this court in determining the relevant date for conversion of currency, the first procedure to be

adopted by the court is to decide the same in accordance with terms of the contract, if such a clause is not available in the agreement then the courts have to determine the best possible date, then this court went ahead and dealt with the procedure to be adopted. But in the present facts that exercise is not relevant as there is a specific clause in the agreement i.e., clause 17 which deals with rate of interest. The clause clearly says that currency should be converted into rupees at the bank buying rate of exchange at Mumbai on the date of relevant shipment.

The relevant date for conversion of currency, the first procedure to be adopted by the court is to decide the same in accordance with terms of the contract, if such a clause is not available in the agreement then the courts have to determine the best possible date. By relying the above Judgments the plaintiff has paid court fee as in Indian Currency and claimed is relief by Indian Currency. Therefore, the DHR is entitle for the relief of recovery of amount as decreed in the Indian Currency as from the date of suit as he valued the suit and paid the court fee.

It is also noted point that the JDR has deposited an amount of Rs. 90,03,200/- dated 16.01.2009 in DD No. 189753 dated 31.12.2008. The JDR also deposited an amount of Rs. 90,00,000/- in Com.O.S. No. 6700/2003 DD No. 531036 dated 08.11.2023 and deposited before this court on dated 10.11.2023. The JDR has also deposited an amount of Rs. 30,54,005/- in execution petition through DD bearing No. 532152 dated 12.09.2024. In total JDR has paid an amount of Rs. 2,10,57,205/- paid. It is also

noted point that, the DHR has withdraw the amount with accrued interest.

It is directed to both the parties to file a memo of calculation regarding the balance payment as per the decree.

For compliance by 30.1.2026.

LXXXII ACC & SJ, B'LURU.