

**IN THE COURT OF JUDGE, COMMERCIAL COURT
(DISTRICT JUDGE CADRE), COIMBATORE**

Present: **Thiru. K.Hariharan, M.L.,**
Judge,
Commercial Court (District Judge Cadre),
Coimbatore.

Wednesday, the 2nd day of April, 2025

E.A. No.1 of 2025
in
E.P. No.194 of 2024
(CNR No.TNCB22-000482-2024)

1. M/s. Real Link Engineering India Pvt. Ltd.,
rep. by its Managing Director L.Navaneethakrishnan,
2. L.Navaneethakrishnan,
Managing Director of M/s. Real Link Engineering India Pvt. Ltd.,

.... Petitioners / Respondents / Judgment Debtors

// Vs //

M/s. Aquatex Engineering,
rep. by its Managing Partner R.Kumaravelu

.... Respondent / Petitioner / Decree Holder

This petition came up for final hearing before me on 18.03.2025 in the presence of Thiru.M.SundaraKadeswaran, Advocate for the petitioners / respondents / Judgment debtors and Thiru.N.Sridhar, Advocate for the Respondent / petitioner / decree holder and upon perusing the records, hearing on the side of petitioner, and having stood over for consideration till this date, this court doth passed the following:-

ORDER

The petition has been filed by the the petitioners / respondents / judgment debtors seeking to declare the Judgment and Decree passed by this Court in C.O.S.No.110 of 2023 is a nullity and a decree cannot be executed, under Section 47 of Civil Procedure Code

2. The petition averments which are found essential for the disposal of the petition is that:-

The petitioner submit that the Judgment and Decree passed by this Court in this suit is without jurisdiction and submitted that it is nullity in the eye of Law. This Court after the trial in the judgment have concluded that the MOU relied on by the respondent / plaintiff is created under suspicious circumstances and further this Court also has held that the suspicious circumstance is not cleared by the respondent / plaintiff in this suit. Further, this Court also have went on to hold that the attestation of Notary Public in the MOU is also doubtful and this Court concluded denying the relief of specific performance and submit that the MOU is non-est. Under the above circumstances, it is mentioned by the petitioner that this Court lacks jurisdiction as per Section 2 (c) (vii) of the Commercial Courts Act and submit that the first ingredient that is needed for treating the dispute as 'commercial dispute' is existence of agreement and submit that the agreement should be valid one. Further the petitioner submit that the finding of this Court in the judgment that the respondent is entitled for

refund of advance amount as alleged on the basis of MOU is mentioned as invalid and unsustainable and termed it as nullity. It is submitted that the petitioner also has initiated Criminal Proceedings for forgery done by the Managing Partner of the respondent and their employee before the Police and it is assigned with Crime No.209 of 2024 before Kattoor Police Station, Coimbatore. Further the Hon'ble High Court by Order dated 29.10.2024 has transferred the above case for investigation to the CBCID Branch and submit that the same is pending for investigation as Crime No.2 of 2024. It is the contention of the petitioner that the transactions between the parties are not commercial in nature and further submit that the MOU relied on by the respondent is held to be a suspicious one by the Court and submit that it is void-ab-initio. Further the petitioner submit that there is no valid agreement between the petitioner and the respondent in the eye of Law and submit that the dispute can be agitated before this Court. Further it is the contention of the petitioner that the transactions between the petitioner and the respondent is only financial transactions and submit that the respondent ought to have filed Civil Proceeding for refund of money before the Civil Court and submit that for the said reasons the judgment passed by this Court suffers from nullity. Further it is the contention of the petitioner that the respondent has not preferred an appeal against the Judgment of this Court, hence it has to be construed that the

observation of the Court regarding the suspicious nature of MOU, is binding on the petitioner and sought for to allow the petition.

3. By denying the petition averments the respondents/decree holder/plaintiff has filed the counter. The sum and substance of the counter averments which are found essential for the disposal of the petitions are that:-

The respondent has submitted that the present petition has been filed by the petitioner to delay the proceedings and also extracted the decree of this Court passed on 15.03.2024. It is submission of the respondent that if the petitioners / Judgment debtors are aggrieved by the decree of this Court dated 15.03.2024, they ought to have preferred appeal before the Commercial Appellate Division of the Hon'ble High Court of Madras and submit that the petitioner remained silent about preferring appeal as contemplated under the Commercial Courts Act. Further it is the contention of the respondent that since the petitioner has not preferred appeal against the decree and judgment of this Court, it shall be treated that the petitioner has no grievance against the money for charge decree of the Court dated 15.03.2024 and submitted that the decree is final and binding the petitioner/judgment debtor and submit that the present petition filed by the petitioner in the above circumstances under Section 47, is not permissible in law and sought for to dismiss the petition. During the

pendency of the suit, the petitioner also has filed I.A.No.4 of 2024 under Order VII Rule 11(a) and (d) of C.P.C. to reject the plaint as the suit is not a commercial dispute under Section 2(c)(vii) of the Commercial Courts Act, 2015 and the said application was also dismissed by this Court on 17.07.2023. Against which CRP (PD) No.3276 of 2023 was preferred by the petitioner before the Hon'ble High Court and the same was also dismissed on 09.11.2023 by holding that this Court has jurisdiction to try the dispute. Against the said Order the petitioner also has preferred SLP before Hon'ble Supreme Court and the same was withdrawn by the petitioners and the SLP was also dismissed on 02.02.2024 and submit that the Hon'ble Supreme Court has confirmed that dispute in this suit is commercial dispute. This Court also has in paragraph No.10 and 11 of the Judgment dated 15.03.2024 has also observed that the dispute involved in this suit is commercial dispute and submit that the petitioners are now estopped to contest that the dispute is not a commercial dispute under Section 2(c)(vii) of the Commercial Courts Act. Further it is the submission of the respondent that as already the dispute involved in this suit has been already decided as Commercial Dispute, the petitioner raising the same contention before this Court is mentioned to hit by the Principle of Res-judicata and binds the parties and submit that the same could be assailed only in appeal or revision and submit that the present petition is not maintainable. In Paragraph No.7 the respondent has discussed about the admission of respondent about the execution of MOU dated

20.07.2022 in the stay affidavit appended to CRP.No.3276 of 2023 before the Hon'ble High Court dated 25.08.2023 and extracted the said portion of the affidavit which is also considered by this Court and submit that only on the ground of readiness to pay the balance sale consideration within the agreed time period in the MOU this Court in the judgment dated 15.03.2024 negated the relief of specific performance. Further, in paragraph No.8 of counter the respondent has extracted portion of affidavit filed by the petitioner in paragraph No.8 and submit that the defendants have failed to establish the loan transactions and granted the relief of refund of advance amount. Further it is the contention of the respondent that the respondent / decree holder is not interested in preferring appeal against the relief of decree of specific performance despite the fact that the finding of the Court about the MOU is wrong and contrary to Ex.A19 and Ex.A20. Further it is the submission of the respondent that the decree passed by this Court is valid and it is not nullity and submit that the alternative relief granted by this Court is in accordance with Law and there is no bar in granting such relief and submit that the decree now has become final and binding on the petitioners and submit that the petitioner could not avoid the decree on the ground of nullity. It is mentioned that the police complaint given by the petitioners are false and submit that the FIR was registered on the basis of false complaint and it is not relevant to the present proceedings. Only to cause

delay in this proceedings the petition is mentioned to have been filed by the petitioner and sought for to dismiss the petition.

4. Point for consideration: -

Whether the petition could be allowed?

Point: -

5. The petitioner in this petition has sought for to declare the Judgment and Decree passed by this Court in C.O.S.No.110 of 2023 as nullity and the decree cannot be executed. To seek such a relief the stand of the petitioner is that this Court has granted the alternative relief of refund of advance amount in the suit for specific performance after holding the MOU entered between the parties as nullity and puts forth that for the said reason there is no valid agreement exists between the parties as contemplated under Section 2(1)(c)(vii) of the Commercial Courts Act and submit that the Decree and Judgment passed by this Court dated 15.03.2024 as nullity for the reason that this Court has no jurisdiction to try the dispute, as the dispute involved in the suit no longer be treated as commercial dispute and sought for to allow the petition.

6. Admittedly both parties have not preferred the appeal against the decree and judgment of this Court dated 15.03.2024. In support of their contention the petitioner has relied on the following judgments;

- 1) **Kiran Singh and others Vs Chaman Paswan and others - 1954 (1) SCC 710 : 1954 SCC (online) 11.**
- 2) **Deepak Polymers Pvt. Ltd., Vs Anchor Investment Pvt. Ltd., and others - High Court of Calcutta - dated 24.06.2021**

7. On the side of the respondent during the oral submission following judgments were relied on:-

- 1) **Vasudev Dhanjibhai Modi Vs Rajabhai Abdul Rehman and others, MANU/SC/0531/1970,**
- 2) **A.V.Hanifa Vs Salima Dhanu, MANU/TN/0021/1992,**
- 3) **Hemanathan and others Vs N.Kupuswamy and others, MANU/TN/0105/2005**

8. During the oral submissions the Counsel on both sides have advanced their arguments on the basis of the petition and the counter averments. Hence, the same was not replicated. For the above noted contention raised by the petitioner in the petition this Court would find appropriate to refer to the Full Bench of judgment of Hon'ble Supreme Court relied on by the respondent in **Vasudev Dhanjibhai Modi Vs Rajabhai Abdul Rehman and others**, noted supra. In particular this Court would consider appropriate to extract the paragraph No.7 and 8 of the Hon'ble Supreme Court as follows and apply to the present facts:-

“7. When a decree which is a nullity, for instance, where it is passed without bringing the legal representative on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a court which has no inherent jurisdiction to make objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record: where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction.....”

"8. In the present case the question whether the Court of Small Causes had jurisdiction to entertain the suit against Munshi depended upon the interpretation of the terms of the

agreement of lease, and the user to which the land was put at the date of the grant of the lease. These questions cannot be permitted to be raised in an execution proceeding so as to displace the jurisdiction of the Court which passed the decree. If the decree is on the face of the record without jurisdiction and the question does not relate to the territorial jurisdiction or under Section 11 of the Suits Valuation Act, objection to the jurisdiction of the Court to make the decree may be raised; where it is necessary to investigate facts in order to determine whether the Court which had passed the decree had no jurisdiction to entertain and try the suit, the objection cannot be raised in the execution proceeding.”.

9. Admittedly this petition has been preferred at the execution stage. As admitted by the parties earlier the question of jurisdiction on the basis of validity of the agreement has been raised by the petitioner in I.A.No.4 of 2023 and the relief sought for by petitioner in I.A.No.4 of 2023 was dismissed by this Court and against which CRP was also preferred by the petitioner before the Hon’ble High Court, which was dismissed and SLP was preferred and withdrawn by the petitioner before the Hon’ble Supreme Court. Subsequently

after the judgment of this Court and on the basis of the findings of this Court that the MOU dated 20.07.2022 entered between the parties, is observed as suspicious one in the judgment by this Court in paragraph No.18, the petitioner has claimed that this Court no jurisdiction. Admittedly on the face of records of the suit lack of jurisdiction to try the suit by this Court is not a factual for legal circumstances involved in the suit. When the plea of lack of jurisdiction was raised before the Trial in the suit by the petitioner in I.A.No.4 of 2023 and the same was dismissed by this Court and this Court has continued the trial proceedings and passed the judgment. So, before going for trial the lack of jurisdiction on the face of records was not existing in this suit proceedings. Once this Court has decided that this Court has the jurisdiction to try the dispute after the Order of Hon'ble High Court in CRP proceedings on the point of jurisdiction, the plea of lack of jurisdiction on the face of records cannot be assumed all along the suit proceedings till the pronouncement of the judgment. When this Court has rendered the judgment after deciding that this Court has jurisdiction to try the dispute involved in the suit, again during the execution proceedings the judgment debtor filing the petition under Section 47 of C.P.C. and seeking the relief to hold the judgment of this Court as nullity in the light of the judgment of Hon'ble Supreme Court in **Vasudev Dhanjibhai Modi case** in paragraph No.7 and 8 extracted supra would not in the considered view of the Court is sustainable.

10. If at all, if the petitioner / judgment debtor has any grievance over the same, this Court would consider that as per the position laid by the Hon'ble Supreme Court in **Vasudev Dhanjibhai Modi** case the petitioner has to prefer the appeal and it could not be agitated before this Court under Section 47 of C.P.C. For the above discussed reasons this Court would consider that the petition is liable to be dismissed.

11. **In the result, the petition is dismissed. No costs.**

Dictated to the Steno-Typist, typed by him directly into the Computer, Corrected and Pronounced by me in the Open Court on this 2nd day of April 2025.

sd / **Tr. K.Hariharan, M.L.,**
Judge,
Commercial Court,
(District Judge Cadre)
Coimbatore

List of Witnesses and Documents:- Nil

sd / **Tr. K.Hariharan, M.L.,**
Judge,
Commercial Court,
(District Judge Cadre)
Coimbatore