

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

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

Tuesday, the 15th day of April, 2025

E.P. No.194 of 2024
(CNR No.TNCB22-000482-2024)

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

.... Petitioner / Decree Holder

// Vs //

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.,

.... Respondents / Judgment Debtors

This petition came up for final hearing before me on 05.04.2025 in the presence of Thiru.N.Sridhar Advocate for the petitioner / decree holder and Thiru.M.SundaraKadeswaran, Advocate for the Respondents / Judgment debtors and upon perusing the records, hearing on both sides and having stood over for consideration till this date, this court doth passed the following:-

ORDER

The petition under Order XXI Rule 66 to 68 of C.P.C. has been filed by the the petitioner / decree holder seeking to sell the petition mentioned property which was charged by this Court while passing the decree in the suit.

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

This Court has passed the decree on 15.03.2024. The petitioner has mentioned that no appeal is pending against the decree of this Court. As per the decree of this Court the respondent / judgment debtor has to pay a sum of Rs.19,52,05,899/- along with interest at the rate of 12% per annum to the petitioner / decree holder along with costs. In total the claim amount due from the respondent / judgment debtor to the petitioner is Rs.25,55,20,373/-. Since the respondent / judgment debtor has not paid the amount as per the decree, the petitioner has come up with the relief to sell the charged petition mentioned property.

3. By denying the petition averments the respondents/judgment debtors has filed the counter. The sum and substance of the counter averments which are found essential for the disposal of the petition is that:-

It is the contention of the respondent that this Court has rendered the finding in the judgment that the MOU entered between the parties is doubtful and order for refund of the advance amount and submit that the same is unsustainable under Law. It is the contention of the respondent that a Criminal proceedings have been initiated for forgery regarding the suit transactions against the Managing Partner of the petitioner and the investigation is under taken by the CBCID and is pending. Mentioning that MOU entered between the

parties is void-ab-intio and submitted that this Court has no jurisdiction to try the dispute as commercial dispute. Further it is the contention of the respondent that the judgment and decree passed by this Court suffers from nullity and submitted that the petition is not maintainable before this Court. Further it is the contention of the respondent that the petitioner has not preferred any appeal regarding the suspicious nature of MOU and mentioned that the MOU is not binding on the respondent. Further it is the contention of the respondent that the description of the property in the execution petition is not correct and sought for to dismiss the petition.

4. Point for consideration: -

Whether the petition could be allowed?

Point: -

5. Admittedly the decree has been passed by this Court. The respondent / judgment debtor has filed a petition in E.A.No.1 of 2025 before this Court under Section 47 of C.P.C. challenging the decree as Non-est and unenforceable and the same is disposed by this Court. Under these circumstances being the executing court this Court is of considered stand that this Court cannot go beyond the facts which is beyond the scope of the decree. Hence the submission of the respondent that the decree is nullity, the MOU entered between the petitioner and the respondent is not binding on the

respondent, challenge on the point of jurisdiction and challenge on the point of criminal proceedings, are all the facts which this Court cannot scrutinize in the Execution proceedings. Admittedly there is no appeal against the decree passed by this Court. It is the contention of the respondent that since there is no appeal preferred by the petitioner as to the suspicious nature of MOU, the same is not binding on the respondent, the learned counsel for the petitioner also placed the contention that the respondent has not preferred any appeal and submitted that the decree for refund of amount is binding on the respondent. Though the contentions are taken regarding the non preference of appeal on both sides, but the execution proceedings is filed for the execution of the decree of this Court. Hence what is not specified in the decree cannot be the scope of examination by this Court in this proceedings. Accordingly, this Court has passed the decree for refund of advance by charging the petition mentioned property, this Court would consider that the claim of the petitioner in the petition cannot be held unsustainable.

6. Since the charge is created over the petition mentioned property by the Court in the decree, the provisions and the procedures contemplated under Order XXI Rule 54 (3) or Order XXI Rule 58(A) shall not be applicable to this proceedings. At the same time since the charge is created, provision under Section 100 of the Transfer of Property of Act is considered by this Court. Once the charge is created by the Court, it is equally treated as simple mortgage.

When the charge created over a property is equated with simple mortgage, this Court would not go into or exercise the process of intimating to the Registrar since no such procedure is contemplated under C.P.C. or under the Transfer of Property Act.

7. The respondent has taken the contention that the property is not identified by the petitioner and mentioned that the description of the property is not correct. This Court has considered the description of property in this petition and also the property mentioned in the decree. The description in the decree passed by this Court and also the description mentioned in the petition are also one and same. Since the charge is created over the property mentioned in the decree and which is the description of the property in the petition, this Court cannot consider that the description of property mentioned by the petitioner in this petition is incorrect and considers that the petition could be allowed.

8. In the result the petition is allowed. Issue Sale Notice to the respondent, call on 28.04.2025. Batta in three days.

Dictated to the Steno-Typist, typed by him directly into the Computer, Corrected and Pronounced by me in the Open Court on this 15th 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