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

Date of decision: 28th April, 2026

\+ **EFA(COMM) 19/2025, CM APPL. 65237/2025 & CM APPL. 65855/2025**

GURMEET SAHNI
DIRECTOR OF M/S RUBANI PRODUCTONS,
AT : 22/29, 3rd FLOOR, NEAR GUJRAL NURSING HOME,
TILAK NAGAR, DELHI-58.

.....**APPELLANT**

Through: Mr. Ankit Batra, Adv.

versus

JASKARAN SINGH BATRA PROP.OF BABLU CHIK-INN
AT : SHOP NO, 9 POCKET B, DDA MARKET,
ASHOK VIHAR, PHASE-111,
DELHI-52.
MOB-9811190083
EMAIL-office@vjlaw.co.in

.....**RESPONDENT**

Through: Mr. Vineet Jindal, Ms. Urvashi Parkash, Ms. Akshita and Ms. Richa Panday, Advs.

CORAM:
HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

NITIN WASUDEO SAMBRE, J.

1. The appellant herein suffered an *ex parte* judgment and decree dated 14th February 2023 in the capacity of Director/Authorized Signatory of M/S

Rubani Productions Pvt. Ltd, wherein he had been substituted as the sole defendant consequent to the plaintiff/respondent seeking leave to amend the memo of parties to include the directors of M/s Rubani Productions.

2. The decree against the appellant/defendant reads thus:

> *"12. Accordingly, the suit is allowed and defendant is restrained from using the plaintiff's trademark Bablu-Chic-inn as well as plaintiff's logo for its business purposes in any manner whatsoever. Plaintiff is also entitled to recover the amount of Rs. 2.90 Lac as balance franchisee fee amount and Rs. 1 Lac as lump sum damages / penalty from the defendant. Defendant to pay the said amount of Rs.3.9 lacs within a period of one month from date of decree failing which interest @ 10% PA would be payable from the date of decree till actual realization."*

3. Against this, the appellant filed an application under Section 152 r/w Section 151 of the Code of Civil procedure, 1908 (**CPC**), which sought correction of the judgment and decree to the extent of his name being mentioned in personal capacity as Director of M/s Rubani Productions, and the same came to be dismissed *vide* order dated 23.04.2025, wherein the Court recorded the following reasons:

> *"Perusal of the original case, file reveals that although the original suit was filed against the original defendant M/s Rubani Productions Pvt. Ltd., but on 17.11.2021, on the submission of Ld. Counsel for the defendant that there are two directions of the defendant (company), Ld. Counsel for the plaintiff had stated that he would implead the directors as party as per law and file amended memo of parties, which was allowed by Ld. Predecessor. Consequent thereupon, the plaintiff had filed the amended memo of parties on 25.11.2021. In the amended memo of parties, in place of sole original defendant M/s Rubani Productions Pvt. Ltd., applicant/defendant Gurmeet Sahni was substituted as sole defendant. Furthermore, although the defendant was initially contesting the suit, but later on appearance on behalf of defendant was discontinued and accordingly defendant was proceeded ex-parte vide order dated*

22.09.2022. The judgment and decree in question were passed with the following title "Jaskaran Singh Batra Prop. Bablu Chick-Inn Vs Gurmeet Sahni Through Its director/authorized signatory M/s Rubani Productions Pvt. Ltd.". Thus, it is clear that the judgment in question was passed against Gurmeet Sahni only as in the title of the said judgment and decree the name of defendant is mentioned as "Gurmeet Sahni" only. Merely because in the footnote of each page of the judgment, the title of the matter is mentioned as "Jaskaran Singh Batra Vs Rubani Productions Pvt. Ltd.", no benefit can accrue to the defendant as same appears to be a typographical error, in view of the clear substitution of Gurmeet Sahni as defendant by the I.d. Predecessor and mentioning of name of Gurmeet Sahni as defendant in the judgment and decree in question. Whether the judgment could have been passed against the applicant/substituted defendant Gurmeet Sahni in his individual capacity as director of M/s Rubani Productions Pvt. Ltd., is a legal question and once the Ld. Predecessor had passed the judgment, against the said judgment, this Court cannot sit in appeal on the same and same is the reasoning of this Court for not passing the judgment and decree in question against M/s Rubani Productions Pvt. Ltd.. In my considered opinion, neither there is any typographical nor clerical error in the name of defendant in the judgment and decree. Hence the relief sought on the merits of the matter, cannot be permitted u/s 152 r/w Sec. 151 CPC. Accordingly the application is dismissed and is disposed of."

4. Thereafter, proceedings were initiated against the appellant in the matter of the execution of the decree.

5. The appellant filed another application under Section 151 CPC, before the executing court, seeking the passing of a speaking order *qua* his objections filed under Order XXI Rules 26 and 59 r/w Section 47 of the CPC against the execution petition, which came to be dismissed *vide* order dated 19.09.2025 wherein a reference was made to earlier order dated 23.04.2025 (whose portion stands reproduced *supa*) holding that it was clear that the judgment and decree in question were passed solely against the appellant, and that the same have attained finality.

6. The present appeal impugns aforesaid order dated 19.09.2025 as well as the execution petition bearing no. EX-282/2023, raising, amongst others, the objection that the decree which is sought to be executed is an *ex parte* decree.

7. It is further urged that the franchise agreement dated 12th January 2021 was executed between the original plaintiff and M/S Rubani Productions Pvt. Ltd, and that the present appellant is one of the directors of Rubani Productions Pvt. Ltd. who as such cannot be held liable in his individual capacity.

8. That being so, he has not only sought a stay on the execution but also urges upon the non-executability of the decree against him.

9. The appellant submits that the scheme under Section 47 of the CPC contemplates the question to be determined by the court executing the decree.

10. According to him, the question that is raised through the objection to the execution proceedings is in regard to the non-executability of the decree as the appellant in the capacity of Director of the original defendant cannot be held liable in a personal capacity.

11. In addition to the above, the provisions of Order XXI Rule 26 of the CPC are sought to be relied on to urge that the execution proceedings in the aforesaid background are liable to be stayed as under Order XXI Rule 58 the executing court is required to adjudicate the claim/objection of the appellant concerning execution of the decree.

12. As against above, the learned counsel appearing for the

respondent/decree holder would oppose the prayer. According to him, it is a settled position of law that the executing court cannot go behind the decree and in such an eventuality, once the appellant was a party to the suit so also the decree in question, he has no legal basis to claim that the decree cannot be executed against him.

13. It is further urged that the appellant has not questioned the decree and that the same has attained finality, as such dismissal of the appeal is sought.

14. We have considered the aforesaid submissions.

15. With the assistance of counsel, we have gone through the judgment and decree in question. The suit was based on the franchise agreement dated 12th January 2021 between M/s Rubani Productions and the respondent. Though the appellant had initially participated in proceedings, he thereafter chose not to appear in the matter, and the suit came to be decided *ex parte* against the appellant.

16. The decision *qua* the decree passed in the suit in question was of 14th February 2023 and admittedly the appellant has not questioned the said decree before a competent court having jurisdiction.

17. As such, we have reason to believe that the said decree has attained finality against the appellant through a reading of the relevant provisions of the CPC and that of the Commercial Courts Act, 2015.

18. Once the decree was passed, the appellant, being party to the same, became bound by such decree as also in the execution proceedings. The appellant was then proceeded against in the matter of execution of the judgment and decree dated 14th February 2023.

19. Rightly so pointed out by the learned counsel for the respondent that the executing court cannot go behind a decree and it is not that the decree can be said to be illegal or has been stayed by any court of competent jurisdiction.

20. The only ground which is sought to be raised is the shelter under Section 47 of the CPC so as to urge that the appellant has raised a question that the decree cannot be executed against the appellant in his personal capacity.

21. However, the same may not be adjudicated at the stage of execution. It ought to be noted that the appellant has chosen neither to assail the *ex-parte* judgment and decree under either Order 9 Rule 13 of the CPC, nor through a regular first appeal.

22. Pertinently, it was upon the submission of counsel representing the erstwhile sole defendant to the suit, M/s Rubani Productions, that counsel for the plaintiff submitted that he would implead the directors of M.s Rubani productions and file an amended memo of parties. The same is evident from a perusal of order dated 17.11.2021 in CS (COMM) 498/2021. The same stands reproduced below for ready reference:

> "   ***CS (COMM) No.498/21***
> ***JASKAR SINGH BATRA PROP. BABLU CHIC-INN Vs. M/S RUBANI PRODUCTIONS P. LTD.***
>
> ***17.11.2021***
>
> ***PHYSICAL HEARING***
>
> *Present: Sh Vineet Jindal, Ld Counsel for the plaintiff.*
> *Sh Ankit Batra, Ld Counsel for the defendant.*
> *Memo of appearance filed by the Ld Counsel for the defendant.*

Ld Counsel for the defendant has stated that there are two Directors of the defendant. Ld Counsel for the plaintiff states that he would implead the Directors as party as per law and file amended memo of parties. Same is allowed.

On request of Ld Counsel for the defendant, list the matter on 18-12-2021 for reply/arguments on application under order XXXIX Rules 1 & 2 and also for filing WS.

(Dinesh Bhatt)
District Judge (Commercial Court)-01
West, Tis Hazari Courts, Delhi 17.11.2021"

23. However, the amended memo of parties thereafter filed contained *only* the name of the appellant, impleaded as the sole defendant, thereby deleting the name of M/s Rubani Productions from the array of parties, and the act of doing so was neither taken notice of nor objected to at the relevant stage.

24. Perusal of the order also reveals that Mr. Ankit Batra, learned counsel appearing now on behalf of the appellant, was also representing erstwhile sole defendant M/s Rubani productions at the time.

25. The Hon'ble Supreme Court has held in a catena of judgments that an executing court cannot sit in appeal over a decree, nor reopen the adjudication of the rights of parties to the decree. What is to be determined is only whether the decree in question has been passed by a court lacking inherent jurisdiction, or is otherwise a nullity rendering it *non-est*, and thus non-executable. Mere allegations to the erroneous nature of the decree cannot render the decree a nullity.

26. The submissions canvassed by learned counsel appearing on behalf of the appellant to the extent of impleadment of a director in his personal capacity neither persuades us that the court passing the decree in question lacked the inherent jurisdiction to do so, nor are we satisfied that this argument would render the decree passed a nullity as it requires a revisitation of the merits of the matter and is therefore beyond the scope of the present exercise.

27. Right from the decision in ***Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman***[1], to that in ***Brakewel Automotive Components (India) (P) Ltd v. P.R. Selvam Alagappan***[2], the consistent position of law has been that courts in execution proceedings must take the decree according to its tenor, and cannot entertain any objection to the effect that the decree was incorrect in law or on facts unless it is set aside by appropriate proceedings in appeal or revision.

28. As the execution of a decree is strictly conformed to the same, the decree is required to be executed as it is.

29. A decree cannot by process of execution enlarge the liability so as to bind a person who was not party to the decree. In the case in hand, though originally the company was a party, the appellant was substituted to the same, who contested the matter on merits and suffered the decree.

30. Though it is urged by learned counsel for the appellant that there were no pleadings as regards the appellant in the capacity of Director has abused, for fraudulent or dishonest purpose, his authority, such issue is not open for

[1] **(1970) 1 SCC 670**
[2] **(2017) 5 SCC 371**

consideration in the execution proceedings as the Executing Court has to maintain the tenure of the decree.

31. Though within the scope of Section 47 of the CPC, the Executing Court can always rule that a decree passed without jurisdiction is nullity and *void ab initio* and as such is not executable, is not the case of the appellant.

32. For the aforesaid reasons, we are of the view that the findings recorded by the executing court cannot be faulted with and as such the appeal lacks merits.

33. However, we grant liberty to the Appellant to avail his remedies in accordance with law by challenging the ex parte judgment and decree dated 14.02.2023.

34. The appeal, along with pending applications, stands dismissed.

NITIN WASUDEO SAMBRE
(JUDGE)

AJAY DIGPAUL
(JUDGE)

APRIL 28, 2026/*AS/av/ay*