IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL EXECUTION APPLICATION (Lodging) NO.2701 OF 2018
WITH
INTERIM APPLICATION NO.618 OF 2019
WITH
INTERIM APPLICATION NO.6708 OF 2025
IN
COMMERCIAL EXECUTION APPLICATION NO.2701 OF 2018

Surinder Kumar Banga **...Applicant**

V/s.

Sucheeta Kedarnath Sethi **...Respondent**

INTERIM APPLICATION NO.2066 OF 2024
IN
COMMERCIAL EXECUTION APPLICATION (Lodging) NO.2701 OF 2018

Sucheeta Kedarnath Sethi **...Applicant**

V/s.

Surinder Kumar Banga and Anr. **...Respondents**

Mr. Kirti Munshi, *Senior Advocate with Mr. Shilpan Gaokar & Mr. Prabhakar M. Jadhav for the Applicant in COMEX(L)/2701/2018, IA/618/2019 & IA/6708/2025.*

Mr. Shanay Shah *with Mr. Yashpal Jain, and Ms. Jahnavi Vora for the Applicant in IA/2066/2024 & for Respondent No.1 in COMEXL/2701/2018.*

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 22 JULY 2026.

Judgment pronounced on: 4 AUGUST 2026.

JUDGMENT:

1) The Applicant- Decree Holder has filed the present Application under Order XX Rule 11 of the Code of Civil Procedure, 1908 (**the Code**) for execution of the amended Award dated 30 October 2017.

2) A Partnership Deed dated 24 March 1993 was executed for carrying on business of the Firm M/s. Hotel Windsor (**the Firm**) at 10 Kumpta Street, Ballard Estate, Fort, Mumbai-400038 with three partners viz., Mrs. Sudarshan K. Sethi, Shri S.K. Banga and Mrs. Suchita Kedarnath Sethi. One of the partners, Ms. Sudarshan passed away on 8 March 2008 and business of partnership firm continued with two surviving partners. Disputes and differences arose between the two partners and accordingly clause (23) of the Deed of Partnership was invoked for resolution of disputes by arbitration. A Tribunal comprising of a sole Arbitrator was constituted. In the meantime, the Applicant gave notice on 2 December 2011 expressing desire to retire from the Firm w.e.f. 31 January 2012. The Arbitral Tribunal made Award dated 9 August 2017. On 30 October 2017 amended Award was published declaring that the partnership stood dissolved as on 31 January 2012. It was declared that the share of the Applicant and the Respondent in the partnership assets is 40:60. Out of the available fund of the Partnership Firm, the Applicant-Surinder Kumar Banga was allotted Rs.54,82,874/- and the Respondent-Sucheeta Sethi was allotted Rs.56,60,541/-. The Tribunal further directed that other movable and immovable assets on realisation of sale or otherwise be distributed in the ratio of 40:60. Flat No.33A was allotted to the Applicant and Flat No.34A was allotted to the Respondent.

3) The Respondent is the lessee of Mumbai Port Trust in respect of the land and building in which the structure – Hotel Windsor is situated. According to the Applicant, tenancy rights in respect of the premises of Hotel Windsor were created in favour of the Firm and this position is disputed by the Respondent. After dissolution of the Firm, the Respondent has retained possession of Hotel Windsor and continued to run the same as her sole proprietary business.

4) The Respondent filed Arbitration Petition No.166 of 2018 under Section 34 of the Arbitration and Conciliation Act, 1996 (**the Arbitration Act**) challenging only a part of amended Award to the extent of operative clauses (c), (d) and (e) thereof. The Respondent has not disputed direction for dissolution of Firm and for sharing of partnership assets in proportion of 40:60. So far as direction in clause (c) of the Award is concerned, though the same was challenged in Section 34 Petition, the Respondent has consented for execution of clause (c) of the Award and accordingly the Applicant has withdrawn amount of Rs.54,82,874/-. Similarly, there is no dispute between the parties in relation to direction in clause (f) of the Award. During pendency of the Section 34 Petition, Applicant has filed the present Execution Application on 23 October 2018 for recovery of amount of Rs.9,83,83,046.40 calculated as on 16 October 2018 with further interest @ 9% per annum. During pendency of the present Application, Arbitration Petition No.166 of 2018 came to be dismissed by the learned Single Judge of this Court vide order dated 19 August 2019 /21 August 2019. The Respondent has preferred Appeal No.531 of 2019 challenging the order of the learned Single Judge. By order dated 5 April 2021, the Appeal Court has admitted the Appeal and

has stayed directions in clause (d) of operative part of the impugned Award.

5) The Applicant has filed the Interim Application No.618 of 2019 for payment of awarded amount of Rs.54,82,874/- for attachment of the balance amount lying in current account of the Firm or to bring the said amount to the Court and for direction against the Respondent for disclosure of movable and immovable assets and properties, etc. By order dated 16 June 2020 passed in Interim Application No.618 of 219, prayer clause (a) in the Interim Application for payment of amount of Rs.54,82,874/- has been granted and accordingly the Applicant has received the said amount.

6) Interim Application No.2066 of 2024 is filed by the Applicant for release of amount of Rs.54,71,248.79. Interim Application No.6708 of 2025 is taken out by the Respondent seeking direction against the registry for finally numbering the Commercial Execution Application (L) No.2701 of 2018. The Execution Application is taken up for hearing alongwith pending Interim Applications.

7) I have heard Mr. Munshi, the learned Senior Advocate appearing for the Applicant. He has submitted that in the Award, the tenanted premises are held as assets of the dissolved Firm and that the Arbitral Tribunal has determined the value of that asset at Rs.17,85,94,000/- .That therefore, the Applicant is entitled to receive from the Respondent, through execution, 40% amount of Rs.17,85,94,000/- alongwith interest. That on dissolution of a partnership, every partner has a statutory right to have its assets realised and converted into cash. In support, he relies

on judgments of the Apex Court in ***Addanki Narayanappa and Another V/s. Bhaskara Krishnappa and 13 Others***[1], ***Commissioner of Income Tax, Madhya Pradesh V/s. Dewas Cine Corporation***[2] and of Madras High Court in ***N. Muhammad Ussain Sahib and Another V/s. S.N. Abdul Gaffoor Sahib and Others***[3] in support of his contention that on severance of its ties between the partners, *inter se* rights and entitlement of each partner to monies worth the value of the assets of the dissolved Firm must be settled by final amount. That this has been done by the Arbitral Tribunal and modes of effecting a final settlement /adjustment between the partners *inter se* can be done in various ways as enumerated under Section 60 of the Code. That this falls within the functions of the Executing Court and need not be mentioned in the Award.

8) Mr. Munshi further submits that post dissolution of the partnership firm, the relationship between the partners is that of debtor and creditor. In support, he relies on judgments of Patna High Court in ***Mistri Goa Petha V/s. N.H. Moos***[4], ***Mohamad Ali V/s. Karji Kondho Rayaguru***[5] and Division Bench of this Court in ***Karamchand Pessumal V/s. Madhavdas Savaldas and others***[6]. That therefore, the Applicant can execute the decree /Award as a decree for payment of money against the Respondent individual and can proceed against her personal properties. That execution is not restricted to tenanted premises of the dissolved Firm in respect of which the Respondent is a landlady. That the Respondent has otherwise appropriated the tenanted premises towards her share and therefore, the Applicant is entitled to amount of

1 1966 SCC OnLine SC 6
2 AIR 1968 SC 676
3 A.I.R. (37) 1950 Madras 758
4 ILR (1931) 10 Pat 792
5 1945 SCC OnLine Pat 191
6 AIR 1956 Bom 669

Rs.9,83,83,046.41 till 16 October 2018 alongwith future interest. Having chosen to appropriate the tenanted premises, the Respondent is liable to pay the value of the said appropriated asset. That the Applicant is not a debtor to the Respondent. That the Respondent has appropriated most valuable asset of the Firm towards her 50% share without compensating the Applicant for his 40% admitted share. That therefore the Respondent is a debtor of the Applicant in respect of amount of Rs. 9,83,83,046.41 as on 16 October 2018.

9) Mr. Munshi would rely upon provisions of Section 31(7) (b) of the Arbitration Act in support of his contention that when arbitral Award is silent in respect of the past awarded interest, there is a statutory provision for payment of interest.

10) Mr. Munshi further submits that the Respondent has violated the interim order passed by this Court on 17 February 2020 under which she was restrained from creating third party rights in the immovable properties. That the Respondent has sold Dharamshala by name Dayalkunj Punjabi Dharmshala at Govindbaug, Vrindavan sometime in June 2021 for Rs. 60,69,500/-. That the Respondent has exhibited contemptuous conduct by committing willful violation of interim order passed by the Appeal Court and has relied upon judgments of the Apex Court in ***Balwantbhai Somabhai Bhandari V/s. Hiralal Somabhai Contractor (deceased) represented by LRs and Others*** [7], ***Chithra Woods Manors Welfare Association V/s. Shaji Augustine*** [8], and ***Celir LLP V/s. Sumati Prasad Bafna and Others***[9]. On above broad submissions,

7 (2023) 17 SCC 545
8 2025 SCC OnLine SC 931
9 2024 SCC OnLine SC 3727

Mr. Munshi prays for making the Execution Application as well as Interim Applications absolute in terms of prayers made therein.

11) Mr. Shanay Shah, the learned counsel appearing for the Respondent opposes the Execution Application by submitting that the Applicant is clearly attempting to convince the Court to travel behind the decree. That it is well settled position that execution court is bound by the decree and cannot go behind the same. In support, he relies on judgments of the Apex Court in ***Sanwarlal Agrawal and Others V/s. Ashok Kumar Kothari and Others*** [10], and ***State of Punjab and Others V/s. Krishan Dayal Sharma*** [11]**.** He submits that the Applicant is seeking to execute operative direction in clause (d) of the Award contrary to the stay granted by the Appeal Court vide order dated 5 April 2021. That in the light of stay granted by the Appeal Court, there is no question of sale of hotel premises nor payment of sale proceeds to the Applicant. That the Award does not make any money decree in terms of operative clause (d) and merely directs distribution of sale proceeds of the Hotel premises in proportion as 40:60. That therefore, it is impermissible to recover any money from the Respondent by dealing with her other personal assets. That the Respondent is not a judgment debtor and in fact an award creditor. That under the provisions of Order XXI Rule 19 of the Code, since there are cross claims, only the award creditor having larger claim can file execution proceedings. That therefore present execution application filed by the Applicant is not even maintainable.

12) Mr. Shah further submits that the Respondent has questioned the Award of the Arbitrator declaring hotel premises as tenanted assets of

10 (2023) 7 SCC 307
11 (2011) 11 SCC 212

the partnership Firm. He takes me through the appeal memo and submits that no tenancy was ever created in the name of the Firm. That the Respondent is otherwise a landlady in respect of the premises and it is impermissible to deal with hotel premises without consent of the landlady. That therefore operative clause (d) of the Award is otherwise unenforceable and has been stayed by the Appeal Court. He further submits that operative clause (d) of the Award uses the expression 'or otherwise' meaning thereby that sale is not the only mode prescribed for monetisation of movable and immovable assets of the Firm. In support of his contention that the expression 'or otherwise' needs *ejusdem generis* interpretation, he relied upon ***United Bank of India V/s. Pijush Kanti Nandy and Others[12].*** Mr. Shah submits that the Execution Application is faulty as the same seeks to recover interest, which is not awarded by the Award. He prays for dismissal of the Execution Application.

13) Rival contentions urged on behalf of the parties now fall for my consideration.

14) By the present Application filed for execution of the impugned Award dated 30 October 2017, the Applicant has sought recovery of Rs.9,83,83,046.41 as on 16 October 2018 with further interest @ 9% per annum. The mode of execution suggested in the Application is for issuance of warrant of attachment in respect of immovable properties being leasehold rights in respect of the commercial premises at Gyan Bhavan Building at 10 Kumpta Street, Fort, right, title and interest of the Respondent as Lessee in respect of first floor, second floor, room No.62

12 (2009) 8 SCC 605

on the third floor of Gyan Bhavan Building (**Windsor Hotel Premises**), commercial premises at 26, Adi Murzban Road, Shahid Bhagat Singh Road, Fort, Mumbai, where the Respondent carries on business in the name and style as 'Hotel Traveller's Inn' and amounts lying in various accounts, etc.

15) By amended Award dated 30 October 2017, the Arbitral Tribunal has declared that the partnership in the name and style as M/s. Windsor Hotel stood dissolved as on 31 January 2012 and thus the share of the Applicant and the Respondent in the assets of the partnership Firm is 40:60. The operative directions in the amended Award are as under:-

> a) It is declared that the Partnership stands dissolved as on 31.01.2012.
>
> b) It is declared that the share of the Claimant and the Respondent in partnership assets is 40:60.
>
> c) The Claimant is allotted Rs.54,82,874/- and Respondent is allotted Rs.56,60,541/-.
>
> d) Other movable and immovable assets on realization by sale or otherwise to be distributed in the ratio of 40:60.
>
> e) Dena Bank to issue cheques for the respective amounts set out in (c), in favour of Claimant and Respondent on a copy of this Award being served on them.
>
> f) Flat No.33A is allotted to the Claimant along with respective parking place and Flat No.34A is allotted to the Respondent with respective parking space.
>
> g) Each party to bear their own costs.

16) There is nothing to be executed in terms of operative clauses (a) and (b). So far as operative directions in clauses (c) and (e) are concerned, the same relate to entitlement of the Applicant to receive Rs.54,82,874/-. By virtue of order dated 16 June 2020 passed in Interim Application No.618 of 2019, the Applicant has received amount of

Rs.54,82,874/-. The amount to the share of the Respondent is Rs.56,60,541/- is apparently still lying in the concerned account. So far as operative direction in clause (f) of the final Award is concerned, there is nothing to be executed since both the parties have already received their respective flats. Thus, what needs to be executed now is operative clause (d) of the final Award, under which the Applicant is supposed to receive 40% share upon sale of movable and other immovable assets of the partnership Firm. The Arbitral Tribunal has conducted detailed inquiry into the assets of the firm. Issue No. 3 was framed about the assets of the Firm, which was as under:

Issue No.3	Finding
What are the assets of the firm, Hotel Windsor on the date of its effective dissolution i.e. on 31st January, 2012 and what is the valuation of each asset and property of the firm as on 31st January 2012?	a) The Assets of the Firm are as under:- i) Two Flats being Flat No.33A and 34A along with Parking lots at Mira Road. ii) Tenanted premises of the Firm where the Hotel was being running along with Goodwill. iii) Account No.000111002801 with Dena Bank, Main Branch, Mumbai. (iv) Fixed Deposit Receipts which have been encashed and proceeds credited to the Partnership Account with Dena Bank. This issue is answered accordingly.

17) The Arbitral Tribunal held that the tenanted premises where the Hotel is being run forms the asset of the partnership. Issue No.3 has been answered by the Arbitrator by recording following reasons:

> Issue No.3:
>
> a) Parties agree that the assets of the firm are (a) the 2 flats, (b) the Fixed Deposit receipts, (c) the balance lying in the account of the Partnership

and (d) Articles of the Hotel a list of which has been drawn up and part which has been sold and the amount credited in the Bank.

b) There is however a dispute whether the Tenancy rights in the building Gyan Bhavan is an asset of the Partnership. I therefore proceed to answer the said issue.

c) The tenancy consists of the entire first and second floors and room No.62 on 3rd Floor of Gyan Bhavan.

d) By an application dated 26.06.2014, the Respondent had raised a plea that the Tribunal has no jurisdiction to decide the Issue of tenancy. The contention raised was that the Respondent has not accepted that the Partnership is a tenant of the premises. By an Order dated 28.06.2014 the application was rejected. It was held that there is no dispute in the pleadings that the firm is not a tenant. Hence no issue on that count would arise. However as the point has been raised, the same can be decided.

e) The Claimant in Para 2(p) of the Claims Statement has pleaded that Hotel Windsor is a tenant in respect of the First Floor, the second floor and room No.62 of the 3rd Floor of Gyan Bhavan. Rent in respect of Hotel premises has been paid from 16 January, 1981 to November 2011 first to the late Kedarnath Haveliram Sethi, thereafter to the late Sudarshan Kedarnath Sethi and after the death of Sudarshan Kedarnath Sethi to the Respondent as one of the heirs of the late Kedarnath Sethi. In Para 20 in answer to para 3(p) of the Claims Statement has stated that as Landlady of the firm M/s. Hotel Windsor the Respondent is entitled to terminate the tenancy of the firm.

xxxx
xxxx

0) The question for consideration therefore is whether the evidence records that there is no dispute that the firm Hotel Windsor is a tenant. Firstly the property Gyan Bhavan was a tenanted property which was purchased by Kedarnath in the year 1981. The Claimant in his pleadings in Para 3(q) has set out that rent in respect of Hotel premises have been paid from 16th January 1981 to November 2011 first in the name of Late Kedarnath Haveli Ram Sethi, thereafter to the late Sudarshan Kedarnath Sethi and after her death to the Respondent. Kedarnath Sethi could not have created a personal tenancy in himself, however he could have created the tenancy in favour of Hotel Windsor. The fact was tenancy was created in favour of Hotel Windsor is evident by the fact that it was the firm Hotel Windsor which was paying the rent and the rent receipts were being issued in favour of the firm. Secondly Exhibit R-1-31 the legal notice by Advocate Patel representing the Respondent clearly admitting that Hotel Windsor was the tenant of the premises. The Respondent in her pleadings in Para 20 has asserted that she as landlady was entitled to

terminate the tenancy of the firm. Next in the cross examination in Answer to Q.23, Q.24, Q.25 and Q.26 which we have reproduced earlier, the various documents and pleas of tenancy that have been put to her which she admits the tenancy of the firm and does not take any stand contrary to that. Lastly before the Tribunal the Respondent has moved an application that the firm must pay her increase rent of 4% which application was allowed.

In my opinion considering all these factors it has to be accepted that Hotel Windsor the Partnership Firm was a tenant of the premises.

(emphasis added)

This is how the Arbitral Tribunal has held that the premises in which Hotel Windsor is run were the assets of the partnership Firm.

18) After having held that the tenanted premises of the Firm where Hotel Windsor was being operated and goodwill thereof would form assets of the Firm, the Arbitral Tribunal proceeded to determine the value of the tenancy rights. It took into consideration the valuer's report and observed in paragraphs 19(a) and (b) as under:

19a) The Claimant had examined Dr. Roshanali Hasanali Namavati as CW-2. The said witness had produced a valuation report and the list of assets of the firm. The firm had two flats being Flat No.33A and Flat No.34A. The said witness had valued each flat at Rs.28,60,000/- and the parking area at Rs.1,76,000/-. Thus, the flat alongwith the parking area would be of the value of Rs.30,36,000/- each.

b) The said witness in his report had valued the tenancy rights. He has arrived at a value of Rs.17,85,94,000 as fair value of tenancy rights. The summary of the valuation done by him is as under:

Valuation done by him is as under:

Valuation of tenancy rights (P)	Rs.17,85,94,000/-
Valuation of goodwill (Q)	Rs.86,54,000/-
Valuation of fixed assets excluding Mira Flats (R)	Rs.14,35,000/-
Valuation of right to net Income (Profit)(S)	Rs.2, 40,38,000/-
Valuation of Mira flats (see annexure-1)	Rs.60,72,000/-
	Rs.21,87,93,000

19) Thus, the Arbitral Tribunal has determined the value of tenancy rights at Rs.17,85,94,000/- in the Award. According to the Applicant, he is entitled to receive 40% of amount of Rs.17,85,94,000/- under operative clause (d) of the final Award.

20) Challenge to the final Award under Section 34 of the Arbitration Act has failed as the learned Single Judge of this Court has dismissed Arbitration Petition No.166 of 2018 vide orders dated 19 August 2019 as corrected on 21 August 2019.

21) The Respondent has filed Appeal No.531 of 2019 under Section 37 of the Arbitration Act challenging the order of the learned Single Judge dated 19 August 2019/21 August 2019. The Appeal has been admitted by the Division Bench of this Court vide order dated 5 April 2021. Order passed by the Division Bench reads thus:

> Mr. Munshi learned counsel for the respondent waive service.
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> 2. The appellant had only challenged the directions issued by the learned Arbitrator in paragraphs (c), (d) and (e) of the operative part of the Award. The learned Single Judge however has dismissed the Arbitration Petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996. Mr. Munshi, learned counsel for the respondent states that as far as the amount allotted to his client in paragraph (c) of the operative part of the award in the sum of Rs.54,82,874/- is concerned, his client had already withdrawn the said amount. Insofar as the directions in paragraph (f) is concerned, both the parties are allotted two separate flats with respective parking space.
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> 3. The main arguments advanced by the learned Senior Counsel today is on the directions issued by the learned Arbitrator in Clause (d) of the operative part of impugned award and mainly on the ground that even if this appeal is dismissed by this Court, the appellant being also a landlord in respect of the said tenanted premises in question would have right to raise objection at the stage of execution of the sale of the tenancy rights. The matter requires consideration.

4. Admit.

5. The impugned award insofar as the directions issued in paragraph (d) of the operative part is stayed. None of the parties shall create any third party interest in respect of the said property during the pendency of the appeal.

6. Parties are at liberty to file compilation forming part of the record before the Arbitral Tribunal with the office within eight weeks from today with a copy to be served upon the other side simultaneously.

22) Thus, the Division Bench of this Court has stayed operative direction in clause (d) of the amended Award with further directions that none of the parties shall create any third-party interest in respect of the premises where Hotel Windsor was being operated by the partnership Firm during pendency of the Appeal. Thus, direction for distribution of the sale proceeds of tenancy rights in the hotel premises is stayed by the Division Bench. Therefore, as of now, neither the tenancy rights in the hotel premises can be sold nor sale proceeds can be distributed. In my view therefore, operative clause (d) of the final Award cannot be executed on account of stay granted by the Division Bench by order dated 5 April 2021 passed in Appeal No.531 of 2019.

23) Faced with the above situation, Mr. Munshi has contended that since partnership is dissolved, every partner has a statutory right to have all the assets of the Firm realised and converted into cash. In support of his contention, he has relied upon judgments of the Apex Court in ***Addanki Narayanappa*** (supra) in support of proposition that during subsistence of the Firm, the right of the partner is to only get his share of profits and it is only upon dissolution of the Firm, partner is entitled to get value of his share in the net partnership assets. He has also relied on judgment of the Apex Court in ***Commissioner of Income Tax, Madhya Pradesh V/s. Dewas Cine Corporation*** (supra) in support of the

contention that when a property is brought into the partnership firm by the partners upon its formation or which is acquired during the course of business, the same becomes property of partnership and a partner is entitled, upon dissolution, to a share in the money representing the value of the property. He has relied on judgment of the Madras High Court in ***N. Muhammad Ussain Sahib*** (supra) in support of the contention that upon dissolution of partnership or upon retirement of partner, the settlement of his account cannot be on a notional basis, but needs to be on a real basis, meaning thereby that every asset of the partnership firm should be converted into money and the amount of each partner needs to be settled on that basis.

24) The Applicant has essentially canvassed the proposition of conversion of assets of partnership into cash/money with a view to get over stay granted by the Appeal Court to operative clause (d) of the amended Award dated 5 April 2021. The Applicant is aware of the position that the tenanted premises as a whole cannot be sold or monetised during pendency of the Appeal, which is a reason why he desires that the monetary value of the tenanted premises be determined and Applicant's 50% share be recovered from sale of other personal assets of the Respondent. The Applicant submits that such monetary value is already determined by the Arbitral Tribunal at Rs.17,85,94,000/- and that therefore the Applicant is entitled to execute that Award for recovery of 40% of such determined value through attachment and sale of other personal assets of the Respondent.

25) In my view however, during operation of stay order dated 5 April 2021, the Applicant cannot pray before the executing court to directly

recover from the Respondent 40% share of determined value of the tenanted premises of the Hotel. The tenanted premises cannot be sold or otherwise monetised on account of stay order dated 5 April 2021. The executing court cannot circumvent the stay order and proceed with recovery of 40% of Rs.17,85,94,000/- by treating it as the value of the tenanted premises. The Respondent has challenged findings of the Arbitral Tribunal about creation of tenancy in respect of hotel premises in favour of the partnership Firm. Since this very finding is under challenge before the Appellate Court, the stay granted to operative clause (d) of the amended Award needs to be understood in proper context and no execution proceedings can be maintained, at this stage, in relation to the tenancy rights in respect of the hotel premises.

26) In the pending appeal the Respondent has specifically questioned correctness of findings recorded by the Arbitral Tribunal about creation of tenancy in respect of the premises where Hotel Windsor was being operated by the partnership Firm. The Respondent claims that no such tenancy was created and correctness of those findings in the arbitral Award are subject matter of challenge in the pending Appeal. In case the Respondent succeeds in setting aside the finding that tenancy was created in favour of the Firm or that tenancy rights are assets of the Firm, the Applicant would not be entitled to any share in respect of the sale proceeds of those premises. Therefore, the Executing Court cannot circumvent the stay order of the Appeal Court by holding that the share of the Applicant in monetary value of those premises can be recovered through other personal assets of the Respondent. Since those premises cannot be sold or dealt with during pendency of the appeal, the Executing Court cannot get over that difficulty by holding that monetary

value of operative clause (d) of the final Award is already ascertained and that 40% of that monetary value can always be recovered through personal assets of the Respondent.

27) I am also not inclined to accept contention sought to be raised by Mr. Munshi that relationship between the Applicant and the Respondent *qua* direction in clause (d) of operative part of the Award is that of creditor and debtor. There is no money decree made in favour of the Applicant under clause (d) of the operative part of the Award. Clause (d) merely envisages sale or otherwise monetisation of the tenanted premises and distribution of sale proceeds in the ratio of 40:60. While entertaining the execution proceedings, this Court cannot go behind the decree and read into the same something which is not specifically awarded. The law is well settled that an Executing Court cannot go behind the decree. It must take the decree as it stands. While executing the decree, the Executing Court is only concerned with execution part of it and nothing else. The Court has to take the judgment and the decree in its face value. Even though in a given case, the Executing Court may interpret the decree in the process of giving true effect to the decree, at the same time it needs to be very cautious in its interpretation and must also be conscious of the fact that it cannot draw a new decree. Reliance by Mr. Shah on judgment of the Apex Court in ***Sanwarlal Agrawal*** (supra) in this regard is apposite, in which the learned Single Judge of this Court has held that the decree was ambiguous and that the Executing Court was competent to construe the decree by looking into the pleadings. The Division Bench of this Court had concurred with the Single Judge and had held that mere consideration of pleadings does not constitute going behind the decree. The Apex Court has set aside the orders passed by the

learned Single Judge and by the Appeal Court and has held in paragraphs 16 to 18 and 21 as under:

> 16. This Court has time and again cautioned against the Execution Court adopting such an approach. In Topanmal Chhotamal v. Kundomal Gangaram, a three-judge bench held as follows:
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> > "It is a well-settled principle that a Court executing a decree cannot go behind the decree: it must take the decree as it stands, for the decree is binding and conclusive between the parties to the suit".
>
> 17. Yet again, in Meenakshi Saxena (supra) it was reiterated that:
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> > "The whole purpose of execution proceedings is to enforce the verdict of the court. Executing court while executing the decree is only concerned with the execution part of it but nothing else. The court has to take the judgment in its face value. It is settled law that executing court cannot go beyond the decree. But the difficulty arises when there is ambiguity in the decree with regard to the material aspects. Then it becomes the bounden duty of the court to interpret the decree in the process of giving a true effect to the decree. At that juncture the executing court has to be very cautious in supplementing its interpretation and conscious of the fact that it cannot draw a new decree. The executing court shall strike a fine balance between the two while exercising this jurisdiction in the process of giving effect to the decree." 9 Topanmal Chhotamal v. Kundomal Gangaram, AIR 1960 SC 388.
>
> 18. As is commonly known, the stream cannot rise above its source. Both Courts have, by selectively perusing the emails, altered the terms of the decree to include the loan amount into the agreement consideration. It is also imperative to note that such a reading was despite the clauses in the joint venture agreement entered into between the parties in 2017, which provided for a separate mechanism of settling all outstanding loans:
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> > "Clause 4: In case of a deadlock, there will be bidding between the groups for sale of shares to each other, and the group offering higher valuation for shares (successful bidder/buyer) will retain the company, preferably by making onetime payment or as per terms agreed by both groups, but not exceeding 180 days from the date of bidding/agreement in any case.
> >
> > Clause 5: Whatever consideration and payment time line is decided mutually between the groups for share transfer, will be adhered strictly by buyer for smooth exit of seller, payable

directly to the seller account, and in case of any delay in payment, compounding interest @ 18% p.a. will be payable by buyer. There will be a lien of the seller group on their shares till payment is completed with interest, if any. The loans and advances of the seller will have to be repaid by the buyer separately within 15 days of bidding/agreement, failing which compounding interest @ 18% p.a. from date of bidding/agreement both principle and interest being routed through company account. Upon completion of both payments, the shares of seller group will be deemed to be transferred to buyer group, and seller cannot delay the transfer on any pretext.”

(emphasis supplied)

xxx

21. ...This elucidation of the law is unexceptionable. It is undeniable that an Executing Court can construe a decree if it is ambiguous. However, as in the facts of the case herein, this cannot result in additions (to the terms of the consent, embodied in the email dated 28.03.2019) which were not agreed upon by the parties, since the decree was drawn on by consent of both parties at admissions stage itself. Both the single judge and Division Bench of the High Court have interpreted the appellants’ silence (manifest in their not filing any written statement) as acquiescence to the inclusion of the loan amount, which, is although worthy of adverse inference, cannot be the reason to justify expansion of the decree.

28) In ***State of Punjab and Others V/s. Krishan Dayal Sharma*** (supra) the Apex Court has held in paragraphs 7 and 8 as under:

7. In the absence of pleadings and directions in the judgment or decree which was under execution, it was not open to the executing court to award interest. **The Execution Court is bound by the terms of the decree, it cannot add or alter the decree on its notion of fairness or justice.**

8. **The right of the decree holder to obtain relief is determined in accordance with the terms of the decree.** The Execution Court has referred to a number of decisions where interest had been granted on the arrears of salary and pension. The Execution Court failed to appreciate that in those decisions direction for payment of interest had been issued by the Court while granting relief for reinstatement or

> payment of arrears of salary or pension. None of those decisions relate to the grant of interest by the Execution Court. No doubt the Courts have power to award interest on the arrears of salary or pension or other amount to which a Government servant is found entitled having regard to the facts and circumstances of the case but that power cannot be exercised by the Execution Court in the absence of any direction in the decree.
>
> *(Emphasis added)*

29) In my view, therefore, it would not be permissible for this Court to go behind the decree by reading into the decree something which is not specifically awarded in favour of the Applicant. This Court is unable to read operative clause (d) of the decree to mean award of any money claim capable of being executed by dealing with other personal assets of the Respondent in favour of the Applicant. This Court can also not treat the Applicant as an award creditor in relation to operative clause (d) of the amended Award. Reliance by Mr. Munshi on judgments of Patna High Court ***Mistry Goa Petha*** and ***Mohamad Ali*** (supra) and of Division Bench of this Court in ***Karamchand Pessumal*** (supra) is therefore inapposite. All the three judgments are authority on proposition that relationship of creditor and debtor arises only after dissolution of the Firm and settlement of accounts and not during currency of the partnership. The judgments therefore cannot be read in support of a proposition that the moment a direction is issued by the Arbitral Tribunal for monetization of the tenancy rights in the hotel premises and for distribution of the sale proceeds in a particular proportion, the Applicant would assume characteristic of a creditor in terms of money or that Respondent would become a debtor of the Applicant. This is because operative clause (d) of the final Award has been stayed by the Division Bench.

30) In fact, if relationship of creditor and debtor is to be assumed in relation to operative clause (d) of the amended Award, the Respondent

has a larger claim than the Applicant and here provisions of Order XXI Rule 19 of the Code would assume importance, which provides thus:

> **19. Execution in case of cross-claims under same decree.—**
>
> Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then—
>
> (a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and
>
> (b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

31) Since there are cross claims under the same Award, where the two sums are unequal, the execution can be taken by the Respondent, who is entitled to larger sum even in respect of operative clause (d) of the amended Award. This is not to suggest that the present Execution Application filed by the Applicant is not maintainable. But in the facts of the present case where the Appeal Court has stayed operative part (d) of the amended Award, as of now, no relationship of creditor and debtor between the parties in relation to the tenanted premises can be assumed.

32) In view of the above discussion, in my view, execution of directions in the operative clause (d) of the amended Award is impermissible at this stage on account of operation of stay order dated 5 April 2021 passed in Appeal No.531 of 2019.

33) Since operative clause (d) of the Award cannot be executed at this juncture, I am not impressed by allegation of contempt raised against the Respondent on account of she dealing with her other personal assets.

Therefore, it is not necessary to discuss the ratio of judgments of the Apex Court in ***Balwantbhai Somabhai Bhandari***, ***Chithra Woods Manors Welfare Association*** and ***Celir LLP*** (supra) relied upon by Mr. Munshi. It is also not necessary to go into the aspect of entitlement of the Applicant to recover amount of interest in the execution proceedings in the light of the provisions of Section 31(7)(b) of the Arbitration Act.

34) As observed above, there is nothing to be executed in respect of the operative clauses (a) and (b) of the amended Award. The directions in the operative clauses (c), (e) and (f) of the amended Award are already implemented. The directions in operative clause (d) of the Award are stayed by the Appeal Court. In that view of the matter, this Court is unable to grant any relief to the Applicant in the present Execution Application at this juncture. Instead of keeping the Execution Application pending, it would be apposite to grant liberty to the Applicant to file fresh execution application in the event, the Appeal is dismissed or in the event the stay order is vacated.

35) The Execution Application is **disposed of.** Applicant shall however be at liberty to institute fresh Execution Application in the event of dismissal of Appeal No.531 of 2019 or in the event of vacation of stay order dated 5 April 2021.

36) Since Execution Application is disposed of nothing would survive in pending Interim Applications and the same are also disposed of.

[SANDEEP V. MARNE, J.]

37) After the judgment is pronounced, Mr. Munshi requests for continuation of ad-interim order granted by this Court on 17 February 2020 by which statement on behalf of the Respondent is recorded for non-creation of third party rights with regard to the immovable properties. Mr. Munshi submits that the statement was in respect of the immovable properties of the Respondent. The request is opposed by Mr.Shah.

38) Considering the nature of findings recorded in the judgment and also the interim order granted by the Appeal Court restraining the parties from creating any third party interest in respect of the property in which the business of the Firm was being conducted, I am not inclined to continue the statement recorded by order dated 17 February 2020. The request is accordingly rejected.

[SANDEEP V. MARNE, J.]