

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 5th July, 2021

+ EFA (OS)(COMM) NO.4/2021, CM No.11905/2021 (FOR STAY)
& CM No.11906/2021 (FOR CONDONATION OF DELAY OF
346 DAYS IN FILING THE APPEAL)

DELHI CHEMICAL AND PHARMACEUTICAL WORKS

PVT. LTD. & ANR.

..... Appellants

Through: Mr. B.B. Gupta, Sr. Adv. with Mr.
Sanjay Agnihotri, Adv. with
appellant no.2 in person.

Versus

HIMGIRI REALTORS PVT. LTD. & ANR. Respondents

Through: Mr. Siddharth Bhatli & Mr. Abhishek
Choudhary, Advs. for R-1.
Mr. P. Nagesh, Sr. Adv. with Mr.
Akshay Sharma, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. This appeal, under Section 13(1A) of the Commercial Courts Act, 2015, impugning the orders dated 23rd December, 2019 and 13th March, 2020 of the Commercial Division of this Court in OMP(ENF.)(COMM) No.140/2019, and accompanied with applications for condonation of delay of 346 days in filing of the appeal and for stay of the impugned orders, came up before us for admission on 27th April, 2021, when finding the impugned orders to have been passed by only referring to *Bhandari*

Engineers & Builders Pvt. Ltd. Vs. Maharia Raj Joint Venture MANU/DE/4601/2019 and further being of the view that there was an inconsistency between *Bhandari Engineers & Builders Pvt. Ltd.* supra and *M.L. Gupta Vs. Aerens Gold Souk International Ltd.* 2018 SCC OnLine Del 7621, and being otherwise also of the opinion that the matter required consideration, leaving open the aspect of maintainability of the appeal, notice of the appeal and the applications was issued.

2. The senior counsel for the appellant no.1 Delhi Chemical and Pharmaceutical Works Pvt. Ltd. and appellant no.2 Ameet Sharma, the counsel for the respondent no.1 Himgiri Realtors Pvt. Ltd. and the senior counsel for respondent no.2 Samir Dev Sharma, were heard on 25th May, 2021, on, the application for condonation of delay in preferring the appeal, maintainability of the appeal as well as on the merits of the appeal, and orders reserved.

3. As far as the delay in preferring the appeal is concerned, the appellants, in the application for condonation of delay, have attributed the same to (i) suspension of the period of limitation during the prevalent Covid-19 pandemic; and, (ii) the appellant no.2, who is the authorized signatory of the appellant no.1, being unwell and the old age of his mother.

4. The counsel for the respondent no.1, which is the only contesting respondent, to be fair to him, did not seriously contest the application for condonation of delay.

5. Owing to the Supreme Court, vide orders dated 23rd March, 2020 and 8th March, 2021 in SMW(C) No. 3/2020 titled *In Re: Cognizance for Extension of Limitation* having suspended the period of limitation, CM

No.11906/2021 for condonation of delay, though superfluous, is allowed and the appeal considered on merits.

6. CM No.11906/2021 is disposed of.

7. The respondent no.1 filed OMP (ENF.) (COMM.) No.140/2019 for execution of the arbitral award dated 11th March, 2019 as a decree of the Court, describing itself as the decree holder and the two appellants and the respondent no.2 as the judgment debtors, and pleading that a total amount of Rs.21,17,80,487/- was due as on 11th July, 2019, jointly and severally from the two appellants and the respondent no.2 [hereinafter together referred to as “judgment debtors”] to the respondent no.1 [hereinafter referred to as “decree holder”] under the award dated 11th March, 2019. In paragraph 10 of the Execution Petition [filed in the form prescribed in the Code of Civil Procedure, 1908 (CPC)], requiring the decree holder to state “In what manner court’s assistance is sought”, the decree holder pleaded, “By issuance of attachment warrant the Hon’ble court may be pleased to attach the movable and immovable properties of the judgment debtors in view of Order XXI of the CPC”. In paragraph 11 of the Execution Petition, requiring the decree holder to furnish “Any other information”, the decree holder pleaded, that (i) the judgment debtors had failed to make payment of the awarded amount to the decree holder; (ii) the decree was to be executed jointly and severally against the judgment debtors; and, (iii) “To the best of the knowledge of the decree holder, the judgment debtors have assets and properties, movable and immovable”. The decree holder, in the prayer paragraph of the Execution Petition, sought (a) a direction to the judgment debtors to pay to the decree holder the awarded amount with interest, in

terms of the arbitral award dated 11th March, 2019; (b) to restrain the judgment debtors from alienating any movable and immovable properties; (c) attachment of any rental or income being derived by the judgment debtors from the immovable properties; and, (d) attachment and sale of movable and immovable properties of the judgment debtors. The Execution Petition was accompanied with a “Schedule of Properties”, wherein the decree holder listed, (i) property no.4, Ansari Road, Daryaganj, New Delhi and property no.A-8 (Site IV) Link Road, Sahibabad, District Ghaziabad (UP) as the properties of appellant no.1/judgment debtor, (ii) property no.66, East Friends Colony, New Delhi and property no.227, Siddharth Enclave, New Delhi as the properties of appellant no.2/judgment debtor, and (iii) property no.66A, East Friends Colony, New Delhi and property no.A-20, New Friends Colony (East), New Delhi as the properties of one Trustline Real Estate Pvt. Ltd. in which the appellant no.2/judgment debtor held a 95.2% shareholding.

8. It appears that when the Execution Petition came up before the Commercial Division on 30th August, 2019, the Commercial Division, in exercise of powers under Order XXI Rule 41(2) of the CPC, directed the judgment debtors to file affidavits of their assets, in Form 16A, Appendix E of the CPC. The Commercial Division, vide order dated 3rd December, 2019, further directed the judgment debtors to file additional affidavits, as per Annexures to the said order, together with documents required to be furnished in accordance with the said annexures.

9. A perusal of the impugned order dated 23rd December, 2019 shows, that on the judgment debtors seeking further time to file additional affidavits as directed, the Commercial Division, while granting such time, modified the earlier order dated 3rd December, 2019 and directed that instead of the additional affidavits being filed in terms of annexures to the order dated 3rd December, 2019, the additional affidavits be filed as per annexures to *Bhandari Engineers & Builders Pvt. Ltd.* supra.

10. The judgment debtors filed EA No.217/2020 and Review Petition No.64/2020, seeking exemption from filing of the additional affidavits as directed, on the ground of confidentiality of personal information and documents and on the ground that the decree holder was sufficiently protected under the arbitral award, of which enforcement was sought. The Commercial Division however, vide order dated 13th March, 2020 disposed of the said applications holding that the judgment debtors could not be exempted from filing the affidavits merely on the ground that the decree holder was sufficiently secured; with respect to the plea of confidentiality of the personal information, the judgment debtors were permitted to file confidential information / documents in sealed covers and the plea of confidentiality left open to be considered at an appropriate stage.

11. The judgment debtors have preferred this appeal, pleading that (i) the judgment debtors, as owners of a plot of land no.A-8 (Site IV) Link Road, Sahibabad, District Ghaziabad (UP) had entered into a Collaboration Agreement with the decree holder, for development of the said property and on disputes and differences arising between the parties, the same were referred to arbitration; (ii) the Arbitral Tribunal held that the judgment

debtors were liable to pay the awarded amount to the decree holder and the decree holder was liable to hand back vacant peaceful physical possession of the plot of land aforesaid to the judgment debtors; (iii) the Arbitral Tribunal further held that the decree holder was entitled to hold possession of the said plot of land till payment of the awarded amount by the judgment debtors to the decree holder; (iv) the judgment debtors have filed an application under Section 34 of the Arbitration & Conciliation Act, 1996 with respect to the award and which application was pending consideration; (v) the decree holder accepted the arbitral award in toto and had filed OMP(ENF.)(COMM) No.140/2019 in execution thereof; (vi) though Order XXI Rule 41(2) of the CPC provides for a direction to the judgment debtor to file affidavit in the form prescribed therein only when the decree for payment of money had remained unsatisfied for a period of 30 days and only on the application of the decree holder, the Commercial Division, in violation thereof had directed filing of affidavits without there being any application of the decree holder therefor and without the decree having remained unsatisfied; (vii) there was thus no justification for the Commercial Division to direct filing of affidavits by the judgment debtors; (viii) that the dicta in *Bhandari Engineers & Builders Pvt. Ltd.* supra prescribing the form in which the affidavits were to be filed would come into operation only on fulfilment of conditions aforesaid under Order XXI Rule 41 (2) of the CPC and not without the said conditions being fulfilled; (ix) the decree holder in the present case was not only well aware of the assets / properties of the judgment debtors, as evident from filing of schedule of the said properties along with Execution Petition but the arbitral award being executed as a decree itself secured the decree holder by

directing the decree holder to deliver possession of the immovable property of the judgment debtors in its possession to the judgment debtors against payment of the awarded amount; that decree holder was thus secure with respect to the recovery of the decretal amount; (x) thus the facts in the present case were very different from the facts of *Bhandari Engineers & Builders Pvt. Ltd.* supra; *Bhandari Engineers & Builders Pvt. Ltd.* supra was concerned with difficulties generally faced by decree holders in execution of the decrees; however in the present case, the decree holder was not facing any difficulty inasmuch as, as per the arbitral award having force of a decree, the decree holder was entitled to retain possession of the immovable property of judgment debtors till payment and the decree holder was even otherwise aware of several other properties of the judgment debtors mentioned in the schedule appended to the Execution Petition; (xi) the examination of a judgment debtor under Order XXI Rule 41 is to be resorted to only when the decree holder is not aware of the assets and properties of the judgment debtors; however in the present case the decree holder is not only well aware of the assets and properties of the judgment debtors but had already taken possession of the property of the judgment debtors in terms of the directions in the arbitral award and in accordance wherewith the decree holder is entitled to retain the said possession till realization of the decretal amount; (xii) the value of the property of the judgment debtors in possession of the decree-holder was over Rs.72 crores as against the awarded amount of about Rs.22 crores claimed to be due; (xiii) the burden of disclosing the assets, as per Section 106 of the Indian Evidence Act, 1872, can only be cast upon the judgment debtor when no properties or assets of the judgment debtor are in the knowledge of the

decree holder; (xiv) a mechanical implementation of *Bhandari Engineers & Builders Pvt. Ltd.* supra causes unnecessary delay to the execution proceedings and causes unnecessary prejudice to the judgment debtor; it also causes waste of time of the Court in knowing what is already known to the decree holder and has been placed before the Court; (xv) the High Court of Bombay, in *United Phosphorous Ltd. Vs. A.K. Kanoria* AIR 2003 Bom 97 has opined that examination of judgment debtor under Order XXI Rule 41 is not one of the modes of execution of a decree provided under Order XXI Rule 11(2)(j) of the CPC; Order XXI Rule 41 is merely an aid to the decree holder to enable him to execute the decree by obtaining information which is within the special knowledge of the judgment debtor; (xvi) the High Court of Calcutta also in *Srei Equipment Finance Pvt. Ltd. Vs. Khyoda Apik* AIR 2016 Cal 293 (DB) has held that Order XXI Rule 41 is to be resorted to only when the decree holder is not aware of the properties of the judgment debtor from which the money decree is to be executed; (xvii) even *Bhandari Engineers & Builders Pvt. Ltd.* supra holds that if the decree holder is aware of the assets of the judgment debtors, the Court can attach such assets at the very threshold of the execution application; (xviii) Order XLI Rule 1(3) and Rule 5 also provide for opportunity to the judgment debtor to obtain a stay against the decree upon deposit of the disputed amount in the Court; Section 34 of the Arbitration Act also empowers the Court to direct the judgment debtor to furnish security for the disputed amount and to stay the execution on such security being furnished; here, the decree holder is already in possession of security in the form of immovable property, for satisfaction of the arbitral award having force of the decree; (xix) direction to the judgment debtors to furnish information of

other assets beyond the security already in possession of the decree holder and way beyond the decretal amount, constraints the said assets of the judgment debtors and infringes the constitutional rights of the judgment debtors; (xx) the Commercial Division has erred in issuing direction for filing affidavits, without even the decree holder having applied therefor; (xxi) this has resulted in wastage of time, as instead of the execution proceeding further, several dates have been wasted by the Commercial Division in issuing directions for filing of affidavits; (xxii) the Commercial Division, in directing affidavits disclosing assets of value much beyond the decretal amount to be filed, has also exceeded its jurisdiction; reliance in this regard is placed on *Kohinoor Transporters Vs. State of Uttar Pradesh* (2018) 18 SCC 165; (xxiii) the information prescribed in the affidavits formulated in *Bhandari Engineers & Builders Pvt. Ltd.* supra is way beyond what was / is necessary for securing the decretal amount and for this reason also the direction for furnishing of the said information is beyond the jurisdiction of the Commercial Division as the Executing Court; (xxiv) direction for furnishing of private and sensitive information regarding matrimonial disputes which are predominantly personal/private in nature, infringes the rights of the judgment debtors to privacy; the said information, once presented in the Court, can be utilized not only by the decree holder but by others, to the prejudice of the judgment debtors;(xxv) the affidavit Annexure-A to *Bhandari Engineers & Builders Pvt. Ltd.* supra, in Serial no.10(g)(h) and (i) and at Serial no.63 to 65, requires the judgment debtor to furnish Aadhar number, passport number, Permanent Account Number (PAN) details; such information is private and sensitive and considered confidential by the individual, especially in this age of online and banking

frauds; furnishing of such information has serious implications; also, the said information concerns the judgment debtor and not the assets of the judgment debtor qua which only affidavit can be directed to be filed under Order XXI Rule 41 of the CPC; (xxvi) Serial no.13(i) and (ii) of the annexure to *Bhandari Engineers & Builders Pvt. Ltd.* supra also require the judgment debtor to furnish information for the previous ten years, when the Income Tax Act, 1961 and the Companies Act, 1956 do not themselves mandate maintenance of records beyond eight years; (xxvii) Serial no.20 of the annexure formulated by the Court in *Bhandari Engineers & Builders Pvt. Ltd.* supra also requires information to be given by the judgment debtor, of all the properties which have ever been in the name of the judgment debtor or in which the judgment debtor has ever had any right or interest; it is not humanly possible to give such information and which even otherwise is of no relevance; (xxviii) Serial no.58 of annexure formulated by the Court in *Bhandari Engineers & Builders Pvt. Ltd.* supra also requires the judgment debtor to give particulars of credit / debit cards and which particulars also ought not to be made public; the issuing banks themselves use redacted particulars thereof; (xxix) Serial nos.63 to 66 of the annexure formulated by the Court in *Bhandari Engineers & Builders Pvt. Ltd.* supra, as aforesaid, require the judgment debtor to furnish details of Aadhar Card, PAN card, passport and Credit Information Report (CIR) / Credit Information Bureau (India) Limited (CIBIL) rating, and are capable of misuse; (xxx) as per Serial nos.77 to 79 of Annexure A and serial nos.61 to 63 of Annexure B formulated by the Court in *Bhandari Engineers & Builders Pvt. Ltd.* supra, a judgment debtor is required to furnish documents of all pending and disposed of litigations against himself / itself

and which is again neither necessary nor expedient to the execution; (xxxix) Serial no.57 of annexure formulated to ***Bhandari Engineers & Builders Pvt. Ltd.*** supra requires judgment debtor to furnish particulars of his social media accounts, which again contains personal information, making the judgment debtor prone to cyber crimes, phishing, scams, cyber stalking, extortion etc.; (xxxix) per ***M.V. Vali Pero Vs. Fernando Lopez*** AIR 1989 SC 2206, rules of procedure should promote justice and prevent miscarriage of justice; furnishing of information as laid down in ***Bhandari Engineers & Builders Pvt. Ltd.*** supra does not promote justice but rather leads to miscarriage of justice; (xl) mandatory filing of affidavits of income and assets adversely affects the true spirit of Arbitration Act as laid down in ***Emkay Global Financial Services Ltd. Vs. Girdhar Sondhi*** (2018) 9 SCC 49 and delays execution of arbitral awards rather than expediting the same; (xli) if the affidavits are filed in a sealed cover and the particulars whereof are not available to the decree holder, the direction for filing thereof in any case does not serve any purpose; (xlii) once Order XXI Rule 41 CPC provides for issuance of a direction for affidavit to be filed on an application of the decree holder, as per ***Bachhaj Nahar Vs. Nilima Mandal*** (2008) 17 SCC 491, in the absence of an application from the decree holder, no such direction could have been issued to the judgment debtor; (xliii) the direction for filing of affidavit of assets of the value beyond the decretal amount, is also beyond the jurisdiction of the Commercial Division acting as the executing Court; (xliv) the application of the judgment debtors for stay of execution of the arbitral award is already pending in Section 34 proceedings filed by the judgment debtors with respect to the subject arbitral award; and, (xlv) the time of the Courts /

Commercial Divisions, in following *Bhandari Engineers & Builders Pvt. Ltd.*, is being wasted, in directing the affidavits as formulated therein to be filed, even when the particulars of the assets of the judgment debtors from which decree could be executed are already before the Court, as in the present case.

12. We would ordinarily not have set out in detail, the pleadings in a memorandum of appeal, but have deemed it apposite to do so in the present case because a reading of the impugned orders does not disclose the issues entailed and because the impugned orders are premised only on *Bhandari Engineers & Builders Pvt. Ltd.* supra. We were also concerned, that inspite of the Execution Petition pending before the Commercial Division since August, 2019 and inspite of particulars of assets of the judgment debtors being before it, the Commercial Division, instead of proceeding with attachment and sale of the said assets from which the decretal amount could be satisfied, is found to have spent over one year in directing the judgment debtors to file additional affidavits of assets, when, we reemphasize, there was no need for the information required to be disclosed in the said affidavits. Merit was thus indeed found in the well articulated challenge in the memorandum of appeal, to the direction in the impugned orders for filing of additional affidavits.

13. The impugned order dated 23rd December, 2019 directing the judgment debtors to file additional affidavits having been made suo motu by the Court and not on any application of the decree holder, the occasion for the judgment debtors to oppose the same or for the Commercial Division to deal with the said opposition as made in this appeal, did not

arise. Though the judgment debtors, in EA no.217/2020 and Review Petition no.64/2020 aforesaid took most of the grounds as enunciated in the memorandum of appeal, but the Commercial Division, in the impugned order dated 13th March, 2020, again did not deal therewith and disposed of the same merely observing that information qua which confidentiality was claimed could be furnished in a sealed cover and that as per the dicta in *Bhandari Engineers & Builders Pvt. Ltd.* supra, no exemption from filing affidavits could be granted.

14. The senior counsel for the appellants / judgment debtors drew our attention to, (i) Section 36 of the Arbitration Act, to contend, firstly that an arbitral award has to be enforced in accordance with the provisions of the CPC, in the same manner as if it were a decree of the Court and secondly, that the appellants / judgment debtors are entitled to, in their proceedings under Section 34 of the Arbitration Act, seek an order of stay of execution of the award and till such application has been considered and which could not be considered owing to the prevalent Covid-19 pandemic, no orders in execution ought to have been made; (ii) Sections 36 to 74 of the CPC pertaining to execution, with special emphasis on Section 51 titled “Powers of Court to enforce execution” to contend that examination of the judgment debtor or direction to the judgment debtor to file the affidavits as laid down in *Bhandari Engineers & Builders Pvt. Ltd.* supra, is not a prescribed mode of execution and to further contend that the Commercial Division in the instant case, instead of proceeding in the execution in one of the modes prescribed i.e. by attachment and sale of the properties of the judgment debtors, list whereof was furnished by the decree holder, has adopted a mode of execution which is not in the domain of the Commercial Division

as an executing Court; (iii) Order XXI Rules 10 and 11 of the CPC, to contend that an application for execution is prescribed to be made in writing and an oral application for execution is permitted only at the time of passing of the decree when immediate execution thereof is sought; (iv) Order XXI Rule 11(2)(j), to contend that the decree holder, in the application for execution is required to plead one of the specified modes in which the assistance of the Court is required and to again contend that filing of an affidavit is not a prescribed mode of execution; (v) Order XXI Rules 12 and 13, to contend that the application for execution is required to annex thereto the list of the properties of the judgment debtor, attachment and sale whereof in execution of a money decree is sought; (vi) Order XXI Rule 41 of the CPC, to contend, (a) that the same has been placed under the heading / sub-chapter titled “Attachment of Property”; and, (b) that the same does not empower the executing Court to, in every case direct the judgment debtor to furnish an affidavit or affidavits or as laid down in *Bhandari Engineers & Builders Pvt. Ltd.* supra but empowers the Court to, as a part of one of the prescribed modes of execution i.e. attachment of property, on an application of the decree holder, issue such a direction to the judgment debtor; (vii) proviso to Rule 17(4) of Order XXI, to contend that in accordance therewith, the value of the property to be attached has to correspond with the amount due under the decree and to further contend that thus the direction under Order XXI Rule 41 which is in aid of attachment of property, also has to be confined to disclose only such properties, value whereof would correspond with the amount of the decree; (viii) Form 16A in Appendix-E to the CPC prescribing the form in which the affidavit of assets in pursuance to a direction under Order XXI Rule 41

is to be filed; and, (ix) Order XLVIII Rule (3) of the CPC laying down that “the forms given in the appendices, with such variation as the circumstances of each case may require, shall be used for the purposes therein mentioned”, to contend that thus the variation in the affidavits to be filed in Form 16A in Appendix-E to the CPC, in terms of Order XXI Rule 41, has to be confined to the purpose thereof and cannot be so vast and of general application as laid down in *Bhandari Engineers & Builders Pvt. Ltd.* supra.

15. The senior counsel for the appellants / judgment debtors argued, that (i) a decree holder is entitled to apply under Order XXI Rule 41 of the CPC, only if not in the know of any of the assets of the judgment debtors, from attachment and sale whereof the money decree can be realized; (ii) in the present case, the respondent no.1/decree holder rightly did not apply under Order XXI Rule 41 of the CPC, because was aware of the assets of the judgment debtors and in fact had appended to the Execution Petition, a list of such assets, from attachment and sale whereof the money decree was sought to be executed; (iii) not only so, the arbitral award sought to be executed as a decree, also permitted the decree holder to retain possession of an immovable property of the judgment debtors valued at over Rs.72 crores, till the awarded amount which according to the decree holder was about Rs.22 crores, was paid; the decree was thus to be executed by attachment and sale of the said property only and not of any other property; (iv) non compliance of an order under Order XXI Rule 41 has grave consequences, as prescribed in Order XXI Rule 41(3) i.e. of imprisonment upto three months and thus the direction under Order XXI Rule 41 of the CPC is not to be made lightly and only when required in the facts of the case; (v) *Bhandari Engineers & Builders Pvt. Ltd.* supra, to the extent

directs the executing Court to, even in the absence of any application of the decree holder, direct the judgment debtor to file affidavits in the format as also laid down therein, is contrary to the express language of Order XXI Rule 41 of the CPC; (vi) similarly, *Bhandari Engineers & Builders Pvt. Ltd.* supra, to the extent directs affidavits to be filed in the format laid down therein, is contrary to the CPC inasmuch as CPC, in Appendix-E prescribes the form (Form No.16A) in which affidavit is to be filed and Order XLVIII Rule 3 permits the Court to make variation in the said form only as per the needs of a particular case; (vii) the Court, in *Bhandari Engineers & Builders Pvt. Ltd.* supra could not have thus prescribed a form, of general application, other than and in supersession of the form prescribed by the legislature in the CPC and the Court, in *Bhandari Engineers & Builders Pvt. Ltd.* supra, acted as super legislature and which is not permitted under the Constitution of India; (viii) *Bhandari Engineers & Builders Pvt. Ltd.* supra, to the extent requires the judgment debtors to disclose properties of value in excess of the decretal amount, is also contrary to the proviso to Order XXI Rule 17(4) and the Court in *Bhandari Engineers & Builders Pvt. Ltd.* supra has again sought to legislate over a field over which the legislature has already acted; the Court in *Bhandari Engineers & Builders Pvt. Ltd.* supra has thus proceeded beyond its adjudicatory role and entered the legislative arena, which is not in the domain of the Court; (ix) besides the property of the judgment debtors in possession of the decree holder and of which the decree holder under the arbitral award is entitled to hold possession till recovery and the value of which property is much more than the decretal amount claimed, the decree holder, in the schedule to the Execution Petition has given list of several other properties of the judgment

debtors and the value of each of which property is in excess of the decretal amount and there was thus no occasion for the Commercial Division to issue a direction in exercise of powers under Order XXI Rule 41 of the CPC; (x) though the contention of the judgment debtors is that *Bhandari Engineers & Builders Pvt. Ltd.* supra does not lay down good law but alternatively it is the plea of the judgment debtors that the direction in terms of *Bhandari Engineers & Builders Pvt. Ltd.* supra can be issued only when the conditions of Order XXI Rule 41 are satisfied and which were not satisfied in the present case; and, (xi) *Bhandari Engineers & Builders Pvt. Ltd.* supra is also erroneous, to the extent directs the executing Courts to, in all cases, *suo motu*, at the very first instance, issue direction to the judgment debtor for filing of affidavits as prescribed therein, when as per Order XXI Rule 41 of the CPC the said direction can be issued only when the decree has remained unsatisfied; the question of the decree remaining unsatisfied in the present case did not arise owing to the decree holder holding possession of a property of the judgment debtors, value of which is much in excess of the decretal amount.

16. The senior counsel for the respondent no.2 / judgment debtor, supporting the arguments of the senior counsel for the appellants / judgment debtors, argued that (i) the direction to the judgment debtor under Order XXI Rule 41 of the CPC is not automatic but subject to the conditions therein being satisfied i.e. of the decree holder making an application and of the decree remaining unsatisfied; thus the question of the executing Court issuing a direction under Order XXI Rule 41 of the CPC, in each and every case, irrespective of whether the decree holder has applied for an order thereunder and / or whether the decree holder has specified the properties of

the judgment debtor from attachment and sale whereof execution is sought, is contrary to law; (ii) placed reliance on *Anirban Roy Vs. Ram Kishan Gupta* MANU/DEL/3524/2017 in this regard; (iii) the forms laid down by this Court in *Bhandari Engineers & Builders Pvt. Ltd.* supra, in accordance wherewith the affidavits are to be filed by the judgment debtors, contravene the rights of privacy of the judgment debtors as recognized in *K.S. Puttaswamy Vs. Union of India* (2017) 10 SCC 1; (iv) drew attention to the forms laid down in *Bhandari Engineers & Builders Pvt. Ltd.* supra, requiring the judgment debtors to furnish information under as many as 51 heads pertaining to their personal affairs and if Director of a company, to furnish information under as many as 64 heads and contended that most of the information required to be furnished therein is unnecessary and alien to the execution proceeding; (v) insistence on the format laid down by this Court in *Bhandari Engineers & Builders Pvt. Ltd.* supra, in which the judgment debtors in every execution are required to furnish information, is a waste of time of the Court and permits decree holder and others inimical to the judgment debtor, to make a roving and fishing enquiry relating to the affairs of the judgment debtors and to the prejudice of the judgment debtors; (vi) the Court proceedings have to be confined to the purport thereof and scope thereof cannot be expanded, as has been done in *Bhandari Engineers & Builders Pvt. Ltd.* supra; (vii) the arbitral award sought to be executed as a decree having itself provided that the payment of the award amount by the judgment debtors to the decree holder has to be simultaneous to the delivery of possession of the property of the judgment debtors in possession of the decree holder by the decree holder to the judgment debtors, the decree had to be executed by attachment and sale of that property only and in no other

manner; (viii) CPC, wherever permits an oral application, has expressly provided so and Order XXI Rule 41 does not envisage an order thereunder on an oral application of the decree holder; attention was invited to Order XXI Rule 12 of the CPC permitting execution on an oral application; (ix) though the Commercial Division issued the direction for filing of affidavit by the judgment debtors without any application and without hearing the judgment debtors but even when the judgment debtors applied by way of EA No.217/2020 and Review Petition No.64/2020 taking all the said grounds, the Commercial Division did not deal with the grounds urged and proceeded on the premise that in terms of *Bhandari Engineers & Builders Pvt. Ltd.* supra, in every execution proceeding, direction for filing affidavits is a must; and, (x) the purpose of making an order under Order XXI Rule 41 of the CPC is to enable the decree holder to know of the properties of the judgment debtors from attachment and sale whereof the decree can be satisfied; the said purpose is not served by directing the judgment debtors to furnish the information in a sealed cover, as has been directed by the Commercial Division in the present case; if the decree holder does not learn of the assets or particulars of the judgment debtors, decree holder cannot possibly seek execution thereagainst.

17. This Court, in order dated 27th April, 2021, while issuing notice of the appeal, having also raised doubts as to the maintainability thereof, the senior counsel for the appellants/judgment debtors, on the aspect of maintainability of the appeal, contended that (i) *D&H India Ltd. Vs. Superon Schweisstechnik India Ltd.* (2020) 268 DLT 15 (DB), lays down that the proviso to Section 13(1A) of the Commercial Courts Act cannot be read as limiting the right to appeal conferred by Section 13(1A) and that the

said proviso merely states that, from orders passed by the Commercial Division of the High Court, as are specifically enumerated under Order XLIII of the CPC, an appeal would lie under Section 13(1A) and that the said proviso cannot be read as meaning that no appeal would lie in any other case especially where the order under appeal has not been passed under the CPC at all, but, as in that case, under Rule 5 in Chapter II of the Delhi High Court (Original Side) Rules, 2018; (ii) all arbitrations do not qualify as a commercial dispute within the meaning of the Commercial Courts Act; (iii) vide Section 10(2) of the Commercial Courts Act, all applications or appeals arising out of arbitration under the provisions of the Arbitration Act, subject matter whereof is a commercial dispute of a specified value, are to be heard and disposed of by the Commercial Division; (iv) the Arbitration Act does not deal with execution and thus does not provide for any application or appeal during the course of execution of an arbitral award; Section 10(2) having prescribed jurisdiction of the Commercial Division only with respect to applications and appeals arising under the provisions of the Arbitration Act, the Commercial Division does not have the jurisdiction to entertain petitions for execution of arbitral awards and thus the execution proceedings are not governed by the Commercial Courts Act and the limitations qua appeal, as prescribed in Section 13 of the Commercial Courts Act, do not apply to execution proceedings; and, (v) the execution proceedings also do not have any specified value, within the meaning of Section 10 of the Commercial Courts Act; thus execution of arbitral award is not within the domain of the Commercial Courts Act.

18. The counsel for the respondent no.1 / decree holder, opposing the arguments of the senior counsels for the judgment debtors, contended that (i) the judgment debtors, in Review Petition No.64/2020 preferred by them, in alternative to seeking the review of the order dated 3rd December, 2019, also offered to file affidavit in sealed cover; (ii) the judgment debtors having themselves so offered to file affidavits in the sealed cover and which offer of the judgment debtors was accepted by the Commercial Division, are not entitled to raise a grievance with respect thereto and this appeal, for this reason alone is not maintainable and liable to be dismissed; (iii) the execution proceedings from which this appeal arises, commenced prior to the dicta in *Bhandari Engineers & Builders Pvt. Ltd.* supra; vide order dated 30th August, 2019 in the execution proceedings, the judgment debtors were directed to furnish affidavits in Form 16A in Appendix-E to the CPC; (iv) however the Commercial Division vide order dated 3rd December, 2019 directed additional affidavits to be filed, instead of in Form 16A in Appendix-E to the CPC, in the format as laid down in the Annexure thereto; (v) subsequently, pursuant to pronouncement in *Bhandari Engineers & Builders Pvt. Ltd.* supra, vide order dated 23rd December, 2019 the affidavit in the form prescribed therein was directed to be filed; (vi) the judgment debtors, before the Commercial Division were seeking time to file the affidavits and thus cannot now in appeal challenge the direction for filing of affidavit; (vii) the judgment debtors have not impugned the order dated 3rd December, 2019 directing the affidavit to be filed in terms of annexure thereto and are thus not entitled to challenge the subsequent order dated 23rd December, 2019 which merely modified the form of the affidavit, to as laid down in *Bhandari Engineers & Builders Pvt. Ltd.* supra; (viii) the property

of the judgment debtors in possession of the decree holder in terms of the arbitral award is located at Sahibabad and is not sellable because of dispute with respect thereto pending with Uttar Pradesh State Industrial Development Corporation (UPSIDC) which has cancelled the lease and is reclaiming the land; and, (ix) without the judgment debtors filing the affidavits, the decree holder would not be able to trace the properties of the judgment debtors.

19. We have considered the rival contentions. As would be evident from the aforesaid narrative of the contentions of the senior counsels for the judgment debtors, their arguments constitute a challenge to correctness of *Bhandari Engineers & Builders Pvt. Ltd.* supra. *Bhandari Engineers & Builders Pvt. Ltd.* supra is however not in appeal before us. We have thus wondered, whether without sitting in appeal against *Bhandari Engineers & Builders Pvt. Ltd.* supra, we, while dealing with this appeal, can go into the correctness of the dicta in *Bhandari Engineers & Builders Pvt. Ltd.* supra. During the hearing, we also enquired whether any appeal had been preferred against *Bhandari Engineers & Builders Pvt. Ltd.* supra and were informed that no appeal was filed or is pending.

20. We may at this stage record, that *Bhandari Engineers & Builders Pvt. Ltd.* supra has been penned by the same Single Judge / Presiding Judge of the Commercial Division who has authored the orders impugned before us. Perhaps for this reason, in the impugned orders, no need was felt to give any reasons and the Commercial Division directed affidavits to be filed and dismissed EA No.217/2020 and Review Petition No.64/2020 raising the

same arguments as raised in this appeal, merely observing that “this is no ground for not filing the affidavits of assets by judgment debtor no.2”.

21. Having pondered over the aforesaid question, we are of the view that once the impugned orders are premised only on *Bhandari Engineers & Builders Pvt. Ltd.* supra, we would not be exceeding our appellate jurisdiction while sitting in appeal against the impugned orders, by making observations and returning findings to the extent required for the purpose of the present appeal, qua the correctness of *Bhandari Engineers & Builders Pvt. Ltd.* supra.

22. Before however entering into the merits of the matter, the question of maintainability of the present appeal is to be decided.

23. The senior counsels for the judgment debtors, on the aspect of maintainability, raised two arguments. Firstly, of execution of an arbitral award executable as a decree under the CPC, in terms of Section 36 of the Arbitration Act, being not within the jurisdiction of the Commercial Courts / Commercial Division and secondly, by relying on the comparatively recent judgment of this Court in *D&H India Ltd.* supra. We had however during the hearing raised two other questions. Firstly, we had drawn attention to Section 13(1A) of the Commercial Courts Act, which uses two expressions i.e. “judgment or order” and to the proviso thereto, which restricts appeals against “orders” to only the orders enumerated in Order XLIII of the CPC; we had enquired, whether notwithstanding the proviso, appeals against orders qualifying as a “judgment” remain maintainable under Section 13(1A) of the Commercial Courts Act. Secondly, we had enquired from the counsels, whether the proviso after Section 13(1A)

regulates both, Section 13(1) as well as Section 13(1A) or only Section 13(1A).

24. As far as our first query aforesaid is concerned, *D&H India Ltd.* supra considered three earlier judgments, also of Division Benches of this Court i.e. *HPL (India) Limited Vs. QRG Enterprises* (2017) 238 DLT 123 (DB), *Samsung Leasing Ltd. Vs. Samsung Electronics Co. Ltd.* (2017) 242 DLT 608 (DB) and *Rahul Gupta Vs. Pratap Singh* (2014) 206 DLT 188 (DB). In *HPL (India) Ltd.* supra, it was held that, (i) Section 13 is the sole repository qua appeals pertaining to commercial disputes and there can be no appeals against judgments / orders / decisions in the said disputes, other than as provided in Section 13; (ii) the word “judgment” appearing in Section 13(1) and Section 13(1A) actually relates or has a reference to a decree; (iii) the word “order” in Section 13(1) and Section 13(1A) would have to be construed in the light of Section 2(14) of the CPC, as “a formal expression of any decision of a Civil Court which is not a decree”; (iv) the appealable orders would be only those which are specifically enumerated under Order XLIII, as provided in the proviso to Section 13(1A) of the Commercial Court Act; (v) Section 13(2) begins with a non-obstante expression “notwithstanding anything contained in any other law for the time being in force or letters patent of a High Court....”; the words “any other law for the time being in force” would include the Delhi High Court Act, 1966; thus, whatever may be contained in the Delhi High Court Act, an appeal from any order or decree of a Commercial Division or Commercial Court shall lie only in accordance with the provisions of the Commercial Courts Act; (vi) since the order under appeal in that case was not enumerated in Order XLIII of the CPC, the appeal was not maintainable;

and, (vii) the argument, that the word “judgment” in Section 13(1A) should be construed in the wider sense, as in *Shah Babul Khimji Vs. Jayaben D. Kaniya* (1981) 4 SCC 8, could not be accepted; the words “judgment” and “order”, in Section 13 of the Commercial Courts Act, have been used disjunctively, in a mutually exclusive manner and “orders” could not be brought under the fold of “judgments”; the interpretation in *Shah Babul Khimji* supra, of the word “judgment”, was in the context of letters patent of the High Court and the non obstante clause in Section 13(2) specifically excludes the operation of letters patent of a High Court, insofar as the appeals from any order or decree of a Commercial Division or a Commercial Court are concerned. The said judgment was followed in *Samsung Leasing Ltd.* supra as well as in *Prasar Bharati Vs. Stracon India Limited* MANU/DE/1371/2020 by another Division Bench of this Court. Our first query aforesaid, also stands answered by *HPL (India) Ltd.* supra. Notwithstanding the aforesaid judgments of Co-ordinate Benches of this Court, the Division Bench in *D&H India Ltd.* supra, for reasons given therein, held that the proviso after Section 13(1A) of the Commercial Courts Act cannot be read as limiting the right of appeal conferred under Section 13(1) and Section 13(1A) or as meaning that no appeal would lie in any other case especially where the order under appeal had not been passed under the CPC at all but under Rule 5 in Chapter II of the Delhi High Court (Original Side) Rules, 2018; the Division Bench further gave reasons why the need to refer the question to a larger bench was not felt.

25. Though we, with due deference to the members of the Division Bench in *D&H India Ltd.* supra, entertain doubts as to the correctness of the view taken in *D&H India Ltd.* but do not, in the facts of the present

case, feel the need to make a reference of the question to a larger bench; the reason is, that *Bhandari Engineers & Builders Pvt. Ltd.* supra, on which the impugned orders are based, while laying down the law laid down therein, also directs all Courts to abide thereby, resulting in plethora of similar challenges as made herein and it is deemed expedient to settle the law in that regard and which would remain pending if the question of maintainability of the appeal were to be referred to a larger bench.

26. However before proceeding to the merits of the matter, we have to also deal with, (A) the contention of the senior counsels for the judgment debtors, with respect to the very jurisdiction of the Commercial Courts/Commercial Divisions, to entertain petitions for execution of arbitral awards, even if in respect of commercial disputes; and, (B) our second query aforesaid vis-a-vis applicability of the proviso after Section 13(1A) of the Commercial Courts Act, whether only to Section 13(1A) or to also Section 13(1).

27. As far as the latter of the aforesaid two is concerned, both, Section 13(1) and Section 13(1A) use the same expression i.e. “judgment or order”, with the only difference being, that Section 13(1) provides for appeals against the judgment or order of a Commercial Court below the level of a District Judge, to the Commercial Appellate Court and Section 13(1A) provides for appeal against the judgment or order of a Commercial Court at the level of the District Judge exercising Original Civil Jurisdiction or the Commercial Division of the High Court. The first part of Section 13 was amended vide the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018

with effect from 3rd May, 2018. Prior to the amendment, Section 13(1) provided for appeal against the decision of a Commercial Court or Commercial Division of the High Court to the Commercial Appellate Division of the High Court. The amendment to Section 13, while splitting up the erstwhile sub-section (1) of Section 13 into two subsections, 13(1) and 13(1A) as aforesaid, did not alter the proviso thereto, and the amended proviso is in *pari materia* to erstwhile proviso to Section 13(1). Though in Delhi there are no Commercial Courts below the level of the District Judge but since both, Section 13(1) and Section 13(1A) provide for appeals arising from commercial disputes and there being nothing in the proviso to indicate that the same is applicable only to Section 13(1A), we conclude that the proviso applies to both, Section 13(1) as well as Section 13(1A).

28. As far as the contention of the senior counsels for the judgment debtors, of proceedings for execution of an arbitral award as a decree being not within the jurisdiction of the Commercial Court / Commercial Division of this Court is concerned, Section 10 of the Commercial Courts Act *inter alia* provides that where the subject matter of an arbitration is a commercial dispute of a specified value, all applications or appeals arising out of such an arbitration under the provisions of the Arbitration Act that have been filed on the original side of the Court shall be heard and disposed of by the Commercial Division, where such Commercial Division has been constituted in the High Court. It is not in dispute that the subject matter of the arbitration, award whereof is under execution, was of the specified value. The arbitration concerned adjudication of rights and obligations arising between the decree holder and the judgment debtors from agreements entered into between them with respect to an industrial plot of

land at Sahibabad. While it was the contention of the decree holder that it was an agreement for sale of the said land by the judgment debtors to the decree holder, the judgment debtors contended the agreement to be a Collaboration Agreement whereunder the decree holder had agreed to raise construction on the land of the judgment debtors for the consideration of sharing a portion of the constructed area. The arbitral award negates the contention of the decree holder, of the agreement being of sale and has held the decree holder to be only entitled to reimbursement of the amounts incurred pursuant to the agreement. Such a dispute, under clauses (vi) and (vii) of Section 2(1)(c) of the Commercial Courts Act read with Explanation (a) thereto, constitutes a commercial dispute. Thus the subject matter of arbitration in the present case was a commercial dispute of a specified value, within the meaning of Section 10 of the Arbitration Act. To be fair to the senior counsels for the judgment debtors, they did not seriously controvert the aforesaid. Their contention however was that since this appeal does not arise out of arbitration under the provisions of the Arbitration Act, within the meaning of Section 10(2) of the Arbitration Act, the execution was not within the jurisdiction of the Commercial Division and the appeal thereagainst does not lie to the Commercial Appellate Division, under Section 13 of the Commercial Courts Act. It was further contended that the Arbitration Act is concerned only with the arbitration proceedings and challenge to the arbitral award and is not concerned with execution of the arbitral award, with the Act, in Section 36 merely providing for the award to be executed as a decree of the Civil Court in accordance with the provisions of the CPC. It was contended that the Execution Petition is thus not an application arising out of arbitration under

the Arbitration Act, to be entertained by the Commercial Division of this Court.

29. Needless to state, this question also was not raised before and has not been considered by the Commercial Division in any of the orders in the subject execution proceedings.

30. Though in appeal, ordinarily we would not allow a new plea to be urged but finding the same to be of general importance, having application in a large number of cases, proceed to do so.

31. Section 2(1)(c) defines “commercial disputes” as a “dispute” arising out of agreements, transactions, relationships, of the nature specified in various clauses thereunder. Sections 6 and 7 of the Commercial Courts Act vest jurisdiction in the Commercial Court / Commercial Division, to try “all suits and applications relating to commercial disputes of a specified value”.

32. According to the senior counsels for the judgment debtors, the jurisdiction of the Commercial Courts / Commercial Divisions is only over suits / arbitrations, subject matter whereof qualifies as a commercial dispute and not over proceedings for execution of the decrees passed in the said suits or over enforcement of awards passed in the said arbitrations. The question which arises is, whether a claim made by one against the other and controverted by the other, on adjudication thereof, whether by the Court or by the Arbitrator, ceases to be a “dispute”, for it to be said that the proceedings for execution of adjudication of a commercial dispute, whether by way of a decree or an arbitral award, do not qualify as a “dispute”.

33. Section 2(1)(i) of the Commercial Courts Act defines “Specified Value” in relation to a commercial dispute, as the value of a subject matter in respect of a suit as determined in accordance with Section 12. Reference therein is thus expressly to a “suit”, as distinct from an “execution”. Section 12 however refers to the specified value of the subject matter of the commercial dispute in a suit, appeal or application. Thereby, the ambit of specified value is increased, from that in Section 2(1)(i), with reference to a “suit” alone, to an appeal or an application also. Finally, Sections 6 and 7, while prescribing the jurisdiction of Commercial Courts and Commercial Divisions, prescribe the said jurisdiction, to extend to try all suits and applications relating to a commercial dispute, again, vesting the jurisdiction in the Commercial Courts / Commercial Divisions, not only to try “suits” but also “applications”.

34. The question which arises is, whether Execution Petitions are “applications” within the meaning of Sections 10, 12, 6 and 7 of the Commercial Courts Act.

35. “Dispute” is defined as a disagreement or argument between two people. “Application” is defined as a formal written request.

36. It is not as if, on adjudication of a dispute, resulting in a judgment / decree of a Court or award of an Arbitral Tribunal, the “dispute” between the parties comes to an end or nothing remains to be adjudicated between the parties. Section 47 of the CPC, in Part-II titled “Execution” itself, in this respect provides that all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to execution, discharge or satisfaction of the decree, shall be determined by the

Court executing the decree and not by a separate suit. It is evident therefrom that a judgment or a decree of the Court or the award of an Arbitral Tribunal, do not put an end to the “dispute” between the parties and it is not as if execution is merely an administrative task, with no adjudication involved. It would be incongruous to hold that the jurisdiction of the Commercial Courts / Commercial Divisions extends only to adjudication of commercial disputes till the stage of adjudication and not to adjudication of commercial disputes arising in the course of execution. Once it is so, the word “dispute” in Section 2(1)(c) would extend to adjudication of disputes arising during execution of arbitral awards subject whereof falls within the jurisdiction of the Commercial Courts Act and the Commercial Court and Commercial Division would also have jurisdiction over the applications for execution of arbitral awards of a specified value, subject matter whereof was a commercial dispute.

37. There is another aspect. A claimant in a dispute is not interested merely in adjudication thereof. The claimant is interested in delivery to him, of what he claims to be due and what has been adjudicated to be due to him from the opposite party. The Commercial Courts Act, as laid down in *HPL (India) Ltd.* supra also, was enacted to provide for speedy disposal of high value commercial disputes and their early resolution. The resolution of a commercial dispute is not complete, till the fruit thereof is in the hands of whosoever is found to be entitled thereto. Supreme Court also recently in *Rahul S. Shah Vs. Jinendra Kumar Gandhi* 2021 SCC OnLine SC 341 has lamented on the troubles of the decree holder, in not being able to enjoy the fruits of litigation on account of inordinate delay caused during the process of execution of the decree and has referred to the observations in a

judgment of 1872 vintage of the Privy Council in the *General Manager of the Raja Durbhunga Vs. Maharaja Coomar Ramaput Singh* 1872 SCC OnLine PC 16, that the actual difficulties of a litigant in India begin when he has obtained a decree. This being the state of affairs, to hold that the jurisdiction of the Commercial Courts / Commercial Division does not extend to execution but ends with adjudication, would defeat the very purpose and object of the Commercial Courts Act i.e. of speedy disposal and resolution of commercial disputes of a specified value. To hold that the Commercial Courts / Commercial Divisions would not have jurisdiction over applications for execution of a judgment or decree or for enforcement of an arbitral award, subject matter whereof was a commercial dispute, would in our opinion sound the death knell for the objective behind setting up of the Commercial Courts and the Commercial Divisions.

38. One of us (Rajiv Sahai Endlaw, J.) sitting singly, in *Bayer Intellectual Property GMBH Vs. Symed Laboratories Ltd.* 2019 SCC OnLine Del 7410 also held that if the decree is of a Commercial Court, its execution will lie in a Commercial Court only and would not lie in an Ordinary Civil Court which has jurisdiction to entertain suits of a non-commercial nature and that an application or execution of a decree in a commercial suit would lie in a Commercial Court only.

39. Order XXI Rule 11(2) of the CPC provides that every 'application' for execution of a decree shall be in writing, signed and verified. Thus the CPC, in accordance wherewith an arbitral award is to be executed/enforced, envisages such execution to be by way of an 'application' and since the jurisdiction of the Commercial Courts / Commercial Divisions extends vide

Sections 6 and 7 of the Commercial Courts Act extends, besides over suits, also over applications relating to commercial disputes, such jurisdiction would also extend over execution applications. Similarly, in respect of arbitration matters subject matter whereof is a commercial dispute, the jurisdiction of the Commercial Courts / Commercial Divisions, vide Section 10(2) extends to “...all applicationsarising out of such arbitration”. Since “dispute” does not come to an end till what has been found due in arbitration to the claimant is in the hands of the claimant, an application for enforcement of the arbitral award arises from arbitration, within the meaning of Section 10(2) of the Commercial Courts Act. Section 36 of the Arbitration Act provides for enforcement of the arbitral award in accordance with the provisions of the CPC, in the same manner as if it were a decree of the Court. Execution of a decree of the Court, per Section 38 of the CPC, has to be by the same Court which passed the decree. Since the jurisdiction over arbitrations subject matter whereof is a commercial dispute, is of the Commercial Courts / Commercial Divisions, applying Section 38 of the CPC, the jurisdiction for enforcement of awards of arbitration subject matter whereof is a commercial dispute, has to be of the Commercial Courts / Commercial Divisions.

40. The argument of the senior counsels for the judgment debtors, that Commercial Courts / Commercial Divisions do not have jurisdiction over executions because there is no specified value of the execution applications also stands negated vide Section 38 of the CPC which provides for jurisdiction for execution to be of the same Court which passed the decree. The “specified value” has been defined in Section 2(i) of the Commercial

Courts Act, of the commercial dispute and an application for execution, as aforesaid, arises therefrom.

41. We are thus unable to accept the arguments of the senior counsels for the judgment debtors that the application for execution of an arbitral award subject matter whereof was a commercial dispute does not lie before the Commercial Court or the Commercial Division and lies before the ordinary original civil court and this appeal would thus not be governed by the provisions of Section 13 of the Commercial Courts Act.

42. During the hearing, we had also wondered whether holding that the appeals arising from orders made in the course of execution proceeding to be also governed by Section 13 of the Commercial Courts Act would result in no appeal whatsoever lying from any order or judgment in a proceeding for execution of a judgment, decree or arbitral award in a commercial dispute. We however find it to be not so. Rules 46H and 103 of Order XXI of the CPC provide for adjudication of the disputes specified therein to be having the force of a decree and which would then be appealable as a judgment within the meaning of Section 13 of the Commercial Courts Act, in accordance with *HPL (India) Ltd.* supra. Similarly, it is not as if Order XLIII of the CPC, to orders specified wherein the right of appeal against orders is confined by the proviso after Section 13(1A), does not cater to any orders in the course of an execution. Order XLIII Rule 1(j) and (ja) provide for appeals against orders passed in the course of an execution proceeding. Of course, an order under Order XXI Rule 41 is not covered therein but in view of the dicta of this Court in *D&H India Ltd.* supra, the appeal against such an order would also be maintainable.

43. We thus hold the appeal to be maintainable and now proceed to the merits of the challenge.

44. Before proceeding further in the matter, we would be failing in our duty if do not mention that one of us (Rajiv Sahai Endlaw, J.) sitting singly, in *M.L. Gupta* supra decided on 22nd February, 2018 and attention whereto does not appear to have been invited during the hearing of *Bhandari Engineers & Builders Pvt. Ltd.* supra, had occasion to deal with Order XXI Rule 41 of the CPC and referring to various precedents, held that (i) for an Execution Petition to be said to be validly filed, furnishing of particulars under Order XXI Rule 11(2)(j) i.e. of the mode in which assistance of the Court is required, is mandatory, unless the reasons for seeking exemption from furnishing such particulars are set out and the Court is satisfied therewith; (ii) Order XXI Rule 17 of the CPC also requires the Court to ascertain whether the requirements of Rules 11 to 14, as may be applicable to the case, have been complied with or not and if they have not been complied with, allow the defect to be remedied and if not remedied, to reject the Execution Petition; (iii) though the language of Order XXI Rule 41 of the CPC is wide but cannot be interpreted as widely as to hold that in every case the decree holder, instead of doing its spadework i.e. setting out the mode in which assistance of the Court is required, simply ask for notice to be issued; if the same were to be permitted, it would nullify Order XXI Rule 11(2)(j) which requires such particulars to be furnished and Order XXI Rule 22 of the CPC which does not mandate notice of execution to be issued when applied for within two years of the date of the decree; issuing of such notice leads to avoidable delays.

45. As aforesaid, challenge to the merits of the impugned orders would require us to deal with *Bhandari Engineers & Builders Pvt. Ltd.* supra. (pronounced on 5th December, 2019) as well as judgments/orders therein, dated 11th January, 2016 reported as MANU/DE/0535/2016, dated 5th February, 2019 reported as 2019 SCC OnLine Del 11879, and dated 5th August, 2020 reported as MANU/DE/1497/2020. Having gone through all the four, we cull out hereunder the conclusions and the law laid down in the four judgments.

46. In the first judgment dated 11th January, 2016, it was held, “in cases of execution of decree for recovery of money, it would be appropriate to direct the judgment debtor, at the initial stage itself, to file the affidavit of assets as on the date of institution of the suit as well as of the current date i.e. the date of swearing the affidavit in Form 16A, Appendix-E under Order XXI Rule 41(2) of the Code of Civil Procedure along with statement of all their bank accounts for the last three years within 30 days of the receipt of the notice and to remain present for being orally examined under Order XXI Rule 41(1) of the Code of Civil Procedure”. It further held that if the judgment debtor’s affidavit does not truly or sufficiently disclose his assets, further affidavit can be directed to be filed with the details listed therein. In the second judgment dated 5th February, 2019, the Court noticed the delays and difficulties in execution of decrees / awards and the erosion of public confidence and trust in judgment delivery system and opined on the need for special attention being bestowed to expeditious disposal of execution proceedings. After opining so, the Court proceeded to hold / observe, that (i) if the decree holder is aware of the assets of the judgment debtor, the Court can attach such assets at the very threshold of the

execution proceeding and proceed to sell the same; (ii) however if the decree holder is not aware of the complete assets and income of the judgment debtor, the executing court, under Order XXI Rule 41(2) has power to direct the judgment debtor to disclose his assets in Form 16A, Appendix-E of the CPC; (iii) however Form 16A, Appendix-E in the CPC was not exhaustive, to ascertain all the assets of the judgment debtor and as a result whereof the execution proceedings were found to be lingering at the mercy of the judgment debtor; (iv) in several other countries, the law prescribes a comprehensive format of assets, income and expenditure to be filed by the judgment debtor; (v) there was thus an urgent need to formulate a detailed format of assets, income and expenditure, to be filed by the judgment debtor at the threshold of the execution proceedings; (vi) Section 151 of the CPC empowers the Court to make such orders as would be necessary to secure ends of justice or to prevent abuse of the process of the Court; and, (vii) Article 227 of the Constitution of India also confers on the Court the power of superintendence over subordinate courts. After observing so, the Court, in purported exercise of power under Section 151 and Order XXI Rule 41 of the CPC read with Sections 106 and 165 of the Indian Evidence Act and Article 227 of the Constitution of India, proceeded to formulate/draft an affidavit of assets and income, to be mandatorily filed by the judgment debtor in execution proceedings. Though the Court, in the earlier part of the judgment had noted that the need for directing such affidavit to be filed would arise only when the decree holder was not aware of the assets of the judgment debtor, but in the concluding portion of the judgment, the Court proceeded to issue a direction to all courts executing a decree for recovery of money, to, in the first instance direct the judgment

debtor to file the affidavit in the form as drafted by the Court and directed the copy of the said judgment to be circulated to all the Courts and others concerned. Vide the third judgment dated 5th December, 2019, certain modifications were carried out in the format devised in the preceding judgments. Finally, in the last judgement dated 5th August, 2020, after receiving the suggestions from Trial Courts and Members of the Bar, the guidelines laid down in the earlier judgments were further modified and made comprehensive.

47. We will first deal with the sources in law, from which the learned Judge authoring *Bhandari Engineers & Builders Pvt. Ltd.* supra drew power, to draft and prescribe the format of the affidavit and to mandate all courts dealing with proceedings for execution of money decree, to, even in the absence of any application of the decree holder, at the very first instance, on its own, direct the judgment debtor/s to file affidavit in the said format.

48. The first source of power referred to, is Section 151 of the CPC. Section 151 however merely saves the inherent power of the Court and provides that nothing in the CPC shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. The exercise of power under Section 151 is however restricted to the facts of a particular case before the Court and does not extend to issuing any general direction, to be abided by all courts in all cases of execution of money decree. Thus, in exercise of power under Section 151, the Court, in *Bhandari Engineers & Builders Pvt. Ltd.* supra, could have made / pass

order/s only to meet the ends of justice or to prevent the abuse of the process of Court, in the facts of that case and could not have issued a mandate or direction of a general nature. In *Padam Sen Vs. State of UP* AIR 1961 SC 218, reiterated in *Vinod Seth Vs. Devinder Bajaj* (2010) 8 SCC 1, it was held that “The inherent powers saved by Section 151 of the Code are with respect to the procedure to be followed by the Court in deciding the cause before it”. Not only so, it has also been held in *Padam Sen* supra, *Ram Chand and Son Sugar Mills Private Ltd. Vs. Kanhayalal Bhargava* AIR 1966 SC 1899, *Nain Singh Vs. Koonwarjee* (1970) 1 SCC 732, *P.A. Ahammed Ibrahim Vs. Food Corporation of India* (1999) 7 SCC 39, *Shipping Corporation of India Ltd. Vs. Machado Brothers* (2004) 11 SCC 168, *Durgesh Sharma Vs. Jayshree* (2008) 9 SCC 648, *Vinod Seth* supra and in *Ram Prakash Agarwal Vs. Gopi Krishan* (2013) 11 SCC 296, that the exercise of power under Section 151 extends to only such situations for which no provision is made in the CPC or in any other law and in exercise of powers under Section 151, the Court cannot pass orders in violation of or contrary to the provisions of the Code. Thus, for the Court / Commercial Division in *Bhandari Engineers & Builders Pvt. Ltd.* supra, to exercise powers under Section 151 of the CPC, it was necessary for the Court/Commercial Division to first hold that there was no provision in the CPC or any other law to meet the exigency which had arisen.

49. Not only did the Commercial Division in *Bhandari Engineers & Builders Pvt. Ltd.* supra not hold so but has itself in the judgment referred to Order XXI Rule 41 of the CPC and rather identified that also as a source of power to do what has been done therein. Order XXI Rule 41 read with Form 16A in Appendix-E of the CPC and Order XLVIII Rule 3 of the CPC

are precisely for the same exigency with which the learned Judge in *Bhandari Engineers & Builders Pvt. Ltd.* supra was concerned i.e. holder of a money decree being unaware of the assets of the judgment debtor. Order XXI Rule 41 of the CPC enables such a decree holder to apply thereunder to the Court for a direction to the judgment debtor to disclose his assets and further empowers the Court to direct the judgment debtor to disclose his assets in Form 16A in Appendix-E of the CPC. Though Order XLVIII Rule 3 permits the Court to order variation in the forms given in the appendices to CPC but only to the extent “as the circumstances of each case may require”. Thus, under Order XLVIII Rule 3 of the CPC, as rightly contended by the senior counsels for the judgment debtors, the Court, though is empowered to, in a particular case direct the judgment debtor to file affidavit of assets in Form-16A with such variations as may be ordered as per the exigencies in that case, but again has no jurisdiction to prescribe a variation generally, for all cases of execution of money decrees. Thus, with respect to the learned Judge, we are unable to identify Order XXI Rule 41 also as a source of power for directing / mandating, what has been directed / mandated in *Bhandari Engineers & Builders Pvt. Ltd.* supra.

50. Not only so, though Order XXI Rule 41 prescribes a direction thereunder to be only on an application of the decree holder and when the decree has remained unsatisfied for a period of 30 days, the learned Judge, in contradiction thereto, has directed all Courts executing money decrees, to, even without any application and on the threshold, direct judgment debtor/s to file affidavits as enunciated in the said judgment. Though Order XXI Rule 41(2) does not prescribe the date from which the period of 30 days for satisfaction of the decree is to be counted but in the context thereof,

the said period of 30 days cannot be from the date of the decree and has to be necessarily from the date when effort has been made for executing the decree and which efforts have not borne any fruit.

51. Neither under Section 151 nor under Order XXI Rule 41 of the CPC, the Court has any power to direct anything to be done in any other manner than as prescribed in the Code. It is settled law that inherent powers may be exercised in those cases where there is no express provision in the Code; the said power cannot be exercised in contravention or in conflict of or ignoring express and specific provisions of law. Inherent powers will not be exercised if its exercise is inconsistent with or comes into conflict with any of the powers expressly or by necessary implication conferred by the provisions of the Code; if there are express provisions exhaustively covering a particular topic, they give rise to necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Section 151 cannot be invoked to nullify the procedure prescribed under the Code. Inherent jurisdiction of the Court must be exercised subject to the Rule that if the Code does contain specific provisions which would meet the necessities of the case, such provision should be followed and inherent jurisdiction should not be invoked. Section 151 cannot be invoked where a party has his remedy provided in the Code and has neglected to avail himself of the same.

52. The High Court of Bombay, as far back as in ***Bachubai Manjrekar Vs. Raghunath Ghanshyam Manjrekar*** MANU/MH/0159/1941 held that except in very exceptional circumstances the Courts should never make an order under Order XXI Rule 41 of the CPC, without in the first instance

giving notice to the party against whom an order is sought. We respectfully concur therewith. In view of the said express provision in the CPC, as aforesaid, in exercise of powers under Section 151 no direction in contravention thereof could have been issued.

53. The next Source of power relied upon by the Court in *Bhandari Engineers & Builders Pvt. Ltd.* supra, is Sections 106 and 165 of the Indian Evidence Act. Section 106 provides that where any fact is especially within the knowledge of any person, the burden of proving that fact is upon that person. Section 165 empowers the Court to ask any question at any time to any party about any fact relevant or irrelevant. The powers under the said provisions also, are to be exercised in the facts of a particular case and do not extend to issuing a general direction. The powers under Section 106 and 165 of the Evidence Act have to be construed harmoniously with the provisions of the CPC. CPC requires a decree holder to, while applying for execution, plead the manner in which assistance of the Court is required and, if seeking execution of a money decree, to append to the execution petition, a list of moveable and immovable property of the judgment debtor/s, from attachment and sale whereof monies under the decree can be realized. To take care of a situation where the decree holder, inspite of reasonable efforts, is unable to give particulars of such assets, Order XXI Rule 41 enables such decree holder to apply to the Court for a direction to the judgment debtor/s to disclose assets from attachment and sale whereof the money decree can be satisfied. Once such specific provisions have been made in Order XXI Rule 41 read with Form 16A, Appendix-E read with Order XLVIII Rule 3 of the CPC, the Court, in exercise of powers under Sections 106 and 165 cannot act in contravention thereof. It is even

otherwise a settled principle of law, that once law requires a particular thing to be done in a particular manner, then, in order to be valid, the act must be done in prescribed manner alone and in no other manner. Reference in this regard may be made to *State of Uttar Pradesh Vs. Singhara Singh* AIR 1964 SC 358, *Dhanajaya Reddy Vs. State of Karnataka* (2001) 4 SCC 9, *Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala* (2002) 1 SCC 633, *Captain Sube Singh Vs. Lt. Governor of Delhi* (2004) 6 SCC 440, *Kunwar Pal Singh Vs. State of U.P.* (2007) 5 SCC 85 and *State of Kerala Vs. Kerala Rare Earth and Minerals Limited* (2016) 6 SCC 323.

54. The Court, in *Bhandari Engineers & Builders Pvt. Ltd.* supra has lastly drawn power from Article 227 of the Constitution of India, to issue the directions as issued therein. Article 227 vests in every High Court, the power of superintendence over all Courts and Tribunals throughout its territory, in relation to which it exercises jurisdiction and to make and issue general rules and prescribe format for regulating the practice and proceedings of such Court. It cannot be lost sight of, that the power thereunder is vested in the “High Court” and which, in our view, would mean the “Full Court” comprising of all the Judges of the High Court and not in individual Judges presiding over different benches as per the roster allocation by Hon’ble the Chief Justice. Though, in dealing with the cases in their roster, the individual Judges presiding over separate benches are empowered to exercise powers vested under Article 227 in the facts of that case but are not empowered to lay down any general direction for all matters of a particular kind or to be abided by all Courts. Such power can be exercised only by the Full Court and not by individual Judges. If Article 227 were to be interpreted as enabling individual Judges of the High Court

to issue general Rules and prescribe forms for regulating the practice and proceedings of the Court, the same would be fraught with difficulties, with different benches of the High Court issuing contradictory directions relating to the same matter, thereby defeating rather than serving the purpose of Article 227 of the Constitution of India.

55. In this regard, we may also mention that Part X titled “Rules” comprising of Sections 121 to 130, of the CPC, vide Section 122 empowers the High Court to, after previous publication, make Rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence and to, by such Rules annul, alter or add to all or any of the Rules in the first schedule of the CPC comprising of Order I to Order LI and Appendices A to H. Section 123 mandates each High Court to constitute a Rule Committee, for exercising powers vested under Section 122. Section 124 provides for the report of the Rules Committee to be placed before the “High Court”. Section 125 and Section 126 provide for consultation and approval of the State Government in the exercise of such powers by the High Court and Section 127 provides for publication of such Rules made by the High Court. In our opinion, the said provisions also illustrate the manner in which the power under Article 227 is to be exercised by the High Court i.e. by all the Judges of the High Court and not by individual benches of the High Court. The Chief Justice of this Court, in exercise of powers under Section 130 read with Section 123 of the CPC, has constituted a Committee to make Rules within the ambit of Part X of the CPC and the recommendations of which Committee are placed by Hon’ble the Chief Justice before the Full Court for consideration and only on approval by the Full Court, are forwarded to the State Government for their

approval. The procedure followed in *Bhandari Engineers & Builders Pvt. Ltd.* supra for laying down Rules of general application binding on all Courts executing a money decree, also defeat the requirement of Section 130, of the Rules being formulated only with the approval of the State Government. We may highlight that though in exercise of powers under Part X of the CPC, this Court is empowered to annul or vary Order XXI Rule 41 read with Form 16A in Appendix-E read with Order XLVIII Rule (3) of the CPC, as has been done in *Bhandari Engineers & Builders Pvt. Ltd.* supra, but only after following the procedure prescribed therein. Thus, if any individual Judge of the High Court, in the course of adjudication of a particular lis or otherwise is of the opinion of the need for any change to be made in the procedure prescribed in any of the Orders in Schedule I of the CPC, the same has to be put up to Hon'ble the Chief Justice for, if so desires, forwarding the same to the Rules Committee for considering the proposal. The Hon'ble Judge, in *Bhandari Engineers & Builders Pvt. Ltd.* supra, if felt any need for any change to be made in Order XXI Rule 41 or in Form 16A in Appendix-E, with all due respect, could not have proceeded to do the same himself and was required to refer the same to Hon'ble the Chief Justice, to, if so deemed fit, place the matter for consideration, first by the Rules Committee, which is a statutory committee as aforesaid, and thereafter by the Full Court. The aforesaid provisions having prescribed the procedure for formulating Rules and / or for making changes in Orders I to LI and Appendix A to H to the CPC, Rules / changes could not be made without following the said procedure.

56. We may notice that the Supreme Court, in *Rahul S. Shah* supra also, though has felt the need for changes in the procedure for execution, has only directed the High Courts to reconsider and update the Rules in exercise of powers under Article 227 read with Section 122 of the CPC.

57. We are thus of the view that *Bhandari Engineers & Builders Pvt. Ltd.* supra, to the extent extends what is laid down therein to execution proceedings pertaining to all money decrees and to all courts executing a money decree, cannot said to be good law. Axiomatically, what is held in *Bhandari Engineers & Builders Pvt. Ltd.* supra could not have been followed in the execution proceedings from which this appeal arises.

58. Once it is so, the impugned orders have no other reason whatsoever for directing the judgment debtors to file the affidavits and which are liable to be set aside on this ground alone.

59. In view of the aforesaid, need is not felt in this case to give other reasons for disagreeing with what has been held in *Bhandari Engineers & Builders Pvt. Ltd.* supra. Suffice it is to say that considerable merit is found in the arguments propounded by the senior counsels for the judgment debtors and some of which arguments have also been accepted by us while propounding on the powers of the Court to lay down Rules of general application.

60. As far as the facts of the present case are concerned, the respondent no.1 / decree holder was aware of the moveable and immovable assets of the appellants / respondent no.2 / judgment debtor and furnished particulars thereof in the schedule to the Execution Petition (and one of which immovable assets in terms of the arbitral award was in possession of the

decree holder) and sought assistance of the Court in execution of the arbitral award as a decree of the Court, by attachment and sale of the said assets. The Commercial Division acting as the executing court, on presentation of the Execution Petition, if preferred within two years of the date of publication of the arbitral award, was thus required to immediately attach any one of the said properties from which the decretal amount could be recovered and to on the next date, proceed with sale thereof. Instead, the Commercial Division, without there being any need thereof, proceeded to issue direction to the judgment debtors to disclose their assets. We reiterate, that there was no need therefor once the particulars of the assets were already before the Court and the decree holder also rightly had not applied. All this, rather than expediting execution, has delayed the cause of the decree holder. Surprisingly, the decree holder did not oppose such directions, which were resulting in delaying recoveries of the monies due to the decree holder under the arbitral award and of recovery whereof there was no stay.

61. As far as the contention of the senior counsels for the judgment debtors, that the decree holder being already in possession of one of the immovable properties of the judgment debtors, was not entitled to proceed with the execution, is concerned, no merit is found therein. Being in possession of one of the properties of the judgment debtors and which property is a plot of land, does not put the monies found due to the decree holder under the arbitral award, in the pocket of the decree holder. The decree holder cannot be expected to sit quiet till the judgment debtor opts to take possession of the said property.

62. As per the existing provisions of Order XXI Rule 41 of the CPC, the Commercial Division, in our view erred in issuing direction to judgment debtors to file affidavits and affidavits in a form other than as prescribed in the CPC. The impugned orders do not record that the decree holder had applied therefor, verbally or in writing. A direction under Order XXI Rule 41 could not have been issued without the decree holder applying therefor. Such direction could not have been issued without, inspite of taking steps and owing to obstruction by the judgment debtor, the decree remaining unsatisfied. No reason whatsoever has been given in the impugned orders as to why the directions as issued were called for in the facts of the case or why affidavit in the form prescribed in the CPC could not have sufficed.

63. Merit is also found in the contentions of the senior counsels for the judgment debtors, that direction to judgment debtor/s in terms of *Bhandari Engineers & Builders Pvt. Ltd.* supra, in all cases of execution of money decrees, irrespective of the need therefor, causes prejudice to the judgment debtor/s and is in breach of right of privacy of the judgment debtor/s. Merely because a person has a money decree against him, does not make the said person susceptible in law to a roving and fishing enquiry into all his affairs; such a person, in law, can be compelled to disclose to only such extent as may be necessary for execution of the decree against him. The principles, as enunciated in *Jolly George Varghese Vs. The Bank of Cochin* (1980) 2 SCC 360, that arrest and detention in civil prison of the judgment debtor in execution of a money decree is to be resorted to only when the judgment debtor, inspite of having means to satisfy the decree is found to have arranged his affairs to defeat the decree, can be invoked. It was held therein that the high value of human dignity and the worth of the

human person enshrined in Article 21 read with Articles 14 and 19 of the Constitution of India obligates the state not to incarcerate except under law which is fair, just and reasonable in its procedural essence; to cast the person in prison because of his poverty and consequent inability to meet his contractual liability, was held to be appalling. Applying the said principles, a judgment debtor in a money decree, cannot in a routine manner, be directed to disclose all the information as has been directed to be disclosed in the affidavits formulated in *Bhandari Engineers & Builders Pvt. Ltd.* supra and which information indeed is far reaching, affecting the substantive rights of the judgment debtor. In *Vinod Seth* supra it was held that Section 151 of the CPC is not a provision of law conferring power to grant any kind of substantive relief; it is a procedural provision saving the inherent power of the Court to make such orders as may be necessary for the ends of justice and to prevent abuse of the process of the Court; it cannot be used either to create or recognize rights or to create liabilities and obligations not contemplated in law. It was further held that the inherent powers saved by Section 151 of the CPC are with respect to the procedure to be followed by the Court and are not powers over the substantive rights which any litigant possesses. It follows, that the Court, without giving reasons in the facts of a particular case, cannot infringe substantive rights of privacy of an individual merely because he happens to be a judgment debtor under a money decree. Though the purpose with which the Court in *Bhandari Engineers & Builders Pvt. Ltd.* supra proceeded to issue directions in general, i.e. to ensure that monies under a decree are realized at the earliest, is laudatory but we are afraid, the Court proceeded beyond its powers and jurisdiction.

64. No merit is found in the contention of the counsel for the respondent no.1 / decree holder, that the judgment debtors having not challenged the order dated 3rd December, 2019, are not entitled to challenge the subsequent orders. The order dated 3rd December, 2019 stood substituted by the order dated 23rd December, 2019 and not challenging the order dated 3rd December, 2019 which ceased to exist, cannot deprive the judgment debtors from challenging the order dated 23rd December, 2019. Similarly, no merit is found in the argument, that the judgment debtors, in the review petition having themselves, in the alternative having offered to furnish particulars with respect to which confidentiality was claimed in a sealed cover, are not entitled to maintain the appeal. The primary / first relief claimed in the review petition having been declined, the judgment debtors are within their right to challenge the denial thereof. Law permits a litigant to claim reliefs in alternative and merely because a relief claimed in the alternative has been granted cannot come in the way of impugning the denial of primary / first relief.

65. Resultantly, the impugned orders, to the extent directing the judgment debtors to file additional affidavits or for that matter affidavits in any form, in exercise of powers under Order XXI Rule 41 of the CPC, are set aside.

66. The appeal is disposed of. No costs.

67. The Commercial Division to now proceed with the execution of the decree in accordance with law.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

JULY 05, 2021

‘gsr’..

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