SANWARLAL AGRAWAL & ORS.

v.

ASHOK KUMAR KOTHARI & ORS.

(Civil Appeal No(s). 1312-13 of 2023)

FEBRUARY 21, 2023

[KRISHNA MURARI AND S. RAVINDRA BHAT, JJ.]

Decree – Execution of – Expansion of decree – Impermissibility of – Parties entered into a joint venture agreement for a project – Each party brought in ₹ 10 crores as loans to finance the project – Respondents bid for the entire 50% shareholding of the appellants for consideration of ₹ 36.75 crores which was accepted, reduced in writing by way of email dtd. 28.03.19 – However, disagreement arose as to whether this amount was inclusive of the loan of ₹10 crores – Suit filed by respondents for declaration that the agreement dtd. 28.03.19 was binding on the appellants and for specific performance – Decree on admission passed – In execution proceedings, Single Judge construed the decree by looking into the pleadings and held that ₹ 36.75 crores was inclusive of the loan amount – Upheld by Division Bench – Held: An Executing Court can construe a decree if it is ambiguous – However, in the present case, this cannot result in additions (to the terms of the consent, embodied in the email dtd. 28.03.19) which were not agreed upon by the parties, since the decree was drawn on by consent of both parties at admissions stage itself – There was a clear lack of consensus on the inclusion of the loan amount into the agreement consideration – Both the Courts have, by selectively perusing the emails, altered the terms of the decree to include the loan amount into the agreement consideration – Impugned judgment set aside – Code of Civil Procedure, 1908 – Order XII, r.6.

Allowing the appeals, the Court

HELD: The decree awarded (on agreement by both parties) captures, in essence, parts (A) to (D) of the prayer made by the Respondents in their suit. They are analogous to the terms of the agreement dated 28.03.2019, which allude only to the *'sale of the 50% shareholding of the defendants'* (i.e., of the appellants), and do not mention anything separately regarding the outstanding

loan amount. The single judge has described the decree as 'ambiguous' simply on the absence of its engagement with the loan amount, and proceeded to go behind it by looking into the pleadings (of only the respondents, as appellants had not filed any – which has been adversely inferred by the Court) – and relied on the term, *'free of all claims of the defendants'* contained in the decree, to enlarge its scope to include the contested amount. Affirming the same, the Division Bench of the High Court has laid emphasis on the exchange of emails *pursuant* to the one containing the agreement, especially the email dated 29.03.2019 sent by Respondents outlining the break-up of the amount *for the first time,* which was *expressly rejected* by appellants in their response dated 11.04.2019. There was a clear lack of consensus on this inclusion. Both the Courts' interpretation of reading the appellants' consent into the same is clearly an exercise in overreach. Both Courts have, by selectively perusing the emails, altered the terms of the decree to include the loan amount into the agreement consideration. Such a reading was despite the clauses in the joint venture agreement entered into between the parties in 2017 which provided for separate mechanism of settling all outstanding loans. The joint venture agreement also contemplated a clear distinguishment between the bidding process and subsequent repayment of loan. 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. [Paras 13, 14, 16, 17 and 19][506-C-G; 507-E; 508-C; 509-F-H; 510-A]

S. Satnam Singh & Ors. v. Surender Kaur & Anr., **(2009) 2 SCC 562 : [2008] 16 SCR 904 – distinguished.**

Topanmal Chhotamal v. Kundomal Gangaram, **AIR 1960 SC 388;** *Meenakshi Saxena v. ECGC Ltd.*, **(2018) 7 SCC 479 : [2018] 5 SCR 421 – relied on.**

Meenakshi Saxena v. ECGC Ltd., **(2018) 7 SCC 479; *Rajinder Kumar v. Kuldeep Singh*, (2014) 15 SCC 529 : [2014] 2 SCR 356;** *Bhavan Vaja and Ors. v. Solanki Hanuji Khodaji Mansang*, **(1973) 2 SCC 40 – referred to.**

Case Law Reference

[2018] 5 SCR 421	**relied on**	**Para 7**
[2014] 2 SCR 356	**referred to**	**Para 11**
[2008] 16 SCR 904	**distinguished**	**Para 18**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.1312-1313 of 2023.

From the Judgment and Order dated 14.06.2022 of the High Court of Judicature at Bombay in APL Nos.3075 and 3079 of 2021.

Shyam Divan, Sr. Adv., Bhavin Bhatiya, Amog Singh, Shreya Bhojnagarwala, Udayaditya Banerjee, Advs. for the Appellants.

Shekhar Naphade, Pallav Shishodia, Sr. Advs., Jatin Zaveri, Harsh Mehta, Ms. Aishwarya Dash, Ms. Farah Hashmi, Kumar Mitakshar, Neel Kamal Mishra, Dr. Prashant Pratap, Advs. for the Respondents.

The Judgment of the Court was delivered by

S. RAVINDRA BHAT, J.

1. Leave granted. These two appeals are preferred against the common impugned judgment and final order of the High Court of Judicature at Bombay, dated 14.06.2022,[1] in which the order of the single judge dated 04.01.2021,[2] was affirmed.

I. *Factual Background*

2. The parties entered into a joint venture agreement in 2017 to operate a multi-specialty hospital in Malad, Mumbai. As equal shareholders, each brought in ₹10 crores as interest-free loans to finance the project. On 27.03.2019, the respondents (hereafter, 'Kotharis') bid for the entire 50% shareholding of the appellants (hereafter, 'Agrawals'),

[1] *Sanwarlal Agrawal v Ashok Kumar Thakur,* Appeal (L) No. 3075/2021 and 3079/2021.

[2] *Ashok Kumar Kothari v Sanwarlal Agrawal,* Execution Application (L) No. 1713/2019 and 139/2020 in Commercial Suit No. 844/2019.

A which was accepted, and reduced in writing by way of an email dated 28.03.2019, which stated the terms as follows:

> *"The* te(r)*ms and conditions agreed by you are also agreeable to us, which are as follows,*
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> *l. consideration- 36.75 crores*
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> B
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> *2. token 5 percent of the consideration*
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> *3. Further 50 percent of consideration within 45 days, after which Kothari group will be allowed to start work on the project.*
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> C
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> *4. remaining 45 percent of consideration within 120 days.*
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> *Failure to pay 50 percent amount within 45 days will lead to forfeiture of token amount of 5 percent and automatic sale of 50 percent shares of Kothari group to Agrawal group at their bid price of 35 crore on same terms and condition starting 45th day. Failure to pay the final 45 percent in time will lead to forfeiture of 5 percent of the consideration and automatic sale of 50 percent shares of Kothari group to Agrawal group at their bid price of 35 crore on same terms and condition sta1iing 120th day. There will be no interest paid by Agrawal group on the balance consideration.*
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> *Deal date march 27, 2019."*

3. Thereafter, token amount of ₹1,83,75,000/- (or 5%) was paid (of which ₹1,25,000/- was contested as having never been received in the account of Agrawals). However, on 29.03.2019, Kotharis, by way of email, provided a break-up of the consideration of ₹ 36.75 crores, as under:

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> *"At the outset, please note that the total consideration of Rs. 36.75 Crores payable to you comprises of:*
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> *a. the total value of your 50% shareholding in the company being the sum of Rs. 26,45,45,000/- (Rupees Twenty-Six Crores Forty-Five Lakh Forty-Five Thousand Only)*
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> *b. re-payment of your group's interest free loan lying with the company of the sum of Rs. 10,29,55,000/- (Rupees Ten Crores Twenty-Nine Lakhs and Fifty-Five Thousand) which will be*
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paid and discharged to you through the bank account of the company."

(emphasis supplied)

This inclusion of the loan amount was not acceptable to Agrawals, who expressly rejected the same in an exchange of emails thereafter, dated 03.04.2019, 11.04.2019, 19.04.2019 and 20.04.2019.

4. On 30.04.2019, Kotharis filed Commercial Suit No. 844/2019, for declaration that the agreement dated 28.03.2019 was binding on the Agrawals, and for specific performance. This was followed by a Notice of Motion No. 1619/2019, dated 29.07.2019, under Order XII Rule 6 of the Code of Civil Procedure, 1908 (hereafter, "CPC"), seeking decree on admission, which was awarded by order dated 05.08.2019 in the following terms:

"1. Mr. Saraogi and Mr. Hakani on instructions from Dr. Vikas Agarwal, Defendant no.2, who says that he has instructions on behalf of other defendants to make the statement, state that they are submitting to a decree in terms of prayer clauses (a) to (d), which read as under:

(a) That this Hon'ble Court be pleased to declare that the said agreement arrived at on March 27, 2019 which is reduced to writing by the defendant no.2 and is recorded by the email dated March 28, 2019 in respect of the 50% shares held by the Agarwal Group in the capital of the plaintiff no. 6 is valid, subsisting and binding upon the defendants and upon persons claiming by, through or under the defendants;

(b) That this Hon'ble Court be pleased to order and decree the defendant to specifically perform the said agreement arrived at on March 27, 2019 for sale of the 50% shareholding of the defendants in the plaintiff no.6 as reduced into writing and as recorded by the email dated March 28, 2019 of the defendant no.2 inter alia by:

(i) executing, signing and attesting all necessary deeds and documents necessa1y to transfer, assign and vest the fifty percent shareholding of the defendants in the plaintiff no.6 in favour of the plaintiffs or their nominees;

A *(ii) handing over original title deeds, documents and writings in respect of the suit plot which are lying with the defendant no.2 and in the locker to be operated jointly by the defendant no.2 and the plaintiff no.2 to the plaintiffs.*

(iii) doing or causing to be done all acts, deeds, matters and
B *things and to sign, execute and register all deeds, documents and writings as may be necessary for the transfer of the said 50% shares of the Agarwal Group to the plaintiff nos. l to 5 and/or to their nominees free of all claims of the defendants.*

(iv) Tendering their resignation from Directorship of the
C *plaintiff no. 6 company.*

(c) That this Hon'ble Court be pleased to order and decree the defendants to do or cause to be done all acts, deeds, matters and things and to sign and execute all deeds, documents or writings necessary under the supervision of this
D *Hon'ble Court for the purposes of the order of specific performance or to give effect to the reliefs sought in terms of prayer (b) above.*

(d) That for the purposes aforesaid all inquiries be made, awards be made, orders be passed, directions be given and
E *accounts be taken as this Hon'ble Court may deem just and proper in the facts and circumstances of the case."*

2. Time mentioned in the agreement will begin from today.

3. Suit accordingly stands disposed. Notice of motion accordingly also stands disposed.

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4. Refund of court fees, if any, in accordance with rules.

5. Drawn up decree dispensed with.

6. All to act on authenticated copy of this order.

(K.R. SHRIRAM, J.)"

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5. After the suit was thus decreed, the counsels of the parties engaged in further correspondence, without much success. Consequently, Kotharis filed an execution proceeding[3] on 13.09.2019 - as did the Agrawals,[4] on 16.01.2020. Several interim applications were also filed.

[3] Execution Application (L) No. 1713/2019.

H [4] Execution Application (L) No. 139/2020.

The single judge, by a common order dated 04.01.2021, held that the decree was ambiguous. While noting that the Agrawals had neither filed any reply to the Notice of Motion, nor any written statement, the Executing Court held that in exercise of its jurisdiction, it was competent to construe the decree by looking into the pleadings. The Court laid emphasis on part B (iii) of the prayer in the suit, which stated as follows:

> *"B. That this Hon'ble Court be pleased to order and decree the Defendant to specifically perform the said agreement arrived at on March 27, 2019 for sale of the 50% shareholding of the Defendants in the Plaintiff No. 6 as reduced into writing and as recorded by the email dated March 28, 2019 of the Defendant No.2 inter alia by:*
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> ***
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> *(iii) doing or causing to be done all acts, deeds, matters and things and to sign, execute and register all deeds, documents and writings as may be necessary for the transfer of the said 50% shares of the Agarwal Group to the Plaintiff Nos. 1 to 5 and/or to their nominees free of all claims of the Defendants."*
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> *(emphasis supplied)*

And held thus:

> *"34. I have, therefore, no hesitation in holding that absent a written statement or denial of averments in the plaint and by submitting to a decree in terms of prayer clause (B)-(iii), the price payable was inclusive of the loan inasmuch as after payment of the agreed price or agreed consideration and transfer of the shares, the Agrawals would not have any further claims".*
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> *(emphasis supplied)*

6. On appeal, by way of the impugned judgment, the Division Bench concurred with the single judge. The Court held that the single judge's discretion of looking into the pleadings in no way constituted going '*behind the decree*', relying on a catena of judgments, and paid emphasis on the email exchange between the parties, particularly the one made on 29.03.2019, on the bifurcation of the amount (as stipulated above in paragraph 3 above), which was also replicated in Kothari's suit (at paragraph 12 of the suit), and held that the total consideration of

A ₹ 36.75 crores was thus *inclusive* of the loan amount:

> *"20. It does seem to us in conclusion that the approach of the Agrawals in contesting the nature of the decree after submitting to it, without any denial or traverse of the plaint's averments, is perhaps a piece of cleverness that should not be*
B *countenanced by any equity-minded court. The Agrawals knew perfectly well what the Kotharis were saying in paragraph 12 of the plaint. They knew exactly what the Kotharis meant when they said that the email of 28th March 2019 was in terms of the oral agreement of the day before. Any ambiguity about this is eliminated by the Kotharis' email of 29th March*
C *2019 at page 545, which explicitly set out in paragraph 3 what 'consideration' meant. To this, too, there is no denial. To say now that the decree is not what it was but something else is a case of not of the Kotharis but of the Agrawals wanting the court to go behind the decree. It is an attempt to*
D *alter the decree completely to something it never intended to be."*

(emphasis supplied)

Hence, the present appeal.

E **II. *Contentions of the Parties***

7. Mr Shyam Divan, Ld. Senior Advocate for the appellants, submitted that the Executing Court went behind the decree by enlarging its scope, through an analysis of the pleadings, which it was not empowered to do, as held by several judgments of this Court, such as
F *Meenakshi Saxena v. ECGC Ltd.*[5] It was emphasised that the agreement entered into by the parties orally on 27.03.2019 was facilitated by a mediator, Shri Pawan Didwania, and affirmed that very evening in the presence of a second mediator, Shri Satyanarayan N. Shrimali, and recorded in writing on the next day, i.e., 28.03.2019 via email, with no discussion on inclusion of outstanding loans. The Agrawals agreed to
G only the terms of the e-mail dated 28.03.2019 and not any later correspondence, even though there was a mention of such correspondence and letters in the plaints and averments. Therefore, this was a clear case where the parties consciously chose to embody only the terms agreed upon, and reduced to writing, as the terms of the decree.

H [5] *Meenakshi Saxena v. ECGC Ltd*., (2018) 7 SCC 479.

8. It was submitted that the High Court fell into error in taking note of selective emails / letters while considering the pleadings even if *arguendo* it were permissible for it to do so. It was pointed out that the suit averments clearly recounted in an elaborate manner the exchange of e-mails and was not confined to e-mail dated 29.03.2019, rather also other e-mails such as the one addressed by the respondent / plaintiff i.e., Kotharis on 03.04.2019, the e-mail from Agrawals to this email, on 11.04.2019 clearly disputing the Kotharis' interpretation with respect to the conditions of the settlement. The suit also referred to another e-mail dated 19.04.2019, which reiterated Kotharis' position that the sum of ₹ 36.75 cores was a '*composite amount*', and nothing further was payable to the Agrawals. In the same way, learned counsel also relied upon other e-mails exchanged after Kotharis filed the suit, i.e., dated 19.07.2019 and 23.07.2019. In these circumstances, the Court could not have relied only on two or three e-mails while interpreting the decree to mean something more than what its terms stated.

9. Mr Diwan relied upon the affidavit of the first mediator, Shri Pawan Didwania, wherein he clearly stated that there was never any discussion or agreement on adjustment of any loan, and that the Agrawals would receive ₹ 36.75 crores from the Kotharis for their 50% shareholding only.

10. On the other hand, Mr Shekhar Naphade and Mr. Pallav Shishodia, learned senior counsels appearing on behalf of the Kotharis, urged that that impugned judgment did not warrant any interference. The decree for specific performance was passed on admission by the Agrawals in terms of the agreement reflected in the email dated 28.03.2019. The expressions used in the email i.e., '*consolidated price*'; that the settlement would provide '*full control*'; that the agreement was for purchase of the Agrawal's '*stake*'; and was for '*smooth transition*', clearly pointed to a complete separation of the groups. Consequently, the amount of ₹ 36.75 crores was a composite one, meant to discharge all claims by the Agrawals on the company. The Kotharis had clearly stated that the amount offered by them was, if accepted, to settle '*all claims*', as was also worded in the prayer in their suit (see paragraph 5 above).

11. Learned counsel argued that the so-called ambiguity created in this case was an afterthought, meant to escape and evade the decree drawn. Further, the fact that the Agrawals did not file a written statement

to the plaint, or reply to the Notice of Motion, contesting the pleadings of the Kotharis with respect to the meaning of the emails dated 28.03.2019 onwards, clearly points to their *acceptance* of the suit averments. Reliance was placed on the judgments of this Court in *Rajinder Kumar v. Kuldeep Singh,*[6] *S. Satnam Singh & Ors. v. Surender Kaur & Anr.*,[7] and *Bhavan Vaja and Ors. v. Solanki Hanuji Khodaji Mansang,*[8] to reinforce these submissions.

III. Analysis

12. The only issue for consideration is whether the sum of ₹ 36.75 crores stipulated in the agreement by email dated 28.03.2019 was *inclusive* of the loan amount of ₹ 10,29,55,000/- or not.

13. The decree awarded (on agreement by both parties) captures, in essence, parts (A) to (D) of the prayer made by the Kotharis in their suit. They are analogous to the terms of the agreement dated 28.03.2019, which allude *only* to the '*sale of the 50% shareholding of the defendants'* (i.e., of the Agrawals), and do not mention anything separately regarding the outstanding loan amount.

14. The single judge has described the decree as 'ambiguous' simply on the absence of its engagement with the loan amount, and proceeded to go behind it by looking into the pleadings (of only the respondents, as appellants had not filed any – which has been adversely inferred by the Court) – and relied on the term, '*free of all claims of the defendants'* contained in the decree, to enlarge its scope to include the contested amount. Affirming the same, the Division Bench of the High Court has laid emphasis on the exchange of emails *pursuant* to the one containing the agreement, especially the email dated 29.03.2019 sent by Kotharis outlining the break-up of the amount *for the first time,* which was *expressly rejected* by Agrawals in their response dated 11.04.2019. There was a clear lack of consensus on this inclusion. Both the Courts' interpretation of reading the Agrawals' consent into the same is clearly an exercise in overreach.

15. This Court has time and again cautioned against the Execution Court adopting such an approach. In *Topanmal Chhotamal v. Kundomal Gangaram,*[9] a three-judge bench held as follows:

[6] *Rajinder Kumar v. Kuldeep Singh*, (2014) 15 SCC 529.
[7] *S. Satnam Singh & Ors. v. Surender Kaur & Anr.*, (2009) 2 SCC 562.
[8] *Bhavan Vaja and Ors. v. Solanki Hanuji Khodaji Mansang*, (1973) 2 SCC 40.
[9] *Topanmal Chhotamal v. Kundomal Gangaram*, AIR 1960 SC 388.

"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".

Yet again, in *Meenakshi Saxena* (supra) it was reiterated that:

"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."

16. 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:

"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

A *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."*

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(emphasis supplied)

C 17. Thus, the joint venture agreement also contemplated a clear distinguishment between the bidding process and subsequent repayment of loan. The argument of the respondent – that the use of words '*consolidated price*' denotes inclusion of the loan amount – cannot be accepted *ipso facto,* considering that from the pleadings, it is clear that only the 50% shareholding valuation was discussed by the parties throughout, which was pegged at ₹ 70 crores by the Kotharis. Repayment of the loan amount in no manner constitutes a disruption of the *'smooth transition'* envisioned as an aim of this transaction – thus its interpretation as such is erroneous.

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18. The case law relied on by the respondents too, is distinguishable from the facts herein. In *S. Satnam Singh v. Surender Kaur*,[10] the question for consideration was whether the trial court's order was in error in amending its preliminary decree in a partition suit to make an addition to the list of properties. This Court held that the mere act of rectifying such a mistake did not constitute an infirmity of the amended decree. The counsel's reliance on the definition of a 'decree', as held in this judgment,[11] does little to support the respondent's submissions, as

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[10] *S. Satnam Singh v. Surender Kaur*, (2009) 2 SCC 562.

[11] *Id.,* "15. *A "decree" is defined in Section 2(2) of the Code of Civil Procedure to mean:*

"2. (2) ... the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and it may be either preliminary or final."

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It may partly be preliminary and partly be final. The court with a view to determine whether an order passed by it is a decree or not must take into consideration the pleadings of the parties and the proceedings leading up to the passing of an order. The circumstances under which an order had been made would also be relevant".

[12] *Rajinder Kumar v. Kuldeep Singh*, (2014) 15 SCC 529.

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clearly the Courts below have *not* looked into the facts leading up to the passing of the decree in a holistic manner.

19. With respect to *Rajinder Kumar v. Kuldeep Singh*,[12] the counsel has placed reliance on the following paragraph:

> "*If the suit for specific performance is not decreed as prayed for, then alone the question of any reference to the alternative relief would arise. Therefore, there is no question of any ambiguity. As held by this Court in Topanmal Chhotamal v. Kundomal Gangaram [Topanmal Chhotamal v. Kundomal Gangaram, AIR 1960 SC 388, p. 390, para 4:"4. At the worst the decree can be said to be ambiguous. In such a case it is the duty of the executing court to construe the decree. For the purpose of interpreting a decree, when its terms are ambiguous, the court would certainly be entitled to look into the pleadings and the judgment…."] and consistently followed thereafter, even if there is any ambiguity, it is for the executing court to construe the decree if necessary after referring to the judgment. If sufficient guidance is not available even from the judgment, the court is even free to refer to the pleadings so as to construe the true import of the decree. No doubt, the court cannot go behind the decree or beyond the decree. But while executing a decree for specific performance, the court, in case of any ambiguity, has necessarily to construe the decree so as to give effect to the intention of the parties. Thus, there is no question of any alternate relief regarding the damages, etc. in the present case since the suit for the specific performance for the conveyance of the property has been decreed*."

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

[12] *Rajinder Kumar v. Kuldeep Singh*, (2014) 15 SCC 529.

A worthy of adverse inference, cannot be the reason to justify expansion of the decree.

20. Thus, the appeals are allowed. The impugned judgment is set aside. There will be no order as to costs.

Divya Pandey Appeals allowed.
(Assisted by : Roopanshi Virang, LCRA)