IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

EXECUTION APPLICATION NO. 1041 OF 2022

ASHOK KUMAR KOTHARI & OTHERS )JUDGMENT CREDITORS
V/s.
SANWARLAL AGARWAL & OTHERS ).JUDGMENT DEBTORS

WITH

EXECUTION APPLICATION (L) NO. 139 OF 2020

SANWARLAL AGARWAL & OTHERS )JUDGMENT CREDITORS
V/s.
ASHOK KUMAR KOTHARI & OTHERS ).JUDGMENT DEBTORS

WITH
INTERIM APPLICATION (L) NO. 28981 OF 2021
AND
INTERIM APPLICATION (L) NO. 5203 OF 2021
AND
INTERIM APPLICATION NO. 546 OF 2022
IN
EXECUTION APPLICATION NO. 1041 OF 2022
WITH
NOTICE (L) NO. 31837 OF 2022
IN
EXECUTION APPLICATION NO. 1041 OF 2022

Mr.Anil Singh, Senior Advocate a/w. Mr.Amogh Singh, Mr.Vikas Mishra, Mr.Nirav Karia, Mr.Adarsh Vyas, Mr.Rohit Yadav, Ms.Krutisha Pandey, Ms.Monika Shekhawat i/by Mr.Bhavin Bhatia, Advocate for the Applicants/Judgment Creditors in EXAL/139/2020 and for the Judgment Debtors in EXA/1041/2022.

Mr.Dinyar Madon, Senior Advocate a/w. Mr.Vishal Kanade, Mr.Bhadrish Raju i/by Mr.Jamshed Ansari, Advocate for the Judgment Creditors in EXA/1041/2022 and for the Judgment Debtors in EXAL/139/2020.

CORAM : ABHAY AHUJA, J.

RESERVED ON : 28th AUGUST 2024
PRONOUNCED ON : 19th SEPTEMBER 2024

**JUDGMENT** :

1. A company by the name of Special Ear, Nose and Throat Hospital Private Limited (the "said company") was incorporated on 2nd April 2009 with the object to construct a multi-speciality hospital on a parcel of land called as "Hospital Plot AM6" admeasuring 4897.40 square meters and bearing CTS No.827/C/1/20 situate at Dindoshi, Malad (East), Taluka Borivali, Mumbai (the "project") by the Defendants (the "Agarwals") in Suit No.844 of 2019 (the "said suit") and the Agarwals were 100% shareholders of the said company till 8th May 2012. On 8th May 2012, the Plaintiffs (the "Kotharis") in the said suit acquired 50% shareholding in the said company. Accordingly, the shareholding of the said company was equally divided between the Kotharis and the Agarwals.

2. The Kotharis advanced sum of Rs.10,30,27,700/- to the said company as an interest free loan by way of quasi-equity and the Agarwals had also advanced a sum of Rs.10,32,55,000/- to the said company as an interest free loan by way of quasi-equity.

3. Around 27th March 2019, differences arose between the parties with respect to the implementation of the project, which differences

were sought to be settled by a mutual agreement whereby both the groups decided to bid against each other, in order to acquire and have full control of 100% shareholding of the said company. The Agarwals made a bid of Rs.35 crores for purchase of the 50% shareholding of the Kotharis and in counter thereto, the Kotharis made a bid of Rs.36.75 crores for the purchase of the 50% shareholding of the Agarwals. The Agarwals did not increase their bid and as a result, the Kotharis were the successful bidder.

4. On 28th March 2019 the Agarwals addressed an email to the Kotharis regarding the terms and conditions of the agreement arrived at on 27th March 2019.

5. The Kotharis, thereafter, addressed two emails, one on 29th March 2019 and the second on 3rd April 2019 further adding terms to the email dated 28th March 2019. The Agarwals rescinded from the entire deal vide email dated 29th April 2019.

6. As disputes and differences arose between the two with respect to the performance of the said email/agreement dated 28th March 2019, on 2nd May 2019, the Kotharis filed the said Suit no.844 of 2019

against the Agarwals before this Court praying for specific performance of the agreement arrived at on 27th March 2019 and reduced to writing by email/agreement dated 28th March 2019. On 30th July 2019, the Kotharis also filed a Notice of Motion No.1916 of 2019 in the said suit praying for a judgment on admission under Order XII Rule 6 of the Code of Civil Procedure, 1908 ("CPC").

7. Thereafter, on 5th August 2019, this Court (Coram : K.R. Shriram, J.) decreed the said suit in view of the settlement on behalf of the Defendants that they are submitting to a decree in terms of prayer clauses (a) to (d) to the plaint. The said order is usefully quoted as under :

> *"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 necessary 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;*
*(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 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.*
*(iv) Tendering their resignation from Directorship of the 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 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 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.*
*Refund of court fees, if any, in accordance with rules. Drawn up decree dispensed with.*
*All to act on authenticated copy of this order."*

8. On 9th August 2019, the Kotharis made payment of the token amount equivalent to 5% of the agreed consideration of Rs.36.75 crores to the Agarwals in accordance with the terms of the

email/agreement dated 28th March 2019 and the decree as above. The Agarwals admittedly have encashed the said cheque of 5% payment of the token amount by the Kotharis.

9. In or around August / September 2019, disputes pertaining to inclusion of loan amount of Rs.10,32,55,000/- in the consideration of 36.75 crores were raised by the Agarwals, the Agarwals contending that their loan amount was over and above the consideration of Rs.36.75 crores and was not to be included in the consideration of 36.75 crores.

10. Thereafter, the Kotharis filed Execution Application No. 1041 of 2022 on 17th September 2019 for execution of the decree. On 10th October 2019, the Kotharis filed Interim Application No.166 of 2019 in their execution application. On 20th January 2020, the Agarwals filed Execution Application (L) No.139 of 2020 before this Court also in execution of the said decree. The Agarwals also filed Interim Application No.692 of 2020 in the said execution application.

11. It has been submitted, that on 10th February 2020, the Kotharis amended their Execution Application No.1041 of 2022 to provide for

the default mechanism contained in the agreement dated 27th March 2019 as reduced into writing by the Agarwals in their email dated 28th March 2019.

12. It has been submitted that the default / reverse mechanism provides for automatic sale of the Kotharis' shares in the said company to the Agarwals upon the Kotharis committing any default in payment of the installments of the consideration payable to the Agarwals as recorded in the email dated 28th March 2019.

13. It has been submitted that on 4th January 2021 the Executing Court (Coram : A.K. Menon, J., as His Lordship then was) accepted the submissions of the Kotharis and held that the loan amount of Rs.10,32,55,000/-was to be included in the consideration of Rs.36.75 crores and accordingly, Interim Application No.166 of 2019 came to be disposed.

14. Against the order dated 4th January 2021, the Agarwals filed two appeals viz. Appeal (L) No.3075 of 2021 and Appeal (L) No.3079 of 2021 before the Appeal Court. On 14th June 2022 the Appeal Court dismissed both the appeals and upheld the order dated 4th January

2021 which had accepted the submissions of the Kotharis that the loan amount of Rs.10,32,55,000/- was to be included in the consideration of Rs.36.75 crores.

15. The Agarwals challenged the said order dated 14th June 2022 before the Hon'ble Supreme Court by way of two civil appeals. On 21st February 2022 the Hon'ble Supreme Court set aside the order dated 14th June 2022 and held that the loan amount of the Agarwals was not to be included in the consideration of Rs.36.75 crores in view of the terms of the said email /agreement dated 28th March 2019 and the said decree.

16. Thereafter, the Kotharis preferred two Review Petitions before the Hon'ble Supreme Court which *inter alia*, raised a ground with respect to the reverse mechanism /automatic sale, however the two Review Petitions came to be rejected on 3rd October 2023.

17. The issue raised before this Court is with respect to the reverse mechanism viz. purchase by the Agarwals of the shares of the Kotharis, viz. the reverse mechanism, as noted earlier, provides for automatic sale of the Kotharis' shares in the said company to the Agarwals, upon

the Kotharis committing default in payment of the installments of the consideration payable to the Agarwals, as recorded in the email dated 28th March 2019.

18. The said email dated 28th March 2019 has been reproduced in paragraph 2 of the order of the Hon'ble Supreme Court dated 21st February 2023 which includes the reverse sale / automatic sale. Paragraph 2 of the said order is usefully quoted as under :

> *"The parties entered into a joint venture agreement in 2017 to operate a multi-speciality hospital in Malad, Mumbai. As equal shareholders, each brought in Rs.10 crores as interest-free loan to finance the project. On 27.03.2019, the respondents (hereafter, 'Kotharis') bid for the entire 50% shareholding of the appellants (hereafter, 'Agrawals'), 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,*
> 1. *Consideration – 36.75 crores*
> 2. *Token 5 percent of the consideration*
> 3. *Further 50% of consideration within 45 days, after which Kothari group will be allowed to start work on the project.*
> 4. *remaining 45 percent of consideration within 120 days.*
>
> *Failure to pay 50% amount within 45 days will lead to forfeiture of token amount of 5 percent and automatic sale of 50% shares of Kothari group to Agrawal group at their bid price of 35 crore on same terms and conditions 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 conditions starting 120th day. There will be no interest paid by the Agrawal group on the balance consideration. Deal date March 27, 2019."*

19. I have heard Mr.Anil Singh, learned Senior Counsel for the Judgment Creditors in Execution Application (L) No.139 of 2020 and for the Judgment Debtors in Execution Application (L) No.1041 of 2022 and Mr.Dinyar Madon, learned Senior Counsel for the Judgment Creditors in Execution Application (L) No.1041 of 2022 and for the Judgment Debtors in Execution Application (L) No.139 of 2020 and with their able assistance considered the papers and proceedings and have given my thoughtful consideration to the rival contentions.

20. Mr.Anil Singh, learned Senior Counsel appearing for the Agarwals would submit that since the decree passed in Suit No.844 of 2019 by consent of the Defendants viz. the Agarwals was in a suit for specific performance filed by the Kotharis as Plaintiffs, wherein the Kotharis had sought specific performance with respect to the sale of 50% shareholding of the Agarwals in the said company as reduced into writing and as recorded by email dated 28th March 2019 and that there being no mention of any reverse mechanism and / or purchase by the Agarwals of the shares of the Kotharis in the said company in the prayers, there is no question of the Kotharis now seeking to invoke the reverse mechanism to have the Agarwals purchase the shares of the Kotharis in the said company.

21. Mr.Singh would submit that the Agarwals had submitted to the decree only in terms of prayer clauses (a) to (d) which do not speak of the reverse mechanism or the Agarwals purchasing 50% shareholding of the Kotharis. Mr.Singh would submit that, infact, in the Notice of Motion No.1916 of 2019 in Execution Application (L) No.1713 of 2019 filed by the Kotharis, the Kotharis had sought for the alternative prayer for implementation of the reverse mechanism i.e. purchase of shares by Agarwals of the Kotharis's shareholding in the said company but the same was not the subject matter of the order dated 5th August 2019 and the said suit was disposed of in terms of the reliefs granted, although there were prayers sought for in the said Notice of Motion.

22. Mr.Singh has drawn the attention of this Court to order dated 5th August 2019 and also to the pleading of the Kotharis, as stated in affidavit dated 25th November 2019 filed in the Interim Application No.166 of 2019, and in particular, the following averment on oath made in the said affidavit :

> *"7. The said Notice of Motion was called for hearing on August 5th, 2019. At the said hearing it was submitted on behalf of the judgment Creditors that the Judgment Creditor nos.1 to 5 were ready and willing to submit to a decree that the Judgment Creditors nos.1 to 5 shall exit the Judgment Creditor no.6 upon payment by the Judgment Debtor to them of a total sum of Rs.43,46,52,700/- (Rs.Forty Three Crores Forty Six Lakhs Fifty*

*Two Thousand Seven Hundred Only) in terms of Clause 4 of the agreement dated March 27 2019 which reduced into writing by the Judgment Debtor no.2 in his email dated March 28th 2019. The Judgment Debtor no.2 was personally present in court on August 5, 2019 and upon inquiry, he declined to rely upon the Judgment Debtor own interpretation of the contract (that the sum of Rs.36.75 crores payable by the Judgment Creditors is exclusive of the debt payable by the Judgment Debtor no.6 to the Judgment Debtor) and to make payment to the Judgment Creditor (in accordance with such interpretation) of the total sum of Rs.43,46,52,700/- (Rupees Forty Three crores Forty Six Lakhs Fifty Two Thousand Seven Hundred only) as computed above. In such circumstances, having regard to the untenable stand of the Judgment Debtor and the fact that the Judgment Debtor cannot approbate and reprobate, the Hon'ble Court after hearing the counsel for the Judgment Debtor and the Advocates appearing for the Judgment Debtor this Hon'ble Court was pleased to decree the suit in terms of the prayer clauses (a) to (d) of the plaint reproduced above."*

23. Mr.Singh has also invited the attention of this Court to the counter affidavit dated 6th September 2022 filed by the Kotharis in the Special Leave Petition (SLP) filed in the Hon'ble Supreme Court and in particular to paragraph 25 thereof, which is quoted as under:

*"25. That the Kotharis submit that the Agrawals are not entitled to any interim relief inasmuch as they have lost in both the courts below. Insofar as the prayer of the Agrawals for directing Kotharis to deposit a sum of Rs.36.75 Cr. (less the amount of Rs.1,83,75,000/-) with interest is concerned, it is submitted that it is the Agrawals who are thwarting the execution of the decree resulting into filing of an execution application by the Kotharis. It is submitted that Kotharis have always been and ready and willing to pay the balance amount in terms of the impugned orders and decree dated 05.08.2019."*

24. Mr.Singh would submit that, from the above, it is clear that the entire understanding of the Kotharis was restricted to explaining the nature of how they would purchase the shares of the Agarwals. That, the Kotharis themselves understood and stated that the decree was granted in terms of prayer clauses (a) to (d) of the plaint and it is not their case that the decree was on the basis of the reliefs sought in the Notice of Motion. Mr.Singh would submit that even before the Hon'ble Supreme Court the contention of the Kotharis in 2022 i.e. well after the period of 120 days referred to in the email dated 28th March 2019 had expired, was that they have been and are ready and willing to pay the purchase price to the Agarwals.

25. Mr.Singh would submit that apart from the fact that the decree on admission dated 5th August 2019 does not speak about the issue of reverse mechanism, the said issue has been finally concluded by the order of the Hon'ble Supreme Court dated 21st February 2023 in SLP No.1312-13 of 2023 and also by the dismissal of the Review Petitions (Civil) No.477-478 of 2023 by order dated 3rd October 2023 of the Hon'ble Supreme Court. Mr.Singh submits that the issue has attained finality and cannot be re-agitated.

26. Mr.Singh would further submit that the Kotharis are only trying to delay the execution on one pretext or the other. Firstly, they *inter alia* tried to include a loan advanced to the company as part of the decree which is negated by the Hon'ble Supreme Court by a detailed judgment which is reported in (2013) 7 SCC 307. The entire claim of Kotharis, at this stage, is untenable, as the same has been decided all the way upto the Hon'ble Supreme Court, whereby the Hon'ble Supreme Court vide its judgment dated 21st February 2023 has held that the agreement / email dated 28th March 2019 only alludes to the sale of 50% share holding of the Defendants i.e. Agarwal group.

27. The Hon'ble Supreme Court has specifically held that the decree in terms of prayer clauses (a) to (d) on agreement of both the parties alludes only to purchase of the sale of 50% share holding of the Defendants i.e. Agarwals.

28. The Hon'ble Supreme Court has further observed that there cannot be addition to the terms of the consent embodied in the email dated 28th March 2019 which were agreed upon by the parties, since the decree was drawn by consent of both the parties at admission stage itself.

29. The now raised contention of reverse mechanism i.e. Agarwals buying back the shares of Kotharis was agitated before the Hon'ble Supreme Court by filing a Review Petitions. It is pertinent to note that the said Review Petitions (Civil) no. 477-478 of 2023 was placed in the open court and after argument the same was dismissed by an order dated 3rd October 2023 and draws the attention of this Court to paragraph 2 and grounds (F) and (K) of the said Review Petitions in support.

30. It is submitted that in an affidavit dated 25th November 2019, the Agarwals had specifically disputed these contentions and reiterated that performance was sought and granted only with respect to the purchase of Agarwal group shares and adjudicated in the nature of a consent decree. Therefore, there is no question of any reverse mechanism after the suit has been decreed.

31. That, the Hon'ble Supreme Court dismissed the Review Petitions filed by the Kotharis on 3rd October 2023 after hearing the parties in the open Court. In view of the aforesaid fact, it is amply clear that the specific performance granted in the decree is only qua the shares of Agarwal group to be sold to the Kotharis. The Kotharis are trying to add

something into the decree by way of the Execution Application which is impermissible in law. Learned Senior Counsel submits that it is well settled legal position that an Executing Court cannot travel beyond the order or decree under execution, it gets jurisdiction only to execute the order only in accordance with the procedure laid down under Order XXI of CPC as held in ***Rameshwar Dass Gupta Vs. State of U.P. and Another***[1].

32. It is further submitted that the Hon'ble Supreme Court has held that the decree in question is not ambiguous and there is no need to go behind the decree and the decree is to be determined by itself.

33. That, the order dated 5th August 2019 *ex facie*, does not address nor grant the reverse mechanism. The Agarwals had not consented to the reverse mechanism. Infact, considering the same was not even a relief sought in the suit, the question of the Agarwals consenting to a relief not sought would even otherwise not have arisen.

34. That, the decree is on admission, only in respect of prayer clauses (a) to (d), which only speaks about declaration of Agarwals' share of

1 (1996) 5 SCC 728

50% and sale of Agarwals' share and all consequential relief in that respect.

35. Mr.Singh would submit that it is also pertinent to note that immediately after passing the decree dated 5th August 2019, there were two letters addressed by the Kotharis on 9th August 2019 and 21st August 2024. The Advocate for Kotharis addressed the aforesaid communications to the Advocate of Agarwals, wherein there is no mention of reverse mechanism and/or purchase of Kotharis' shares by Agarwals.

36. With reference to the contention of the Kotharis that a reference to the time mentioned in the agreement begins from the date of the decree means that the reverse mechanism was decreed, it is submitted that the said submission is contrary to everything stated herein. That, the timelines were necessary even for the purchase, considering payments had to be made in accordance with the timelines. This by itself, especially in light of the above submissions, can never be read as to imply something and thereby adding to the consensual decree.

37. Mr.Singh would submit that the contention on behalf of the Kotharis that a decree has not been drawn up in terms of Order XXI Rule 31 read with Order XXI Rule 34 is in the teeth of the order dated 5th August 2019 which specifically states :

*"5. Drawn up decree dispensed with."*

38. As regard to submission made by Plaintiff / Judgement Creditor referring to paragraph 21 of affidavit dated 25th November 2019, Mr.Singh would submit that in the entire affidavit and particularly in paragraphs 17, 19 and 20, Agarwals have repeatedly said that it is the Kotharis who have agreed to acquire shares of Agarwals. The decree is also for the sale of Agarwals' shares which is valid, subsisting and binding and that Plaintiff/Judgement Creditor has no intention to go contrary to the decree. Mr.Singh refers to paragraphs 17, 19 and 20 of the said affidavit in support.

39. Mr.Singh, learned Senior Counsel for the Agarwals, submits that in view of the aforesaid, the Execution Application (L) No. 139 of 2020 deserves to be allowed in terms of prayer clauses (i) to (v) and Execution Application 1041 of 2022 to be dismissed.

40. On the other hand, Mr.Dinyar Madon, learned Senior Counsel for the Kotharis, would submit that the plaint in the said suit clearly demonstrates that the Kotharis have sought reliefs qua the specific performance of the agreement arrived on 27th March 2019 which was reduced into writing by email / agreement dated 28th March 2019 in its entirety including the reverse mechanism. That, the Single Judge accepted the consent / submission of the Agarwals to the terms of the prayer clauses (a) to (d) of the plaint and passed the said decree, however, it has been consciously recorded in paragraph 2 of the said decree that the time mentioned in the agreement would begin from the date of the said order viz. 5th August 2019 and the time stipulated therein that the Kotharis have performed its part of the contract by making payment of 5% of the token amount to the Agarwals under the belief that the loan amount of the Agarwals was included in the consideration of Rs.36.75 crores, which the Hon'ble Supreme Court rejected by order dated 21st February 2023. That, in the interregnum, the time period of 45 days from the date of the said decree for making the further payment of 50% by Kotharis to the Agarwals, as mentioned in the email dated 28th March 2019 read with the said decree, had passed. As a result, the 5% token amount was forfieted and the 50% shareholding of the Kotharis to the Agarwals was automatically sold for

a consideration of Rs.35 crores as provided in the email dated 28th March 2019 read with the decree. Mr.Madon would submit that in view thereof, the relief with respect to the default/reverse mechanism as prayed for in the Execution Application No.1041 of 2022 deserves to be allowed by this Court and the Execution Application (L) No.139 of 2020 of the Agarwals is liable to be dismissed.

41. Mr.Madon would submit that paragraph 13 of the order dated 21st February 2023 passed by the Hon'ble Supreme Court records that the only issue for consideration is whether the sum of Rs.36.75 crores stipulated in the agreement by email dated 28th March 2019 was inclusive of the loan amount of Rs.10,29,55,000/- or not and that the Hon'ble Supreme Court did not consider whether the email / agreement or the decree incorporated the reverse mechanism or not.

42. That, the decree has been passed for specific performance of the email / agreement dated 28th March 2019 and the same cannot be read in part and has to be performed in whole for the purposes of execution.

43. Mr.Madon would submit that the said two civil appeals were filed against the said final judgment and order dated 14th June 2022 of the

Division Bench of this Court wherein, the order dated 4th January 2021 of the Executing Court was affirmed.

44. It is submitted that this Court while passing the said impugned orders has considered and dealt only with the issue pertaining to the inclusion of the loan amount in the consideration mentioned in the said email/agreement dated 28th March 2019 and vide the said impugned orders, this Court have accepted the Kotharis version and held that the loan amount of Rs.10,32,55,000/-as claimed by the Agarwals is included in the consideration of Rs.36.75 crores. That the said impugned orders have not considered the fact as to whether the email/agreement or the decree incorporated the reverse mechanism or not.

45. Mr.Madon submits that the issue which was assailed before the Executing Court, the Division Bench of this Court and the Hon'ble Supreme Court was limited to the issue as to whether the loan amount was included in the consideration of Rs.36.75 crores as stipulated in the said email/agreement dated 28th March 2019 or not. The reverse mechanism was not considered by any of the said three Courts.

46. Mr.Madon would submit that the parties in the said two civil appeals have advanced their submissions with respect to the only issue on inclusion of loan amount in the consideration mentioned in the said email/agreement dated 28th March 2019 before the Hon'ble Supreme Court and that the Hon'ble Supreme Court has expressly recorded under the head of 'Analysis' at paragraph 13 of the said order dated 21st February 2023 that the only issue which falls for its consideration is whether the loan amount is included in the sum of Rs.36.75 crores as stipulated in the said email/agreement dated 28th March 2019.

47. It is submitted that it is on an analysis of only this issue that the Hon'ble Supreme Court has rendered its finding at paragraph 21 of the said order dated 21st February 2023 holding that both the learned Single Judge and the Division Bench of this Court have expanded the decree by interpreting that the Agarwals' silence is acquiescence to the inclusion of the loan amount. In paragraph 21 of its Order the Hon'ble Supreme Court has held that there can be no additions to the terms of the consent embodied in the email dated 28th March .2019 since the decree was drawn by consent in terms thereof. In effect the Hon'ble Supreme Court has held that decree is in terms of the email dated 28th March 2019 and that there cannot be any deviation therefrom. Namely,

that there cannot be any additions or deletions. If the case of the Agrawal Group is to be accepted, then the entire reverse mechanism contained in the email dated 28th March 2019 would be required to be deleted. This would do violence to the order of the Hon'ble Supreme Court.

48. That a conjoint reading of the said impugned orders coupled with paragraphs 8, 13 and 21 of the said order dated 21st February 2023 clearly establish that the only issue which has been considered and decided in the said order dated 21st February 2023 is that the loan amount is not included in the consideration of Rs.36.75 crores stipulated in the said email/agreement dated 28th March 2019.

49. It is submitted that infact, in paragraph 12 of the said order dated 21st February 2023, the Hon'ble Supreme Court has observed that the agreement between the parties is to be found in the email dated 28th March 2019 and this email itself is reproduced in paragraph 2 which included the reverse sale/automatic sale.

50. Mr.Madon would, therefore, submit that the decree categorically records an agreement as reduced in writing and as recorded by the

email dated 28th March 2019 to be performed, *inter alia* by prayer clauses b(i) to (iv) and the said decree does not stipulate that only a part of agreement as reduced in writing and as recorded by the email dated 28th March 2019. That, accepting such an argument of the Agarwals would lead to this Court going behind the decree, which is not permissible in execution proceedings under Section 47 read with Order XXI of the CPC.

51. It is submitted that the submission by the Agarwals that the Kotharis advanced the contention of the default/reverse mechanism after the order dated 21st February 2023 was passed by the Hon'ble Supreme Court in their Review Petitions is also not supported by the facts of the case because the Kotharis had amended their Execution Application No.1041 of 2022 on 10th February 2020 even before the judgment and order of the learned Single Judge dated 4th January 2021 in Interim Application No.166 of 2020.

52. Mr.Madon would submit that the Agarwal group has accepted and admitted that the decree includes and incorporates the reverse mechanism. That, the Agarwal group have admitted that although they are entitled to forfeit the first tranche they have chosen not to do so.

The issue of forfeiture will only arise in the background of default mechanism/reverse sale scenario. Their stand at paragraph 21 of the affidavit in reply dated 25th November, 2019 to the Interim Application No.166/2019 is reproduced hereunder for reference:

> *"21. I say that though after making payment of 5% amount, the judgment creditors were required to pay additional amount and in the absence thereof,* ***I have been made entitled to forfeit the amount paid by them, however, I have no intention to do so****"*
> *(Emphasis supplied)"*

53. It is submitted that, therefore, right from the beginning viz. even before the order dated 4th January 2021 of the learned Single Judge of this Court, the Agarwal group had admitted and was fully aware and mindful of their liability under the default/ reverse mechanism as set out in the contract dated 27th March 2019 / email dated 28th March 2019.

54. That, therefore, there was no occasion for the executing Court, the Division Bench of this Court or the Hon'ble Supreme Court considering as to whether the decree included the reverse mechanism or not as the Agarwal group had admitted in their affidavit in reply that the reverse mechanism was included in the decree.

55. Mr.Madon would, therefore, submit that the said decree records that the transfer of 50% shares would be in accordance with the said email/agreement dated 28th March 2019, hence for the purpose of execution of the said decree, the terms of the contract as they stand have to be incorporated, including the default/automatic reverse sale. Mr.Madon has relied upon the decision of the Hon'ble Kolkata High Court in the case of ***Kartick Chandra Pal vs. Dibakar Bhattacharjya[2].***

56. Mr.Madon would submit that the Hon'ble Supreme Court by an order dated 3rd October 2023 dismissed the Review Petitions filed by the Kotharis *in limine* without passing a speaking order.

57. Mr.Madon would further submit that the contention of the Agarwals that the Kotharis have raised the plea of the second part of the contract with respect to the reverse mechanism/automatic sale so as to delay the execution of the decree is incorrect as the performance of the second part of the contract had already been sought for in the Execution Application since 10th February 2020 whereas the Hon'ble Supreme Court has passed its order only on 21st February 2023 and 3rd October 2023.

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2 350 ILR 1960 Cal

58. Mr.Madon submits that the letters dated 9th August 2019 and 21st August 2019 cannot be relied upon and referred to by the Agarwals since, the said letters are addressed post-decree by the Kotharis to the Agarwals and that the Hon'ble Supreme Court in paragraph 21 of its order dated 21st February 2023 has clearly held that there cannot be any addition to the terms of the consent as embodied in the email dated 28th March 2019. Hence, reference to the said letters is impermissible and cannot be looked into.

59. Mr.Madon has submitted that while seeking interim relief for deposit of the balance 95% of the agreed consideration of Rs.36.75 crores from the Kotharis in this Court, the Agarwals have failed to consider Order XXI Rule 34 of the CPC which provides the manner and procedure for execution of a decree.

60. Mr.Madon would further submit that the said decree pertains to transfer of the 50% shareholding of the said company from one group to another group. For the said purpose, several forms, declarations, resignation letters, writings and / or documents are required to be executed by either the Kotharis or the Agarwals after

following the procedure laid down in the provisions of Rule 34 of Order XXI of the CPC.

61. That, therefore, the relief of interim deposit of the 95% amount of the agreed consideration of Rs.36.75 crores cannot be sought for by the Agarwals by circumventing the procedures laid down in Order XXI Rule 34 of the CPC.

62. Mr.Madon further submits that, in any event, in view of the reverse mechanism it is the Agarwals who has automatically purchased the Kotharis' shares and hence the Agarwals have to make payment to the Kotharis. Hence, no question arises of the Kotharis depositing any amounts in this Court since the Kotharis have to recover monies from the Agarwals.

63. Mr.Madon would submit that in view of the above, the relief with respect to default/reverse mechanism as prayed in Execution Application No.1041 of 2022 deserves to be allowed by this Court and the Execution Application (L) No.139 of 2020 of the Agarwals is liable to be dismissed with compensatory costs by this Court.

64. It is not in dispute that the said Suit No.844 of 2019 was filed by the Kotharis against the Agarwals for specific performance with the following prayers :

> *"(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 necessary 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;*
> *(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 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.*
> *(iv) Tendering their resignation from Directorship of the 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 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 accounts be taken as this Hon'ble Court may deem just and proper in the facts and circumstances of the case.*

*(E) In addition to and/or in the alternative to prayer clauses (B) and (C) above, and only if this Hon'ble Court comes to the conclusion that a decree of specific performance cannot be granted, then this Hon'ble Court be pleased to order and decree the Defendants to pay to the Plaintiffs the sum of Rs. 45.00 Crores or such higher amount including and not limited to escalation in the project costs as may he determined by this Hon'ble Court by way of recompense of the expenses incurred by the Plaintiffs and/or by way of damager as per the Particulars of the Plaintiffs Claim at Exhibit "J" to the Plaint with Interest on such sums at the rate of 24% per annum from the date of the Suit till payment or realization;*

*(F) That the Defendant Nos. 1 to 3, by themselves, their servants and agents and all persons claiming by, through or under the Defendant Nos. 1 to 3 and/or the Defendant Nos. 4 and 5, through their Directors, partners and persons in control and management of the business and affairs of the Defendant Nos. 4 and 5 be restrained by a permanent Injunction and order of this Hon'ble Court from in any manner directly or indirectly (i) allenating, encumbering or creating any third party rights in respect of the 50% shareholding of the Defendants in the Plaintiff No. 6 (ii) altering or changing the shareholding pattern or the persons in management and control of the Defendant No. 4 or the partners in the partnership of Defendant No. 5 to some third parties (iii) carrying out or running a medical practice in the name of Speciality Ear Nose Throat Hospital or epresenting that the Defendant No. 2 is the purported Proprietor thereof or from operating a bank account in the name of the Specialty Ear Nose Throat Hospital as a proprietor thereof or from holding out to the world at large that the assets and properties and the proposed multispeciality hospital project of the Plaintiff No. 6 are singly owned by the Defendant No.2 as proprietor thereof;*

*(G) That pending the final hearing and disposal of the Sult, the Defendant Nos. 1 to 3, by themselves, their servants and agents and all persons claiming by, through or under the Defendant Nos. 1 to 3 and/or the Defendant Nos. 4 and 5, through their*

*Directors, partners and persons in control and management of the business and affairs of the Defendant Nos. 4 and 5 be restrained by a temporary injunction and order of this Hon'ble Court from in any manner directly or indirectly (i) alienating, encumbering or creating any third party rights in respect of the 50% shareholding of the Defendants in the Plaintiff No. 6 (ii) altering or changing the shareholding pattern or the persons in management and control of the Defendant No. 4 or the partners in the partnership of Defendant No. 5 to some third parties (iii) carrying out or running a medical practice in the name of Speciality Ear Nose Throat Hospital or representing that the Defendant No. 2 is the purported Proprietor thereof or from operating a bank account in the name of the Specialty Ear Nose Throat Hospital as a proprietor thereof or from holding out to the world at large that the assets and properties and the proposed multispeciality hospital project of the Plaintiff No. 6 are singly owned by the Defendant No. 2 as proprietor thereof ;*

*(H) That pending the hearing and final disposal of the Sult, the Defendants, by themselves, their servants and agents and/or their directors and partners be ordered by an order and injunction of this Hon'ble Court to:*

*(i) make their proportionate 50% contribution for all expenses for security, outgoings, pending litigation and other costs necessary to protect the property of the Plaintiff No. 6 situated at "Hospital Plot AMG admeasuring 4897.40 square meters and bearing CTS No. 827/C/1/20 situated at Dindoshi Malad, Taluka Borivali, Mumbai Suburhan District;*

*(ii) to sign and deliver to the Maintiffs all mandates/cheques and other documents in connection with the operation of the Bank Account of the Plaintiff No. 6 Company with State Bank of India, Tirupati Towers, Thakur Complex, Kandivall (East), Mumbal and with Axis Bank Ltd., Thakur Village, Kandivall (East), Mumbai;*

*(iii) to sign and deliver to the Plaintiffs all required mandatory forms and documents in order to complete all formalities in the office of the Registrar of Companies/ Ministry of Corporate Affairs, Income Tax Department and other statutory authorities with respect to the day to day management of the business and affairs of the Plaintiff No. 6;*

*(I) For ad-interim rellefs in terms of prayer [G] and (H) above;*

*(J) For costs of the suit;*

*(J) For such other and further reliefs as the nature and circumstances of the case may require."*

*(Emphasis supplied)*

65. From a bare reading of the above prayers, it is quite clear that the specific performance that was sought was only with respect to 50% of shareholding of the Agarwals in the said company to be transferred to the Kotharis. None of the prayers make any mention of the reverse mechanism or the automatic purchase by the Agarwals of the shares of the Kotharis in the said company. Although admittedly the Notice of Motion had prayer seeking performance of the reverse mechanism, however, by virtue of order dated 5th August 2019 passed by the consent of the Defendants in terms of prayer clauses (A) to (D), the said issue seeking performance of reverse mechanism/automatic sale by the Kotharis to the Agarwals was out of question.

66. The Hon'ble Supreme Court vide its judgment dated 21st February 2023 has held that the agreement / email dated 28th March 2009 only concerns the sale of 50% share holding of the Defendants i.e. Agarwal group. The relevant portion of paragraphs 13 and 21 of the Hon'ble Supreme Court's decision is usefully quoted as under :

> *"13. ….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 Agarwals)…*
>
> *21. ….This elucidation of the law is unexceptionable. It is undeniable that an executing court can construe a decree if it is ambiguous. However, as in the facts of the case herein, this cannot result in additions (to the terms of the consent, embodied in the email dated 28.03.2019) which were not agreed upon by the parties, since the decree was drawn on by consent of both the parties at admission stage itself…."*
>
> *(emphasis supplied)*

67. As can be seen, the Hon'ble Supreme Court specifically refers to decree by consent of both parties. The consent decree was in terms of prayer clauses (A) to (D) which refers only to the sale of 50% shareholding of the Defendants i.e. Agarwals. There cannot be addition to the terms of the consent embodied in the email dated 28th March 2019 which were agreed upon by the parties, since the decree was by consent of both the parties at admission stage itself.

68. It has not been disputed by the Kotharis that the 120th day, even assuming the same commenced from the fresh timelines in the order dated 5th August 2019 had already expired when the Kotharis had, in their affidavit filed before the Hon'ble Supreme Court on 6th September 2022, submitted that the Kotharis have always been and ready and

willing to pay the balance amount in terms of the order and decree dated 5th August 2019, and that therefore, for the Kotharis to now invoke the automatic sale of the 50% shares of the Kotharis to the Agarwals at their bid price of Rs.35 crores, in my view, would not be tenable. The 5% amount, as submitted above, has not been forfeited by the Agarwals nor they had the intention to do so, as has clearly been set out in paragraph 21 of the affidavit in reply to the Interim Application No.166 of 2019.

69. The contention with respect to the reverse mechanism / the automatic buying back of the shares of Kotharis by the Agarwals was also agitated before the Hon'ble Supreme Court by filing Review Petitions and the said Review Petitions (Civil) no. 477-478 of 2023 were dismissed by an order dated 3rd October 2023 after hearing the matters. A perusal of the Review Petitions filed before the Hon'ble Supreme Court seeking a review of the order dated 21st February 2023 clearly indicates that the Kotharis have submitted that the Agarwals insisted to be bought over having consistently declined to honour their obligations to buy over the Kotharis as per Clause (4) of the email / agreement dated 28th March 2019 despite repeated offers before the Single Judge, the Division Bench and the Hon'ble Supreme Court.

Relevant averments from the said Review Petitions are usefully quoted as under :

> *"Para 2..... The Kothari further submit that the judgement under review has restored the stalemate which existed between Kotharis and Agarwals in as much as Agarwals have consistently declined to honour their obligations to buy over Kotharis as per Clause 4 of the email dated 28.03.2019 despite repeated offers before the Id. Single Judge, Hon'ble Division Bench and this Hon'ble Court on the contrary., Agarwal insist to be bought over on terms and conditions which are more onerous than terms and conditions on which Kotharis are agreeable to be bought over. This stalemate in effect nullifies the decree in question on the basis of interpretation thereof in judgement under review. The petitioners submit there are thus sufficient reasons to review the impugned judgement.*
>
> *(F) Because the judgment under review failed to consider that proof of the pudding is in eating and that Agarwals themselves are not ready to fulfil the email dated 28/03/2019 as per their interpretation and re-pay the amount of loan advanced by Kothari to the company in addition to the agreed price of the shareholding of Kotharis; this is relevant because the agreement between the parties provides that if Kotharis failed to pay 50% of the consideration within 45 days, agarwals were bound to purchase the shareholding of Kotharis.*
>
> *(K) Because the judgment under review has restored the stalemate which existed between Kotharis and Agrawals inasmuch as Agrawals have consistently declined to honour their obligations to buy over Kotharis as per Clause 4 of the email dated 28.3.2019 despite repeated offers before the learned Single Judge, Hon'ble Division Bench and this Hon'ble Court. On the contrary, Agrawals insist to be bought over on terms and conditions which are more onerous than terms and conditions on which Kotharis are agreeable to be bought over. This stalemate in effect nullifies the decree in question on the basis of interpretation thereof in judgment under review. The Petitioners submit there are thus sufficient reasons to review the impugned judgment."*

70. Having perused the orders of the learned Single Judge, the Division Bench as well as the Hon'ble Supreme Court, I am afraid, I do not find that any such offer has been made by the Kotharis to the Agarwals. Therefore, whether or not the Kotharis advanced the contention of the default/reverse mechanism before or after 21st February 2023 would not make any difference. Infact, even if the said contention has been taken up by the Kotharis in the Execution Application No.1041 of 2022 by amending the said Execution Application even before the judgment and order dated 4th January 2021 that would not make any difference in view of what has been held above. In my view, the matter has been concluded and the issues having attained finality, cannot be re-agitated.

71. Further, it has not been disputed, that in an affidavit dated 25th November 2019, the Agarwal's had specifically disputed these contentions and reiterated that performance was sought and granted only with respect to the purchase of Agarwal group shares and adjudicated in the nature of a consent decree. Therefore, there is no question of any reverse mechanism / automatic sale to the Agarwals after the suit has been decreed.

72. As noted above, the Hon'ble Supreme Court dismissed the Review Petitions filed by the Kotharis on 3rd October 2023 after hearing the parties. It is, therefore, clear that the specific performance granted in the decree is only qua the shares of Agarwal group to be sold to the Kotharis. The Kotharis are trying to add something into the decree by way of the Execution Application which is not tenable. It is well settled that an Executing Court cannot go beyond the order or decree under execution, it gets jurisdiction only to execute the order only in accordance with the procedure laid down under Order XXI of CPC as held in *Rameshwar Dass Gupta Vs. State of U.P. and Another (supra).* Paragraph 4 of the said decision is usefully quoted as under :

> *"4. It is well settled legal position that an executing Court cannot travel beyond the order or decree under execution. It gets jurisdiction only to execute the order in accordance with the procedure laid down under Order 21, CPC. In view of the fact that it is a money claim, what was to be computed is the arrears of the salary, gratuity and pension after computation of his promotional benefits in accordance with the service law. That having been done and the court having decided the entitlement of the decree-holder in a sum of Rs.1,97,000/- and odd, the question that arises is whether the executing Court could step out and grant a decree for interest which was not part of the decree for execution on the ground of delay in payment or for unreasonable stand taken in execution ? In our view, the executing court has exceeded its jurisdiction and the order is one without jurisdiction and is*

*thereby a void order. It is true that the High Court normally exercises its revisional jurisdiction under Section 115 CPC, but once it is held that the executing court has exceeded its jurisdiction, it is but the duty of the High Court to correct the same. Therefore, we do not find any illegally in the order passed by the High Court in interfering with and setting aside the order directing payment of interest."*

73. The Hon'ble Supreme Court has held that the decree in question is not ambiguous and there is no need to go behind the decree and the decree is to be determined by itself.

74. The order dated 5th August 2019 *ex facie*, does not address nor grant the reverse / automatic sale mechanism. The Agarwals had not consented to the reverse mechanism. Infact, considering the same was not even a relief sought in the suit, the question of the Agarwals consenting to a relief not sought would even otherwise not have arisen. In ***Topanmal Chhotamal V. Kundomal Gangaram***[3] the Hon'ble Supreme Court held that it is well settled principle that a Court executing a decree cannot go behind the decree. Again in ***Meenakshi Saxena vs ECGC Ltd.***[4] the Hon'ble Supreme Court has held that the whole purpose of execution is to enforce the verdict of the Court. Executing Court while executing the decree is only concerned with the execution part of

3 AIR 1960 SC 388
4 (2018) 7 SCC 471

it and nothing else. The Court has to take the judgment on its face value.

75. After passing the decree dated 5th August 2019, there were two letters addressed by the Kotharis on 9th August 2019 and 21st August 2024. The Advocate for Kotharis addressed the aforesaid communications upon the Advocate of Agarwals, wherein there is no mention of reverse mechanism and/or purchase of Kotharis' shares by Agarwals. Although the two letters are not denied but the Kotharis are objecting to their reliance as the same have not been part of the proceedings. In my view, even if the said letters are not considered, that would not make any difference to the view expressed by this Court with respect to the reverse mechanism/automatic sale.

76. The order dated 4th January 2021 and subsequent order of the Division Bench was carried to Hon'ble Supreme Court and the Hon'ble Supreme Court having specifically dealt with the decree pertaining to sale of Agarwals' shares to Kotharis held that there cannot be made an addition to terms of the consent, embodied in the email dated 28th March 2019 which were not agreed upon by the parties since the decree was by consent of both the parties at the admission stage and

therefore it is not open for the Kotharis to contend that the decree be interpreted by adding something which was not agreed upon. Apart from the order of the Hon'ble Supreme Court dated 21st February 2023, the grounds with respect to the reverse mechanism/automatic sale have been taken up before Hon'ble Supreme Court in the Review Petitions, heard and rejected and now it is not open for the Kotharis to re-agitate and argue the same before the Court.

77. I also agree with the submission of Mr.Singh that the contention that a decree has not been drawn up in terms of Order XXI Rule 31 read with Order XXI Rule 34 is in the teeth of the order dated 5th August 2019 which specifically states in paragraph 5 that drawn up decree is dispensed with.

78. With respect to the submission made by the Plaintiff referring to paragraph 21 of affidavit dated 25th November 2019, I agree with Mr.Singh that in the entire affidavit and particularly in paragraphs 17, 19 and 20 quoted as under, the Agarwals have repeatedly said that it is the Kotharis who have agreed to acquire shares of Agarwals and that the decree is also for the sale of Agarwals' shares which is valid,

subsisting and binding and that Plaintiff/Judgement Creditor has no intention to go contrary to the decree :

> *"17. I say that in view thereof, it is also necessary to look into the original execution application filed before this Hon'ble Court. I say that even the original application filed before this Hon'ble Court in clear terms shows the intentions of present judgment creditors that they had agreed to acquire rights in respect of 50% equity share of the company held by the Agarwal group on the terms and conditions mentioned in the email.*
>
> *19. I say that all those prayers are consequential prayers allowed by the Hon'ble Court subject to original plaintiff complying with their part of obligation as per the email referred and relied upon by the plaintiff and at this stage, they can never be permitted to revert back to the situation and say they wanted to go on behalf of execution application and at the same time, they do not want to comply with their obligation.*
>
> *20. I say that the said decree is valid in substance and binding upon the parties, as such, I have no intention to act contrary to the said decree, as after the decree, I have made alternative arrangements and require money to fulfill my commitments."*

79. As can be seen, even till the SLP in the Hon'ble Supreme Court, the entire understanding of the Kotharis was restricted to explaining as to how they would purchase the shares of the Agarwals. The Kotharis themselves understood and stated that the decree was granted in terms of prayer clauses (A) to (D) of the plaint. It is not even their case that the decree was on the basis of reliefs sought for in the Notice of Motion. I, therefore, agree with Mr.Singh that even before the Hon'ble Supreme Court, the contention of the Kotharis in the year 2022 i.e. well

after the period of 120 days referred to in the email dated 28th March 2019 had expired, was that they had been and are ready and willing to pay the purchase price to the Agarwals. The contention of the Kotharis that a reference in the consent order that the time mentioned in the agreement begins from the date of the decree means that the reverse mechanism was decreed is therefore not tenable. As also noted above, the decree dated 5th August 2019 does not speak of the issue of reverse mechanism / automatic sale to the Agarwals. The specific performance that has been sought for and granted in the decree is only *qua* the shares of the Agarwal group to be sold to the Kotharis. The decree does not speak about Kotharis selling their 50% shares to Agarwals. It cannot, therefore, be said that agreement dated 28th March 2019 has to be read or directed to be performed in part. The said issue has been finally concluded by the order of the Hon'ble Supreme Court on 21st February 2023 and the dismissal of the Review Petitions on 3rd October 2023 after hearing the parties in open Court. The issue, therefore, having attained finality cannot be re-agitated in execution of the consent decree dated 5th August 2019, as the Kotharis cannot add something into the decree by way of an execution application. The same is impermissible in law and the Executing Court cannot go beyond the order or decree in execution.

80. In the case of *Rameshwar Dass Gupta Vs. State of U.P. and Another (supra)* the Hon'ble Supreme Court has in paragraph 4 clearly observed that it is a well settled legal position that an Executing Court cannot travel beyond the order or decree under execution and it gets jurisdiction only to execute the order in accordance with the procedure laid down under Order XXI of the CPC. In the said case, the Hon'ble Supreme Court upheld the order of this Court in setting aside the order directing payment of interest in the case of a decree which did not award interest observing that the Executing Court cannot step out and grant a decree for interest which was not part of the decree for execution on the ground of delay in payment.

81. The order dated 5th August 2019 nowhere addresses or allows the automatic sale nor had the Agarwals consented to the same. I agree with Mr.Singh that considering that the same was not even a relief sought for in the suit, the question of the Agarwals consenting to the same could not even have arisen.

82. Mr.Madon has sought to argue that the specific performance of the decree dated 5th August 2019 was to execute even the email

agreement dated 28th March 2019 in its entirety i.e. including the reverse mechanism / automatic sale to the Agarwals, in the event the Kotharis failed to make the balance payment, as the timelines mentioned in the agreement had been extended by paragraph 2 of the decree. I am afraid, I am unable to accept the arguments of Mr.Madon, as the extension of timelines were necessary even for the purchase by the Kotharis, considering that payments had to be made. In the light of the above submissions, this cannot be read as to imply something and thereby adding to the consent decree. Moreover, as noted above, as late as in 2022, the Kotharis have, in their counter affidavit filed before the Hon'ble Supreme Court, submitted that they have been ready and willing to pay the balance amount in terms of the order and decree dated 5th August 2019, which is after the 120th day from the date of the decree. Therefore, for Mr.Madon to, at this stage, contend that in view of paragraph 2 of the decree, the reverse mechanism / automatic sale from the Kotharis to the Agarwals for a consideration of Rs.35 crores was effected, in my view, cannot be countenanced. Even the submission on behalf of Mr.Madon that the 5% token amount had been forfeited by the Agarwals, does not appear to be correct, in as much as, in Mr.Madon's own submissions reproducing paragraph 21 of the reply of the Agarwals, it has been clearly averred that although the Agarwals

are entitled to forfeit the amount paid by them, however, they have no intention to do so.

83. Although the Hon'ble Supreme Court has stated in paragraph 13 that the only issue for consideration is whether the sum of Rs.36.75 crores stipulated in the agreement by email dated 28th March 2019 was including of the loan amount of Rs.10,29,55,000/- or not, however, it cannot be ignored that the Hon'ble Supreme Court has in paragraph 21 clearly observed that in the facts of this case, additions to the terms of the consent embodied in the email dated 28th March 2019, which were not agreed upon by the parties, since the decree was drawn on by consent of both the parties, at the admission stage itself. And therefore, in my view, albeit the fact that the only issue for consideration before the Hon'ble Supreme Court was whether the sum of Rs.36.75 crores was inclusive of the loan amount of Rs.10,29,55,000/- or not, an Executing Court can neither go beyond the decree nor behind it and has to execute the decree in terms thereof. Further, it also cannot be ignored that paragraph 2 and grounds (F) and (K) in the Review Petitions where reverse mechanism/automatic sale was taken up, have been dismissed, thereby rejecting the said claim of the Kotharis.

84. The reverse mechanism/automatic sale was neither prayed for in the suit nor part of the consent order/decree under execution nor accepted by the Hon'ble Supreme Court. Obviously, therefore, it cannot be implied that the reverse mechanism/automatic sale has to be read as part of the decree. Reading it otherwise would do violence to the order of the Hon'ble Supreme Court and not the other way round. The Court has to take the judgment on its face value. The Executing Court while executing the decree is only concerned with the executing part of it and nothing else. The whole purpose of execution is to ensure the verdict of the Court is implemented. Therefore, the Executing Court cannot read or imply an understanding of terms in an unambiguous decree. If that is permitted, it would be never ending. It is in the interest of justice that there should be *finis litium* that is there is an end to dispute or litigation. *Interest reipublicae ut sit finis litium* – It is also in the interest of the State that there should be an end to litigation. Therefore, since the Hon'ble Supreme Court had clearly given its findings in the order dated 21st February 2023, it would not matter that the dismissal of the Review Petitions were without a speaking order. I am, therefore, unable to accept the submissions by Mr.Madon.

85. In my view, Mr.Madon's reliance upon the decision of the Calcutta High Court in the case of *Kartick Chandra Pal vs. Dibakar Bhattacharjya (supra)* is not of any assistance, in as much as, firstly the said decision itself observes that the most important part of the decree is that portion where the court directs the contract to be specifically performed. As noted above, the prayers in the suit only sought specific performance of the agreement arrived at on 27th March 2019 for sale of the 50% sharholding of the Agarwals in the said company to the Kotharis and nothing more. No doubt, details which follow in a contract for specific performance do not, in any way, limit the jurisdiction of the Executing Court to the particular steps which are mentioned in the decree but all such other steps, which ought to be taken for giving full effect to the decree for specific performance, are not only within the competence of the Court but the Court is bound to assist the party to that extent. However, that is not what is being sought for by the Kotharis here. What is being sought for is the part of autoamatic sale that was not even sought for in the suit for specific performance. The consent by the Agarwals with respect to prayer clauses (A) to (D) was only with respect to the sale of 50% shares by the Agarwals to the Kotharis. Therefore, in my view, the principle laid down by the said decision of the Calcutta High Court would not apply to the facts of this case.

86. Ergo, in view of the above discussion, the Execution Application (L) No. 139 of 2020 is hereby allowed as under :

(i) That against the deposit of all the document for transfer of 50% shares in respect of the company known as Specialty Ear Nose Throat Hospital Pvt. Ltd. and handing over the same to the Respondents being the original Plaintiffs or deposit of the same with the office of this Court, the Respondents being the Judgment Debtors and being the original Plaintiffs be directed to pay within a period of four weeks the balance sum of Rs.34,91,25,000/- to the Applicants along with applicable interest on delayed payment as per original schedule of payment.

(ii) Failing the above, liberty to the parties to take steps / initiate proceedings as they may be advised in law.

87. The Execution Application 1041 of 2022, accordingly stands dismissed.

88. Pending Interim Applications to accordingly stand disposed.

89. After the order is pronounced, Mr. Kanade, learned Counsel appearing for the original Plaintiff seeks stay of the order for a period of six weeks.

90. Mr. Singh, learned Senior Counsel appearing for the original Defendant opposes the request.

91. Considering that we are in execution, stay prayed for by Mr. Kanade, learned Counsel for the Plaintiff is rejected.

(ABHAY AHUJA, J.)