

**In the High Court at Calcutta  
Commercial Division  
Original Side**

Judgment (2)

**PRESENT :  
THE HON'BLE JUSTICE ANIRUDDHA ROY**

**IA NO. GA-COM/1/2025  
In EC-COM/200/2025**

**DALGREEN AGRO PRIVATE LIMITED  
Vs  
SHAIKH ASADUR RAHMAN AND ORS**

**For the decree holder : Mr. Jayanta Sengupta, Adv.  
Mr. Pratik Shanu, Adv.**

**For the judgment debtor Nos. 1 to 3 : Mr. Sarosij Dasgupta, Adv.  
Ms. Saheli Bose, Adv.**

**For the judgment debtor No. 4 : Mr. Aurin Chakraborty, Adv.  
Ms. Sanchayita De, Adv.**

**For the judgment debtor Nos. 6 & 7 : Mr. Rittick Chowdhury, Adv.  
Mr. Ramij Munsu, Adv.  
Mr. Sukrit Mukherjee, Adv.**

**Heard on : May 5, 2026**

**Judgment on : May 5, 2026  
[In Court]**

**ANIRUDDHA ROY, J :****FACTS:**

1. This is a proceeding for execution of a decree dated **May 15, 2023** for a sum of **USD 428500** equivalent to **Rs.9,81,84,205/-** including interest, as decreed.
2. The instant application has been taken out by the judgment-debtors 1 to 3 praying for dismissal of the execution proceeding.
3. Mr. Aurin Chakraborty, learned advocate (vc) appears for the judgment-debtor No.4. He prays for leave to file a supplementary affidavit to supplement the Affidavit of Assets filed by his client. Such leave is granted. Affidavit of Assets shall be filed on or before **June 30, 2026**.
4. The judgment-debtors 5 and 8 are not represented.

**SUBMISSIONS:**

5. Mr. Jayanta Sengupta, learned advocate appearing for the decree-holder submits that warrant of arrest was issued against the judgment-debtor No.5 and the judgment-debtor No.8 who are beyond the territorial jurisdiction.
6. Mr. Sarosij Dasgupta, learned advocate appearing for the judgment-debtors 1 to 3 submits that the said judgment-debtors are the residents of Bangladesh. They carry on business in Bangladesh. They do not have any asset or property within the territory of India. The transactions by and between the parties

carried out partly in India and partly in Bangladesh. In such circumstance, Mr. Dasgupta has raised the issue of jurisdiction. He submits that this Court in India does not have territorial jurisdiction to execute the decree. To execute the decree, the decree has to be sent for execution at the jurisdictional Court in Bangladesh.

7. In support of his contention, Mr. Sarosij Dasgupta, learned Advocate appearing for the judgment-debtors 1 to 3 has placed the provisions under **Section 38 and 39 of Code of Civil Procedure, 1908** (herein, '**CPC**'). Referring to those provisions, he submits that a decree may be executed by the Court which passed it or by the Court to which it is sent for execution, as laid down under **Section 38 of the Code of Civil Procedure. Section 39 of CPC** says that the Court which passed a decree, may on the application of the decree holder, send it for execution to another Court of competent jurisdiction, if the judgment debtor actually and voluntarily resides or carries on business or personally works for gain within the local limits of the jurisdiction of such other Court.
8. **Section 39** further provides that if such person has no property within the local limits of jurisdiction of the Court which passed the decree, sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, the decree

may be sent for execution to such other competent Court. In the instant case, the decree holder has not come up with the case in this execution proceeding that the judgment-debtors 1 to 3 are residing or carrying on business within the local limits of this Court or that any property of the said judgment debtors are within the local limits of this Court with which the decree can be satisfied. Therefore, it is the obligation of this Court to transmit the decree for execution at the competent Civil Court at Bangladesh where the said judgment debtors are residing.

9. In support, he has relied upon the following decisions :

**a) In the matter of : Smt. Uma Kanoria Vs. Pradip Kumar Daga reported at AIR 2003 Cal 162;**

**b) In the matter of : Mohit Bhargava Vs. Bharat Bhushan Bhargava and Others reported at (2007) 4 Supreme Court Cases 795.**

10. Mr. Dasgupta further submits that **Section 42 of CPC** also provides that the transferee Court which will execute the decree would have the same authority and power to execute the transferred decree, as if, transferee Court had passed it. Therefore, if this decree is transmitted to the competent Civil Court at Bangladesh, the same can be executed against the said judgment debtors, in the same manner, as this executing Court can execute.

11. In the light of the above submissions, Mr. Dasgupta prays for dismissal of this execution proceeding and submits that no interim order can be passed, as the main proceeding is not maintainable.
12. Mr. Jayanta Sengupta, learned Advocate, *per contra*, submits that the provisions under **Section 39 (1) of CPC** should be applied at the instance of the decree holder, when the decree holder applies, whereas rest of the sub-sections shall depend on the discretion of the executing Court and the Court has exclusive authority and jurisdiction to exercise its power thereunder.
13. Mr. Jayanta Sengupta, learned Advocate appearing for the decree holder further submits that, the judgment-debtor Nos. 1 to 3 had filed their written statement but during the trial they chose not to participate and the suit was decreed in their absence. The said judgment debtors had not filed any application praying for setting aside of the *ex parte* decree neither had preferred any appeal from the said decree. The decree has now crystallized for a total sum of **Rs.9,81,84,205/-** and the decree was passed in the equivalent sum of USD.
14. To distinguish the judgment, ***In the matter of : Smt. Uma Kanoria (supra)***, Mr. Sengupta submits that the Court did not exercise the provisions under **Order XXI Rule 41 of CPC** i.e. the examination of judgment debtor. He further submits to come to a conclusive finding whether the judgment debtor has no property within the local limits of this Court whether movable and

immovable, to satisfy the decree, the provisions for examination of the judgment debtor is required to be undertaken which is an integral part of the execution process, within the authority and jurisdiction of the executing Court. Therefore, in absence of such conclusive finding, the ratio laid down in the said judgment would not apply in the facts and circumstances of this case, as in the instant case, that stage of examination of judgment debtors has not yet arrived.

15. To distinguish the judgment ***In the matter of: Mohit Bhargava (Supra)***, Mr. Sengupta submits that the judgment was rendered in a partnership action and arose out of a preliminary decree where both movable and immovable properties were the subject matter. The judgment was not restricted only to the extent of a money decree. There also the execution proceeding did not travel up to the stage of examination of judgment debtors. The instant decree being a money decree only, the ratio laid down in that judgment would not apply in the facts and circumstances of this case.
16. Mr. Jayanta Sengupta, learned Advocate then submits that the examination of judgment debtor is an integral part of execution proceeding and unless that process is undertaken, the executing Court cannot come to a conclusive finding whether any property either movable or immovable of the judgment debtors is lying within the local limits of the executing Court, which passed the decree.

17. In support, he has relied upon a decision of the Hon'ble Division Bench ***In the Matter of: DVM Construction & Ors Vs. Srei Infrastructure Finance Ltd. reported at AIR 2009 Cal 227.***
18. **In reply**, Mr. Dasgupta, refers to the judgment ***In the matter of: DVM Construction and Others*** and submits that this was not a judgment rendered in the case of execution of decree but arose from an arbitral award. There, the properties were found within the local limits of the executing Court and hence, execution application was filed. The enquiry under the provisions of examination of the judgment debtor was already directed and thereafter, the application was filed whereas in the instant case, examination of the judgment debtor is not yet commenced. Therefore, the ratio in this judgment is not applicable in the facts of this case.
19. He submits that the judgment ***In the matter of: Uma Kanoria*** was passed at a stage where the examination of judgment debtor was not allowed to be proceeded with.

**DECISION:**

20. After considering the rival contentions of the parties and on perusal of the materials on record, it appears to this Court that the judgment-debtors 1 to 3 had filed their written statement and then did not participate in the trial. The decree was allowed to be pronounced dated **May 15, 2023** for a sum of **Rs.9,81,84,205/-**. Admittedly, the judgment-debtors 1 to 3 did not file any application for setting aside of *ex parte* decree neither preferred an

appeal therefrom. The decree is, therefore, crystallized and has attained its finality.

21. When the decree has been put into execution, judgment-debtor Nos. 1 to 3 have come up with the instant application, praying for dismissal of this execution proceeding on the ground of lack of territorial jurisdiction of this Court.
22. In **paragraph 18** to the execution application, the decree holder specifically stated that **judgment debtors have immovable properties situated within the jurisdiction of this Court**. The said judgment debtors contend that this statement is not correct and the judgment-debtors 1 to 3 have no property within the territorial limit of this Court neither they reside or carry on business within such jurisdiction.
23. On a meaningful reading of the provisions laid down under **Order XXI Rule 41 of CPC**, it appears to this Court that the legislature thought it fit to enact this provision to ascertain the details of the properties and assets, whether movable or immovable of the judgment debtors, upon a detailed enquiry being conducted by way of trial on evidence before the Court so that, the Court can come to its final opinion with regard to the assets and properties of the judgment debtor, whether it will satisfy the subject decree and this enquiry naturally will include whether the assets and properties of the judgment debtors are lying within the local limits of the executing Court or not.

24. The executing Court while exercising its jurisdiction for executing a decree, the cardinal principle is it cannot travel beyond the decree. However, the executing Court has enormous and ample authority and jurisdiction, of course within the statutory framework, to proceed against the judgment debtor with the sole aim to satisfy the decree passed by the Court. It is the obligation of the executing Court.
25. The Court that passed the decree, it is primarily responsible for its execution. **Section 38** works in tandem with **Order XXI Rule 10 of CPC**, which states that the decree holder must apply to the Court that has passed the decree, for its execution. These are the provisions engrafted under CPC for enforcement and execution of a decree of Civil Court.
26. After conducting all possible enquiries within the statutory framework, provided under CPC relating to execution of a decree, if the Court ultimately finds and is satisfied that neither the judgment debtor resides, carries on business within the local limits of the executing Court nor does it have any property both movable or immovable within the local limits of the executing Court, then the executing Court shall transmit the decree before the competent Court having jurisdiction where the judgment debtor is residing or carrying on business or its properties are situated.
27. ***In the matter of: Smt. Uma Kanoria (supra)***, the execution process did not reach at the stage of examination of judgment

debtor. Unless, a conclusive finding is arrived at by the executing Court, within the statutory framework under the provisions of **Order XXI of CPC**, the executing Court should not take any step to transmit the decree. Hence, the ratio laid down in the said judgment would not apply in the facts and circumstances of this case, more so, in view of the facts that even the judgment debtor Nos. 1 to 3 though have filed written statement but avoided the trial and allowed the decree to be crystallized, as already discussed above. As such, the examination of the said judgment debtors are essential.

28. ***In the matter of: Mohit Bhargava (supra)***, the judgment was rendered in a partnership action, which was not restricted to a money claim only. Therefore, the ratio laid down in the said judgment would not apply in the facts and circumstances of this case.
29. ***In the matter of: DVM Construction & Ors (supra)***, the law is settled that to come to a conclusive conclusion whether the judgment debtor stays or carries on business or that whether any property of the judgment debtor is available within the territorial jurisdiction of the executing Court, the Court must undertake all the processes available for execution of decree.
30. In the facts of this case, the stage of examination of judgment-debtor has not yet reached. This Court is of the firm and considered view that unless that stage is reached and concluded,

that is, the said judgment-debtors 1 to 3 are examined, it will not be possible for this Court to arrive at a conclusive conclusion that the judgment-debtors 1 to 3 do not reside within the territorial limit of this Court or they have no property or asset to satisfy the decree within the territorial limit of this Court. Only after arriving at this conclusion, this Court can take a decision whether the decree should be transmitted before a competent Court of jurisdiction for execution.

31. Therefore, at this stage, this Court holds that this application is not maintainable, devoid of any merit and must fail. However, the point raised by the judgment-debtor Nos. 1 to 3 shall remain open and can be considered, at the appropriate stage.
32. Now comes the conduct of the judgment-debtor Nos. 1 to 3. The record shows that despite written statement having been filed by them, they chose not to participate in the trial and allowed the decree to be passed for a sum of **Rs.9,81,84,205/-** which was equivalent to **USD 428500**. The said judgment-debtors neither applied for setting aside of the decree nor preferred any appeal and allowed the decree to be crystallized. At the execution stage the said judgment-debtors filed the instant application questioning the territorial jurisdiction of this Court but the said judgment-debtors have not come up with any other plea with regard to their liability to pay off the decretal dues neither they have denied. The attempt of the executing Court shall always be to see that the decree

passed by the Court is satisfied in accordance with law and the decree should not be rendered infructuous and a paper decree. The conduct of the judgment-debtor Nos. 1 to 3 clearly shows that the judgment-debtors are interested to delay the adjudication of the execution proceeding.

33. This Court is of the firm view that the judgment-debtor Nos. 1 to 3 must show their *bona fide*. Accordingly, the judgment-debtor Nos. 1 to 3 shall deposit a sum of **Rs.9,81,84,205/-** with the **Registrar, Original Side** positively within **six weeks** from date to show their *bona fide*.
34. In the event the deposit is made, the **Registrar, Original Side** shall keep the sum in a fixed deposit account with the **State Bank of India, Kolkata High Court SPB Branch** and shall prepare a report and keep the same in the original execution file.
35. It is made clear that this deposit shall be without prejudice to the rights and contentions of the judgment-debtor Nos. 1 to 3 in this execution proceeding and the same shall not be treated as a payment towards the satisfaction of the decree but to show *bona fide* by the said judgment-debtors.
36. However, the judgment-debtor Nos. 1 to 3 shall file their Affidavits of Assets by **July 15, 2026**. Copies shall be served upon the learned Advocate on Record for the decree-holder.
37. The matter shall appear under the heading "**Examination of Judgment-debtor**" in due course.

38. With the above observations and directions, this application **IA NO. GA-COM/1/2025** stands **dismissed**.

**(ANIRUDDHA ROY, J.)**

sm/Sbghosh