Reserved On : 30/09/2025
Pronounced On : 16/10/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 647 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 648 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

==========

Approved for Reporting	Yes	No

==========

SUSHILBHAI ASHARFILAL GUPTA & ORS.
Versus
SUBHASHCHANDRA RAMCHANDRA GUPTA & ORS.

==========

Appearance:
MR SP MAJMUDAR(3456) for the Petitioner(s) No. 1,2,3
SHASHVATA U SHUKLA(8069) for the Petitioner(s) No. 1
MR. BHADRISH S RAJU(6676) for the Respondent(s) No. 1,3

==========

CORAM:**HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

CAV JUDGMENT

1. **Rule** returnable forthwith. Learned advocate Mr. Bhadrish S. Raju waives service of notice of rule on behalf of respondents No.1 & 3.

2. Heard learned advocate Mr. S.P. Majmudar for the petitioners and learned advocate Mr. Bhadrish Raju for the respondents.

3. The present writ applications are filed under Article 227 of the Constitution of India seeking following relief :-

Special Civil Application No. 647 of 2019

"(A) YOUR LORDSHIPS may be pleased issue a writ of certiorari or to a writ in the nature of certiorari any other appropriate or order or writ, directions quashing and setting aside the impugned order dated 30.11.2018 passed by learned Additional Principal Judge, City Civil Court, Ahmedabad in Execution Petition Regular No. 317 of 2004 (at ANNEXURE-5 hereto) and further be pleased to allow Execution Petition Regular No.317 of 2004 filed before (at ANNEXURE-D hereto);

(B) During the pendency and final disposal of the present petition YOUR LORDSHIPS may be pleased to stay further operation, implementation and execution of the impugned order dated 30.11.2018 passed by learned Additional Principal Judge, City Civil Court, Ahmedabad in Execution Petition Regular No. 317 of 2004 (at ANNEXURE-5 hereto) and further be pleased to direct the respondents not to open or run any new counter(s), apart from the counters mentioned in the consent passed in Civil Suit No. 5918 of 1988 (at ANNEXURE-C hereto) be and also further pleased to direct the respondents to maintain status-quo with regard to their counters;

(C) Pass any such other and/or further orders that may be thought just and proper, in the facts and circumstances of the present case."

Special Civil Application No. 648 of 2019

"(A) YOUR LORDSHIPS may be pleased issue a writ of certiorari or to a writ in the nature of certiorari any other appropriate or order or writ, directions quashing and setting aside the impugned order dated 30.11.2018 passed by learned Additional Principal Judge, City Civil Court, Ahmedabad in Execution Petition - Regular No. 935 of 2012 (at

ANNEXURE-B hereto) and further be pleased to allow Execution Petition Regular No. 935 of 2012 filed before (at ANNEXURE-A hereto);

(B) During the pendency and final disposal of the present petition YOUR LORDSHIPS may be pleased to stay further operation, implementation and execution of the impugned order dated 30.11.2018 passed by learned Additional Principal Judge, City Civil Court, Ahmedabad in Execution Petition Regular No. 935 of 2012 (at ANNEXURE-B hereto) and further be pleased to direct the respondents not to open or run any new counter(s), apart from the counters mentioned in the consent passed in Civil Suit No. 5918 of 1988 and also further pleased to direct the respondents to maintain status-quo with regard to their counters;

(C) Pass any such other and/or further orders that may be thought just and proper, in the facts and circumstances of the present case."

4. As such, both these matters are arising out of an execution proceedings though separately filed at different point of time by the petitioners herein, but the issue germane in both the matters would common, thereby, with the consent of the parties, both the writ applications are heard and decided together, by way of this common judgement.

5. As far as possible, the parties will be referred as per their original position in the suit.

Short Facts of the case

6. The petitioners herein are original plaintiffs (hereinafter referred to as petitioner), whereas respondents herein are original defendants (hereinafter referred to as defendant) of Special Civil Suit No. 5918 of 1988 filed against respondent before the City Civil Court, Ahmedabad City.

6.1 The suit filed for permanent injunction, account of profit and damages. The suit appears to have filed seeking an injunction against the defendant to use trademark 'ASARFI' in their trading style and trading business of ice-cream and Kulfi. Its essentially filed for infringement of trademark ‘ASARFI’ by defendants.

6.2 The plaintiff and defendant appears to be close relatives. So, it further appears that during the pendency of the aforesaid suit, there was an amicable settlement between the plaintiff and defendant which reduced into writing and submitted before the trial Court. Accordingly, the trial Court have accepted such consent terms executed between the parties, thereby passed consent decree on 04.01.2001 in the suit.

6.3 As per consent terms executed between the parties which later on become part of decree drawn by the trial Court as aforesaid, defendant accepted the plaintiff's

registered trade-mark 'ASARFI'. Further, the defendant accepted his mistake by using trademark 'SHREE ASARFI' till execution of consent terms.

6.4 It is also assured by the defendant that they and their successors as well as their servants, shall use the trade-name 'ASARFI' for carrying the business of ice-cream. Accordingly, the defendant accepted not to use trade name 'SHREE ASARFI' from the date of execution of consent terms.

6.5 As per condition No.4 of such consent terms, plaintiff agrees to execute 'registered user agreement' as may be required as per law for performance of this agreement. The plaintiff undertakes to put its signature and seal where-ever requires in future in this regard.

6.6 The plaintiff agreed that they will not object in any manner whatsoever in regards to business centers, so operated by defendants as referred/mentioned in Clause No.5 in consent terms, but defendant used its trade name "ASARFI" instead of "SHREE ASARFI". Further, as per Clause No.6, defendant is allowed to sell its items/ ice-cream through third party at Mehsana and Vallabh Vidyanagar in the name of 'SHREE ASARFI'.

6.7 As per Clause No.8 of the consent terms, it was agreed between the parties that "*in future, if the Defendants are desirous to commence trade or business of ice-cream products under trade-name of 'Asarfi' at any new place other than the above mentioned business-places, a fresh 'Registered User Agreement' shall be executed as per the provisions of law to that effect and before executing such an agreement, the Defendants shall inform the Plaintiffs thereabout and pay Rs.30,000/- (Rupees Thirty Thousand) against the proposed name. After such a name is informed and payment is rendered to the Plaintiffs by the Defendants, even during the time such a Registered User Agreement is pending for execution and effect, the Defendants shall be entitled to commence business at such a new center under trade-name and with the trademark of 'Asharfi'.*

6.8 Thus, in view of the aforesaid consent decree passed by the trial Court, the parties to sue requires to act upon it.

6.9 It is the case of the plaintiff that defendant not fulfilled its part of obligation as per consent decree, so plaintiff forced to first file Execution Petition No. 317 of 2004, whereby sought for relief of Jangam Warrant be issued against defendant for attachment of movable properties etc. of defendant and further prayed to send defendant to civil

prison. The plaintiff appears to have sought a recovery of Rs. 3,22,899/- with 9% interest from the date of execution till its realization from the defendant.

6.10 The defendant appears to have filed their detailed objection below Exh. 33 in Execution Petition No. 317 of 2004, refuted all allegations and prayers made by the plaintiff in execution.

6.11 It appears that during the pendency of the said Execution Petition, plaintiff filed another Execution Petition No. 935 of 2012, wherein a prayer was made to direct the defendant to execute a registered user agreement in favour of the plaintiff for the new outlets where the plaintiff's trademark and trade name are being used by the defendant.

6.12 The defendant having appeared in the aforesaid Execution Petition filed their reply below Exh. 20 to 23, it is contended by the defendant that subsequent execution is nothing but abuse of process of law and as such it would not be maintainable. It is submitted that defendant never acted in violation of consent terms/decree but plaintiff under guise of such consent decree, want to arm twist the defendant and forced defendant to sign the user agreement, having incorporate terms, never agreed upon between the parties.

6.13 After hearing the parties, the Executing Court vide its common order dated 30.11.2018 dismissed both these Execution Petitions. Hence, the present writ applications.

Submission of the petitioner-plaintiff

7. Learned advocate Mr. S.P. Majmudar would submit that the Executing Court while dismissing the execution, committed serious error of law and so also committed jurisdictional error in not allowing it in favour of plaintiff-decree holder.

7.1 Learned advocate Mr. Majmudar would further respectfully submit that as per consent terms, in absence of registered user agreement executed by the plaintiff in favour of defendant, it would not be permissible on part of defendant to use trademark namely 'AFARFI' on other outlets than already in existence. It is respectfully submitted that as per Section 49 of the Trade Marks Act, 1999 read with Rule 81 of the Trademarks Rules, 2002, it would be incumbent upon defendant to enter into registered user agreement with plaintiff and until such agreement entered into between the parties, defendant or its agents cannot allow to use trade mark 'ASARFI' of plaintiff.

7.2 Learned advocate Mr. Majmudar would further respectfully submitted that the Executing Court has thoroughly misconceived in its approach while adjudicating the lis between the parties, inasmuch as, not appreciated Clause No. 8 of the consent terms executed between the parties being part of the consent decree. It is submitted that as per Clause No.8 of consent terms, unless such registered user agreement executed by the plaintiff, defendant cannot allow to use trademark 'ASARFI'.

7.3 Learned advocate Mr. Majmudar would further respectfully submitted that the Executing Court has committed jurisdictional error by not executing decree as per consent terms entered between the parties. It is submitted that the Executing Court has erroneously and wrongly interpreted Clause No.8 incorporated in consent decree by observing that '*it is not sine qua non under the clause to first execute registered user agreement before use of trademark ASARFI by the defendant.'*

7.4 Learned advocate Mr. Majmudar would further respectfully submit that plaintiff was ready and willing to execute registered user agreement but for any reason defendant finds fault with certain clauses thereby, not to be

incorporated in such agreement, never come forward for its execution, which ultimately resulted into filing subsequent second Execution Petition. It is respectfully submitted that defendant deliberately not executing registered user agreement and not allowing plaintiff to act in accordance with law, inasmuch as, its standard practice prevailing in the market being trademark holder, the plaintiff has all right to put certain condition in such user agreement, whereby, plaintiff can protect its reputation/ trade name. It is submitted that as per Section 49 of the Trade Marks Act, 1999, it is justified on the part of plaintiff to insist for allowing them to inspect the outlet of defendant or its agents and to have quality check. It is further submitted that if the plaintiff would not allow to have such right of inspection etc. ultimately trade name of plaintiff, would get affected in the society, which would carry bad name in the mind of the people at large.

7.5 Learned advocate Mr. Majmudar would further respectfully submit that when there is a question of interpreting certain terms of decree, the Executing Court requires to have pragmatic approach and to first ascertain the intention of the parties, having entered into a consent terms upon which consent decree came to be passed by the Court, then to execute the decree in its true letter and spirit.

7.6 Learned advocate Mr. Majmudar would respectfully submit that as per settle legal position of law, in a case where there is some ambiguity remain in consent decree, the Executing Court can always interpret such decree whereby it can be given effect in a manner which intended by the parties to give when entered into consent terms.

7.7 Lastly, learned advocate Mr. Majmudar would humbly request this Court that the Executing Court having not appreciated aforesaid legal aspect of the matter and fallaciously arrived at wrong conclusion, thereby dismissed the execution, so he would request this Court that let both these matters be remanded back to the Executing Court for its fresh look/adjudication.

7.8 To buttress his arguments, learned advocate Mr. Majmudar would refer and rely upon the following judgments:-

(i) Meenakashi Saxena and another Vs. ECGC Limited (formerly known as Export Credit Guarantee Corporation of India Limited) and another reported in 2018(7) SCC 479.

(ii) Deepa Bhargava and another Vs. Mahesh Ghargava and others reported in 2009 (2) SCC 294.

(iii) Kanwar Singh Saini Vs. High Court of Delhi reported in 2012 (4) SCC 307.

(iv) Bendakayala Abudul Rajjak and others Vs. Uastad Abdul Latheef reported in 1960 SCC Online AP 231.

7.9 Making the above submissions, learned advocate Mr. Majmudar would request this Court to allow the present writ application.

Submission of the respondent-defendant.

8. Per contra, learned advocate Mr. Bhadrish Raju would vehemently opposed the present writ applications, contending inter-alia that neither Execution Petitions nor the present writ applications having any merit, which required to be dismissed at *limine*.

8.1 Learned advocate Mr. Raju would further submit that defendant having appeared in the Execution Petitions filed their detailed reply/ objection and on similar line, they have

opposed both these writ applications by filing their reply in each writ application respectively. It is submitted that the execution petitions were filed at the instance of plaintiff-decree holder is nothing but misuse of process of law, inasmuch as, no default committed by the defendant qua consent decree.

8.2 Learned advocate Mr. Raju would further submit that there is no gross error of law, inasmuch as, no jurisdictional error committed by the Executing Court while dismissing both these execution petitions. It is submitted that the Executing Court has thread-bare examined all aspects including legal provisions of law pressed into service before it, whereby, dismissed both these execution petitions, having not found any merit.

8.3 Learned advocate Mr. Raju would further submit that Clause-8 of consent terms having incorporated in consent decree would clearly suggests that it was not a condition precedent that unless and until registered user agreement executed between the plaintiff and defendant, till then, defendant was not allowed to use trademark 'ASARFI' when open its future outlets. It is respectfully submitted that it agreed between the parties that in future, if defendant desirous to commence trade or business at any place other

than business places mentioned in consent terms and to use trade name 'ASARFI', defendant shall inform the plaintiff about the new place and to pay Rs. 30,000/- to plaintiff. It is submitted that in clear terms as incorporated in Clause-8 that after making such payment to plaintiff by defendant, even during the time, such a registered user agreement is pending for execution and effect, defendant shall be entitled to commence business at such new center under trade name and trademark 'ASARFI'.

8.4 Learned advocate Mr. Raju would respectfully submit that on appreciation of consent terms executed between the parties, being part of consent decree, the Executing Court has correctly concluded that it was not sine qua non between the parties to have first registered user agreement before allowing defendant to use trade mark ASARFI when commence trade or business at other places than named in consent terms. It is submitted that defendant always ready and willing to execute such registered user agreement having filed pursis before the Executing Court in this regard, but for any ill intention on the part of the plaintiff just to drag the litigation further and antagonize defendant, not accepted draft of registered user agreement though forwarded to the plaintiff by defendant filed before the Executing Court.

8.5 Learned advocate Mr. Raju would further submit that as per Section 49 of the Trade Marks Act, 1999 & its Rules, on which heavy reliance placed upon by the learned advocate for the petitioner, nowhere oblige defendant to agree the terms settled by the plaintiff in such an agreement, inasmuch as, it not envisaged that plaintiff can have an inspection of outlet, see the accounts/ purchase/ sell of products etc. It is submitted that when there is no registered user agreement either exists between the parties prior to execution of consent terms or annexed with such consent terms, in absence of such user agreement, the Executing Court correctly refused to execute such consent terms as prayed by the plaintiff.

8.6 Learned advocate Mr. Raju would further submit that during the pendency of those Execution Petitions, plaintiff having filed a commercial Suit No. 38 of 2018, wherein Para-25 categorically made statement that due to inordinate and inexcusable delay in entering into registered user agreement by the defendant, it frustrated the plaintiff's right as registered owner of trade mark ‘ASARFI’ and in light of such conduct of defendant, plaintiff entitled to treat themselves discharge from consent decree and no longer bound by such decree. It is respectfully submitted that once the plaintiff

themselves claim to have discharge from consent decree and no longer bound by it, such consent decree cannot be executed in law.

8.7 Learned advocate Mr. Raju would further submit that on one hand, plaintiff having filed aforesaid commercial suit wherein stated and treated themselves discharged from consent decree and on other hand, pursuing execution of such consent decree, such an act on part of plaintiff requires to be deprecated by this Court. It is submitted that the execution proceedings amount to both probate and reprobate, and suffer from inconsistencies and contradictions. Therefore, taking into consideration the aforesaid averments made in the commercial suit filed by the plaintiff, the Executing Court has rightly dismissed both execution petitions.

8.8 Lastly, learned advocate Mr. Raju humbly submitted that during the pendency of the execution as on date also, defendant always ready and willing to abide by consent terms executed between the parties which become part of consent decree, inasmuch as, they always send money i.e. Rs. 30,000/- to plaintiff before open of its new outlet to plaintiff, but plaintiff not accepted it for any reasons. In that view of the matter, no fault can be found

with defendant, and as such, there is no merit in the matters, which may be dismissed.

8.9 Making the above submission, learned advocate Mr. Raju would request this Court to reject the present writ application.

Point for determination

9. The short question falls for my consideration as to whether-

(i) Whether, in the facts and circumstances of the case, is there any error of law and or any jurisdictional error committed by the Executing Court while dismissing both the Execution Petitions?

(ii) Whether, in the facts and circumstances of the case, both the Execution Petitions requires to be re-adjudicated by the Executing Court as prayed for?

Analysis

10. The facts which are narrated hereinabove are not in dispute. The consent terms arrived at between the parties during the pendency of Regular Civil Suit No. 5918 of 1988,

incorporated in the consent decree drawn by the Executing Court in the aforesaid suit on 04.01.2001. As observed hereinabove, the plaintiff and defendant are close relatives and there was a dispute about use of trademark 'ASARFI' by the defendant without taking prior permission of plaintiff, for which suit came to be filed.

11. The defendant having accepted trademark 'ASARFI' an exclusive ownership of plaintiff, so also agreed that he will start new outlets using the name of 'ASARFI' and so also used such mark in its existing business so mentioned Clause-5 of such consent terms. It was agreed between the parties, that defendant be allowed to use trade mark 'SHREE ASARFI' at its outlet at Mehsana and Vallab Vidyanagar.

12. So, the crucial aspect which germane in the execution proceedings was in regards to in absence of execution of registered user agreement between the parties, would it disentitled defendant not to use new outlets with aforesaid trade name?.

13. As per say of the plaintiff, it was mandatory requirement as per consent terms, thereby, defendant requires to have executed registered user agreement prior to use trademark 'ASARFI' while opening new outlet in future. Whereas, according to defendant, as per Clause-8 of

consent terms during the pendency of execution of such registered agreement and given its effect, defendant can use trademark ASARFI in its new outlet open after passing of consent decree.

14. As such, Executing Court examined such issue thread-bare while passing impugned judgment/ order wherein, this Court not found any error much less any gross error of law or any jurisdictional error. As such this Court is rather in the complete agreement with the view taken by the Executing Court while interpreting Clause-8 of consent terms, being part of consent decree. This Court also agreed and having similar view like Executing Court that it was not sine qua non to have prior registered user agreement before allowing defendant to use trademark 'ASARFI' when it open new outlet in future.

15. The relevant Clause-8 of such consent terms being part of consent decree reads as under :-

> *"8. In future, if the Defendants desirous to commence trade or business of ice-cream products under trade-name of 'Asharfi' at any new place other than the above mentioned business-places, a fresh 'Registered User Agreement' shall be executed as per the provisions of law to that effect and before executing such an agreement, the Defendants shall*

> *inform the Plaintiffs thereabout and pay Rs.30,000/- (Rupees Thirty Thousand) against the proposed name. After such a name is informed and payment is rendered to the Plaintiffs by the Defendants, even during the time such a Registered User Agreement is pending for execution and effect, the Defendants shall be entitled to commence business at such a new center under trade-name and with the trademark of 'Asharfi'."*

16. The bare reading of the aforesaid Clause-8 would clearly indicate the intention of the parties that it was not condition precedent to have prior registered user agreement to be executed between the parties before allowing defendant to open its new outlet in future. Had there been such an intention, the parties would have agreed otherwise.

17. To further understand the issue from slightly different angle, the Clause-4 of such consent terms requires to be noticed which reads as under :-

> *"4. The plaintiffs consent to execute a 'Registered User Agreement' as and when required as per law. The plaintiffs undertake to put their signatures and seal where-ever required in future in this regard."*

18. The bare look of Clause-4 would also indicate that

plaintiff agreed to execute registered agreement as and when required as per law and if so required in future, plaintiff put his signature and seal which was assured by the plaintiff. So, had it been so condition precedent to first execute user agreement before using new outlets, parties to the consent terms would have agreed otherwise.

19. At this stage, it would be apt to refer and rely upon Section 49 of the Trademarks Act, 1999, (herein after referred as 'the Act, 1999') which reads as under :-

> **"Section 49 : Registration as registered user**
>
> *(1) Where it is proposed that a person should be registered as a registered user of a trade mark, the registered proprietor and the proposed registered user shall jointly apply in writing to the Registrar in the prescribed manner, and every such application shall be accompanied by-*
>
> *(a) the agreement in writing or a duly authenticated copy thereof, entered into between the registered proprietor and the proposed registered user with respect to the permitted use of the trade mark; and*
>
> *(b) an affidavit made by the registered proprietor or by some person authorised to the satisfaction of the Registrar to act on his behalf,-*
>
> *(i) giving particulars of the relationship, existing or proposed, between the registered proprietor and the proposed registered user, including particulars showing the degree of control by the proprietor over the permitted use which their relationship will confer and whether it is a term of their relationship that the proposed registered user shall be the sole registered user or that there shall be any other restriction as to persons for whose registration as registered users application may be made;*
>
> *(ii) stating the goods or services in respect of which registration is*

proposed;

(iii) stating the conditions or restrictions, if any, proposed with respect to the characteristics of the goods or services, to the mode or place of permitted use, or to any other matter;

(iv) stating whether the permitted use is to be for a period or without limit of period, and, if for a period, the duration thereof; and

(c) such further documents or other evidence as may be required by the Registrar or as may be prescribed.

(2) When the requirements of sub-section (1) have been complied with, the Registrar shall register the proposed registered user in respect of the goods or services as to which he is so satisfied.

(3) The Registrar shall issue notice in the prescribed' manner of the registration of a person as a registered user, to other registered users of the trade mark, if any.

(4) The Registrar shall, if so requested by the applicant, take steps for securing that information given for the purposes of an application under this section (other than matters entered in the register) is not disclosed to rivals in trade."

(emphasis supplied)

20. Prima-facie reading of the aforesaid provisions of law, it is not mandatory requirement under the Act, 1999 to have compulsory registration of registered user agreement before allowing defendant to use trademark 'ASARFI' by the plaintiff. Had it been so, plaintiff and defendant would have agreed for compulsory registration of registered user agreement prior to use of trademark by defendant at its new outlet. Thus, in view of aforesaid, it cannot be gainsaid that It is sina qua non to first have registered user agreement executed between the parties and till such execution and give its effect, the defendant cannot use trade mark 'ASARFI'

when its open new outlet.

21. According to my view, plain reading of Clause-8 and 4 of consent terms being part of consent decree would clearly suggest that after informing about new opening and making payment of Rs. 30,000/- by the defendant to the plaintiff, towards opening of new outlet in future and till execution of registered user agreement and given its effect, defendant can commence/ start its business at new center/ outlet under trade name and trade-mark 'ASARFI'. What was agreed between the parties, is a prior intimation and the payment of Rs. 30,000/- by the defendant to the plaintiff before commencement of new outlet.

22. Thus, in view of the aforesaid, I am not at all impressed with any of the submissions so far made by the learned advocate Mr. Majmudar for the petitioners in regards to execution of prior registered user agreement till such time of execution/registration, defendant cannot use its new outlet. Apart from the aforesaid facts and circumstances of the case and as it has come on record and so correctly observed by the Executing Court that during the pendency of the execution, the Commercial Suit No. 38 of 2018 filed by the plaintiff against defendant, wherein in Para-25 stated as under :-

"25. …….The inordinate and inexcusable delay in entering into

a Registered User Agreement has effectively frustrated the plaintiff's rights as registered owners of the trademark 'Asharfi'. In light of such conduct the Plaintiffs are entitled to treat themselves discharged from the consent decree and are no longer bound by the decree dated 04.01.2001."

(emphasis supplied)

23. The plaintiff has consciously make the aforesaid statement / averment in its suit filed subsequent to Execution, which would indicate that for all purposes, plaintiff assumed that it discharged from consent decree and no longer bound by it. If that be so, it would not be appropriate on the part of plaintiff being decree holder to pursue the execution any more. I am in complete agreement with the submissions so canvassed by the learned advocate for the respondent that the plaintiff cannot allow to approbate and reprobate.

24. It has come on record by way of pleadings of the parties and as such, there is no serious dispute raised by the learned advocate for the petitioner during the course of his submission that subsequent to passing of the consent decree, and prior to opening of new outlet by the defendant, defendant not failed to pay/ sent Rs. 30,000/- for each such outlet to plaintiff.

25. In that view of the matter, none of the prayers so made in any of the aforesaid execution so filed by the plaintiff/ decree holder no longer survive and as such, prayers made in Execution could not have been granted, which correctly not granted by the Executing Court.

26. According to my view, the Executing Court has not committed any error while deciding the lis between the parties rather correctly appreciated consent terms executed between the parties. The Executing Court after analyzing the provisions of law including the provisions of Order 21 of CPC, arrived at just and proper conclusion, whereby dismissed both the Execution Petitions. I am in complete agreement with such view taken by Executing Court, when dismissed the executions.

27. Furthermore, there is no ambiguity in consent decree, rather plain reading of clause No.8 read with 4 of the consent terms incorporated in consent decree, would clearly shows that execution/registration of User Agreement prior to using trademark “ASARFI” by defendant, never be a paramount intention of parties. So far as the judgments so cited by the learned advocate Mr. Majmudar for the petitioner in support of his submissions, for remand of the matters back to the Executing Court, in view of aforesaid,

none of such decisions would help the case of the petitioners. In absence of any agreed terms executed between parties to form User Agreement while entering into consent terms, Executing Court cannot redraw such terms, inasmuch as, Executing Court cannot go beyond decree. According to my view, when there is nothing ambiguous in the decree, there is no question arise to remand the matters back to Executing Court for its fresh adjudication.

28. In view of the aforesaid, I am not all impressed with any of the submissions so canvassed by the learned advocate Mr. Majmudar for the petitioner and as such, I am of the view that the matters do not require to be remanded back to the Executing Court for its re-adjudication of Execution Petitions, as in view of aforesaid, there is nothing to be re-adjudicated in the execution.

Conclusion

29. In view of the foregoing observations, discussions, and reasons, I am of the view that the impugned common order whereby, both the Execution Petitions dismissed would neither suffers from any perversity nor erroneous, nor it passed exceeding jurisdiction so vested with the Executing Court. Consequently, in light of what is observed and held

hereinabove, there is no need to remand the matters back to the Executing Court for afresh adjudication of Execution Petitions.

30. Both these writ applications found bereft of any merit, requires to be rejected, which are hereby rejected. Consequently, the impugned common order dated 30.11.2018 passed by the Additional Principal Judge, City Civil Court, Ahmedabad in Execution Petition Nos. 317 of 2004 & 935 of 2012 is hereby confirmed. Rule discharged. No order as to cost.

Sd/-

(MAULIK J.SHELAT,J)

SALIM/-

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: MOHAMMAD SALIM(HC01108), STENO GR II, at High Court of Gujarat on 16/10/2025 14:46:56