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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : 13.05.2026*

\+ **RFA(COMM) 300/2026 CM APPL. 29766/2026 CM APPL. 29767/2026**

YOGESH KUMAR SHARMA .....APPELLANT

Through: Mr. D.B. Yadav and Mr. Sauraj Yadav, Advs.

versus

CANARA BANK (ERSTWHILE SYNDICATE BANK) .....RESPONDENT

Through: None.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

MANMEET PRITAM SINGH ARORA, J. (*ORAL*)

RFA(COMM) 300/2026 CM APPL. 29766/2026 CM APPL. 29767/2026

1. The present appeal has been filed under Section 13 of Commercial Courts Act, 2015 read with Section 96 of Code of Civil Procedure 1908, ['CPC'] against judgment dated 18.04.2023 passed by Commercial Court-01, East, Karkardooma Courts in CS (Comm) No. 222/2021 titled as **Canara Bank (erstwhile Syndicate Bank) v. Yogesh Kumar Sharma**, whereby the learned District Judge has decreed the suit in favour of the Respondent for a sum of Rs. 6,69,202/-, along with interest at rate of 11% per annum and penal interest at the rate 2% per annum from the date of filing of the suit till realization.

Factual Matrix

2. The Respondent *vide* sanction letter dated 21.09.2015 authorized a term loan of the amount 5,27,000/- to the appellant for the purchase of a radio taxi, i.e., Hyundai Xcent Car.

3. It is the case of the Appellant that he entered into an agreement dated 26.05.2015 with M/s Magic Sewa Pvt. Ltd., a company engaged in the business of providing radio taxi services. And, as per the terms and conditions of the said agreement, since the Appellant opted to operate the taxi in a single shift, the first 24 EMIs of the loan were payable by the Appellant, while the remaining 36 EMIs were agreed to be borne and paid by M/s Magic Sewa Pvt. Ltd.

4. It is stated that pursuant to the agreement dated 26.05.2015, the Appellant had paid EMIs amounting to the sum of Rs. 2,64,748/- to the Respondent Bank; however, M/s Magic Sewa Pvt. Ltd. failed to comply with its obligations under the said agreement and defaulted in the payment of remaining EMIs to the Respondent bank.

5. The Respondent bank initially entered into a settlement with the Appellant before the Lok Adalat held in the year 2018 and in the award passed at the Lok Adalat, the Appellant acknowledged its liability for a sum of Rs. 5,03,874/-, which was to be paid in the manner recorded therein.

6. However, the Appellant did not make payments as per the award and therefore, the Respondent Bank instituted the suit for recovery of Rs. 6,69,202 /- along with pendente lite and future interest at the rate of 18% per annum.

7. The Appellant contested the suit by filing his written statement and denied its liability to make any payment to the Respondent. It also moved an application under Order I Rule 10 CPC seeking impleadment of M/s Magic Sewa Pvt. Ltd. as a necessary party, on the ground that the transaction in question with the bank arose out of an agreement dated 26.05.2015 executed between the Appellant and M/s Magic Sewa Pvt. Ltd. The said application was, however, dismissed by the learned Trial Court *vide* order dated 22.10.2022 holding that M/s Magic Sewa Pvt. Ltd. is not a necessary or a proper party.

8. The suit proceeded to trial, parties led evidence and thereafter, by the impugned judgment dated 18.04.2023, the learned Trial Court decreed the suit in favour of the Respondent Bank.

9. The Appellant subsequently filed a suit i.e., CS No. 71/2025 for a declaration and mandatory injunction against M/s Magic Sewa Pvt. Ltd. and the Respondent Bank in 2025, which was held not maintainable by the District Court *vide* order dated 03.04.2025, with liberty to the Appellant to pursue appropriate remedies before the Executing Court or to seek enforcement of the agreement dated 26.05.2015 executed with M/s Magic Sewa Pvt. Ltd.

10. The Appellant thereafter filed Ex. (COMM) No. 04/2026 being objections under Section 47 of CPC before the Executing Court, which was seeking to implement the impugned judgment dated 18.04.2023, agitating the plea of liability of M/s Magic Sewa Pvt. Ltd. This application was dismissed by the Executing Court *vide* order dated 20.03.2026. Consequent thereto, warrants of attachment have been issued against the Appellant in the execution proceedings.

11. In this background of facts, the Appellant has preferred the present appeal, contending that the judgment dated 18.04.2023 has been passed without appreciating that he had discharged his contractual liability under the agreement dated 26.05.2015 and that the remaining liability, if any, was attributable to M/s Magic Sewa Pvt. Ltd.

Analysis:

12. The Appellant in the year 2015 applied for a term loan facility to purchase a new radio taxi under the Pradhan Mantri Mudra Yojana, pursuant to which the Respondent herein had sanctioned a term loan of the amount Rs. 5,27,000/- to the Appellant *vide* sanction letter dated 21.09.2015.

13. After making payment of Rs. 2,64,748/-, the Appellant defaulted in payment of the remaining EMIs. The Appellant, however, contended that in terms of its agreement dated 26.05.2015 executed between the Appellant and M/s Magic Sewa Pvt. Ltd., the liability to pay the remaining EMIs was that of M/s Magic Sewa Pvt. Ltd.

14. The Trial Court decided the entire controversy under Issue No. 1, wherein the deliberations and the findings of the Trial Court read as follows:

> "8.1 The defendant has further raised a plea that he had no contact with the plaintiff Bank and he was introduced to the plaintiff by a company namely Magic Sewa Pvt. Ltd. through its official. Even if it is presumed to be correct, the introducer has no liability. The plaintiff has duly proved all the documents vide which the loan was granted, including the loan application and there is no mention of the said company in any of the said there is no mention of the said company in any of the said documents. The name of the said company also does not appear as a guarantor in the Loan Agreement Ex.PW1/3. In the cross-examination, defendant/DW 1 admitted that he had taken the loan and the copy of the registration certificate of the loaned vehicle is in his name. He also admitted his signatures and photograph on the loan application Ex.PW1/1 as well as on the Hypothecation Agreement Ex.PW 1/4, on each and every page.

8.2 PW1 has also relied upon copy of an Award of Settlement before the **Lok Adalat held on 10.2.2018** in which the defendant had settled the dispute in the present matter for a total sum of Rs.5,03,874/- with the plaintiff Bank and the said amount was to be paid in five EMIs as per schedule and the defendant had duly signed his statement admitting the settlement However there was no cross-examination on behalf of the defendant on this point and even no suggestion denying the said settlement was ever given to PW1.

8.3 The defendant relied upon a contract between him and Magic Sewa Pvt. Ltd., copy of which was placed on record as Mark P1 dated 26.5.2015. According to it, the said company agreed to pay 48 installments of the plaintiff Bank after the defendant initially paid Rs.70,000/- and 12 EMIs of Rs.11,000/-. However, the plaintiff Bank is neither a party nor a signatory to the said Agreement and it is only between the defendant and the said company. Had the said Agreement been a tripartite agreement inclusive of the plaintiff Bank with the defendant and M/s Magic Sewa Pvt. Ltd., the position would have been Agreement between the defendant and Magic Sewa Pvt. Ltd and the defendant cannot escape his liability to pay the loan amount on the basis of the said agreement which was bilateral between him and the said company. It is for this reason that the plea raised by are defendant in the written statement of non-joinder of necessary party, i.e. M/s Magic Sewa Pvt. Ltd. is not tenable.

8.4 DW1 deposed in his evidence that he repaid a sum of **Rs.2,64,748.45p** in EMIs. The credit of said amount has been admitted on behalf of the plaintiff Bank in the replication filed by it. It means that this amount has been accounted for and the suit has been filed for the balance loan amount alongwith interest and penal interest which shows that the suit amount has been correctly arrived at.

8.5 It was submitted by Ld. Counsel for the defendant that the loan in question was a car loan and the plaintiff has not followed the guidelines issued by the RBI and has termed the loan to be ‘Term Loan’ and not ‘Car Loan’. It was submitted that as per the guidelines of the RBI and BFSI, copies of which were placed on record, the car loan has to be disbursed by means of pay order in favour of the car dealer and a letter is to be issued to the Regional Transport

> Authority. It is true that the loan in question was a car loan but as per the procedure explained by the plaintiff, a loan account is required to be opened where the loan amount is to be transferred and from that loan account, the amount is to be credited/transferred to the dealer. Opening of the loan account is necessary so that the EMIs can be regularly deposited therein. I find no irregularity in the procedure adopted deposited therein. I find no irregularity in the procedure adopted by the plaintiff Bank that too, when the loan has been admitted to have been obtained by the defendant and it has also been admitted that it would not have been repaid. Hence, this issue is decided in favour of the plaintiff."
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> (Emphasis supplied)

15. The aforesaid deliberations of the Trial Court show that the Respondent duly proved the Loan Application Form as Ex. PW1/1, Sanction Letter as Ex. PW1/2, Loan Agreement as Ex. PW1/3, Composite Hypothecation Agreement of vehicle as Ex. PW1/4 and Statement of Account certified under the Banker's Books of the Evidence Act as Ex. PW1/10.

16. The Appellant admitted making payment of instalments equalling a sum of Rs. 2,64,748/- towards the the purchase of a Hyundai Xcent Car and non-payment of the remaining instalments. Therefore, the computation of the outstanding amounts was also not in dispute.

17. The Respondent also proved on record that parties had entered into a settlement before the Lok Adalat held on 10.02.2018, and an award was passed wherein Appellant acknowledged its liability and undertook to settle the matter for a full and final payment of Rs. 5,03,874/-. The said amount was agreed to be paid by the Appellant to the Respondent-Bank in five ['5'] EMIs, and the said settlement was duly signed by the Appellant. The proceedings before the Lok Adalat further proved the acknowledgment of liability privity of contract between the parties.

18. In our considered opinion, the findings of the Trial Court with respect to the privity of contract between the Appellant and the Respondent bank, as well as the finding of Appellant's absolute liability to pay the amount due and payable under the agreement, have been duly proved through documents.

Effect of Appellant's agreement dated 26.05.2015 with M/s Magic Sewa Pvt. Ltd.

19. Before us, during arguments, learned counsel for the Appellant has referred only to a contract entered into between the Appellant and M/s Magic Sewa Pvt. Ltd., dated 26.05.2015 to contend that the liability to pay the remaining instalment should be on M/s Magic Sewa Pvt. Ltd and Respondent bank should not proceed against the Appellant.

20. The said agreement dated 26.05.2015 has been duly noted by the learned Trial Court in paragraph 8.3 of the impugned judgment. In our considered view, the learned Trial Court has rightly held that any inter se arrangement between the Appellant and M/s Magic Sewa Pvt. Ltd. regarding payment of EMIs would not absolve the Appellant of his independent liability towards the Respondent-Bank.

21. Learned counsel for the Appellant states that after the passing of the decree, the Appellant had also filed a separate suit bearing Civil Suit No. 71/2025, impleading both M/s Magic Sewa Pvt. Ltd. and Respondent Bank as parties; however, the said suit was dismissed by the District Court on 03.04.2025. He states that Appellant has not filed any appeal against the said order and instead elected to rely upon the said order in the execution proceedings, by filing objections, to contend that the decretal amount should be recovered from M/s Magic Sewa Pvt. Ltd. He states, however, that even the Executing Court has dismissed the said objection petition on 20.03.2026.

He states that in these circumstances, the Appellant has been saddled with the responsibility of paying the decretal amount, whereas the said amount is payable by M/s Magic Sewa Pvt. Ltd. as per the agreement dated 26.05.2015.

22. The Civil Suit No. 71/2025 filed by the Appellant against M/s Magic Sewa Pvt. Ltd. and Respondent-Bank had the following prayers:

> "a) pass a decree of DECLARATION in favour of the plaintiff and against the defendant thereby declaring that the plaintiff is not liable to pay the remaining loan amount of Rs.6,69,202.75- along with interest @ 11% per annum and penal interest @ 2% per annum as per terms & conditions of agreement dated 26.05.201'5 executed between the plaintiff and defendant no. 1;
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> b) pass a decree of MANDATORY INJUNCTION in favor of the plaintiff and against the defendants1 directing- the defendant no.2 to recover the remaining above loan amount with interest etc. from defendant no. 1 M/s Magic Sewa Pvt. Ltd.;
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> c) Award the COST of the present proceedings in favor of the plaintiff and against the defendants;
>
> d) Any other and further relief as may be deemed fit and proper may also be granted in favour of the plaintiff and against the defendants in the interest of justice."

23. The District Court opined that the said suit i.e., Civil Suit No. 71/2025 was not maintainable *vide* order dated 03.04.2025 and it held that by this suit the Appellant was seeking to challenge the validity of the impugned judgment dated 18.04.2023 which was not maintainable in law. The order dated 03.04.2025 reads as under:

> "1. Arguments heard on the maintainability of the present suit.
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> 2. Ld. Counsel for the plaintiff contends that the suit seeks a declaration that the plaintiff is not liable to pay the outstanding loan amount of Rs. 6,69,202.75/- alongwith interest (1 1% per annum and

penal interest 2% per annum), in accordance with the agreement dated 26.05.2015 executed between the plaintiff and defendant no. 1. Additionally, the plaintiff seeks a mandatory injunction directing defendant no. 2 to recover the said amount from defendant no. 1.

3. The counsel argued that as per the agreement, the plaintiff was responsible for paying first 24 EMIs, while defendant no. 1 was to pay the remaining 36 EMIs to defendant no. 2 for the loan amount of Rs. 7,67,910/- sanctioned by defendant no. 2. The counsel asserts that the plaintiff fulfilled his obligations but defendant no. 1 has failed to comply. He informed that defendant no. 2 filed a civil suit CS (Comm.) 222/21 titled as ' Canara Bank (Erstwhile Syndicate Bank) Vs. Yogesh Kumar Sharma' seeking recovery of the unpaid amount.

4. During those proceedings, the plaintiff filed an application u/o I Rule 10 CPC to implead defendant no. 1, but it was dismissed on 22.10.2022. Subsequently, the commercial court decreed the suit against the plaintiff on 18.04.2023. The plaintiff later filed a review petition on 10.01.2025, but withdrew it with liberty to file objections in the execution proceedings.

5. The counsel for the plaintiff alleges that defendant no. 1 and 2 colluded to defraud him and defendant no. I failed to fulfill its contractual obligations. He farther submitted that the decree passed by the commercial court should not be executed against the plaintiff in view of the agreement dated 26.05.2015.

6. Upon considering the submissions and the record, I am of the opinion that the relief sought effectively challenge the validity of the decree passed by the Ld. District Judge, Commercial Court, on 18.04.2023. Any declaration exempting the plaintiff from paying the outstanding loan amount or directing defendant no. 2 to recover same from defendant no. I would contradict the decree which has been passed on merits. The suit, in the opinion of this court, is not maintainable. However, the plaintiff is at liberty to pursue appropriate remedies before the executing court or seeking I enforcement of the agreement dated 26.05.2015, as per law. File be consigned to record room after due compliance."

24. The Appellant has elected not to challenge the said order and the same has attained finality.

25. Similarly, the objections filed by the Appellant before the Executing Court, seeking to avoid its liabilities by relying upon the agreement dated 26.05.2015 with M/s Magic Sewa Pvt. Ltd. has been dismissed by the Executing Court *vide* order dated 20.03.2026, relevant paragraph of which reads as under:

> "8. In "***MMFC Limited Vs Anglo American Metallurgical Coal Pvt. Limited 2025 SCC OnLine SC 2328'***, Hon'ble Apex Court has held as under:
>
> > 98. An objection petition under Section 47 should not invariably be treated as a commencement of a new trial. In Rahul S. Shah v. Jinendra Kumar Gandhi14. this Court had the following telling observations to make.
> > 24. In respect of execution of a decree, Section 47 CPC contemplates adjudication of limited nature of issues relating to execution i.e. discharge or satisfaction of the decree and is aligned with the consequential provisions of Order 21 CPC. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible. 25. These provisions contemplate that for execution of decrees, executing court must not go beyond the decree. However, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the executing court and the decree-holder is deprived of the fruits of the litigation and the judgment-debtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to.

9. Perusal of the judgment dated 18.04.2023 reflects that the objection taken by the decree holder in respect of the alleged agreement between him and M/s Magic Sewa Pvt. Ltd. has duly been dealt with and in the judgment it has been categorically held that the plea of the defendant of nonjoinder of M/s Magic Sewa Pvt. Ltd. is not tenable.

10. In "***Electrosteel Steel Ltd. v. Ispat Carrier (P) Ltd., (2025) 7 SCC 773***" Hon'ble Apex Court held as under:

> 69. Section 47CPC deals with questions to be determined by the court executing decree. As per sub-section (1), all questions arising between the parties to the suit in which the decree was passed and relating to the execution, discharge or satisfaction of the decree shall be determined by the court executing the decree and not by a separate suit. Execution of decrees and orders is provided for in Order 21 CPC. The law is well settled that at the stage of execution, an objection as to executability of the decree can be raised but such objection is limited to the ground of jurisdictional infirmity or voidness. The law laid down by this Court in Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman (1970) 1 SCC 670] is that only a decree which is a nullity can be the subject-matter of objection under Section 47CPC and not one which is erroneous either in law or on facts. The aforesaid proposition of law continues to hold the field.

11. The JD has failed to bring any material on record, which shows that the judgment/decree dated 18.04.2025 suffers from any jurisdictional infirmity or is otherwise void. The present application of the JD is sans merit and accordingly stands dismissed.

12. Let the warrant of attachment be issued in respect of the movable assets of JD to the extent of decreetal amount of the execution petition on filing of PF by the DH. List the matter before Ld. ACJ for 02.04.2026 for appointment of bailiff and for report on 17.04.2026."

26. We note that earlier the Appellant had filed an application under Order I Rule 10 CPC in the underlying suit CS(COMM) 222/2021 for impleading M/s Magic Sewa Pvt. Ltd., which was dismissed by the Trial Court vide order dated 22.10.2022, which reads as under:

> "No reply intended to be filed to the application of the defendant under order 1 Rule 10 CPC by the plaintiff. Arguments heard.
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> It is submitted by Ld. Counsel for the defendant that the defendant is a driver and he took the loan for purchasing a vehicle from the plaintiff bank and had entered into an MOU with M/s Magic Sewa Pvt. Ltd. Under the said MOU, the said company agreed to pay half of the cost of the vehicle and it was agreed that under the scheme floated by the company, the driver would drive the vehicle and defendant would pay first 24 EMIs and the said company 36 EMI to the bank.
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> As per the loan documents furnished by the plaintiff, the loan was taken only by the defendant in his individual name and at that time, no copy of the MOU was filed with the bank. The grievance of the defendant against the said company M/s Magic Sewa Pvt. Ltd. of not complying with the MOU cannot be redressed in the present suit nor the Managing Director of the said company can be arrayed as co-defendant as prayed for. However, the defendant shall be at liberty to initiate separate action against the said company for not complying with the terms of agreement if any.
>
> This court is of the view that the present application is not maintainable and M/s Magic Sewa Pvt. Ltd. or its Managing Director are neither necessary nor proper parties. Application is accordingly dismissed.
>
> At this stage, Ld. Counsel for the defendant submits that defendant is still willing to settle the dispute. Hence, the matter be listed for further proceedings on 05.11.2022.
>
> The defendant and the AR of the plaintiff bank shall remain present on the said date."

27. A perusal of the orders dated 22.11.2022, 03.04.2025 and 20.03.2026 shows that, on each occasion, the Court(s) directed the Appellant to avail its legal remedy, if any, against M/s Magic Sewa Pvt. Ltd. by initiating appropriate proceedings before the competent court.

In our considered opinion, the appropriate remedy available to the Appellant was to institute proceedings against M/s Magic Sewa Pvt. Ltd. for enforcement of the latter's obligations under the agreement dated

26.05.2015. However, the said inter-se agreement would not postpone the Appellant's liability under its loan agreement with the Respondent which is a bi-party agreement.

28. The Appellant has failed to demonstrate any legal infirmity in the findings of the Trial Court holding that the Appellant's obligation to repay the loan amount to the Respondent-Bank is absolute and unconditional, and cannot be made dependent upon any inter-se arrangement between the Appellant and M/s Magic Sewa Pvt. Ltd. We accordingly find no merit in this appeal.

29. We also note that this appeal has been filed after an inordinate delay of 1035 days and CM APPL. 29767/2026 has been filed seeking condonation of the delay.

In our considered opinion, the discretion under Section 5 of the Limitation Act is required to be exercised keeping in view the objective of the Commercial Courts Act, 2015, which mandates diligence and expedition in pursuing commercial remedies. The Appellant has failed to disclose sufficient cause for condonation of such an extraordinary delay of 1035 days. Accordingly, no ground is made out to condone the delay.

30. The appeal is accordingly dismissed on merits as well as on delay. Pending applications stand disposed of.

31. Before parting, we, however, note that Appellant is seeking to rely upon its inter-se agreement dated 26.05.2015 executed with M/s Magic Sewa Pvt. Ltd. to contend that the decretal amount payable to Respondent Bank is actually payable by M/s Magic Sewa Pvt. Ltd. There is no document before this court where this liability of M/s Magic Sewa Pvt. Ltd. has been

acknowledged or an order of a competent Court which has determined the liability of M/s Magic Sewa Pvt. Ltd.

In our considered opinion, the Appellant appears to be asserting rights akin to those of a surety under Section 140 of the Indian Contract Act, 1872. We accordingly clarify that after the Appellant has made payment to Canara Bank for the decretal amount, the Appellant will be at liberty to institute a suit for recovery of the amounts paid to Respondent Bank, from M/s Magic Sewa Pvt. Ltd., subject to establishing its legal rights and the corresponding liability of M/s Magic Sewa Pvt. Ltd. under the agreement dated 26.05.2015.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

MAY 13, 2026/AJ/hp