

Order below Exh-49

1. The defendant No. 7 has filed the present objection application vide Exh-49.

The defendant No. 7 have stated in his objection application that The Award passed by the Arbitration Tribunal for Rs. 4,49,40,822/- in case No. 10/2018 on 10/01/2020 in which the defendant No. 7 was a party and against which the present execution No. 1/2021 has been filed. The opponent No. 7 has further stated that he has not received any single notice / summons regarding arbitration case or regarding present execution in any stage. The defendant No. 7 has stated that as there is no any single notice served upon him and he is not aware about any proceedings, the court cannot attached his property and hence he has filed the present objection along with rejoinder and requesting to cancel all the orders passed in the present execution.

2. The concise facts of the present case is that the present Execution No. 1/2021 filed for the award passed by the Arbitration Tribunal in Case No. 10/2018 for Rs. 4,49,40,822/- in which the notice has been issued vide Exh-11 against defendant No. 7 on 26/11/2021 which was served to sister in law of defendant No. 7 and inspite of that the defendant No. 7 is not remained present before this Court. Thereafter, the applicant has filed an application for issuance of warrant of attachment vide Exh-13 against which this Court has issued attachment warrant on 10/12/2021 for movable property but the total amount of the

present execution could not be recovered. Thereafter the warrant of attachment of immovable property of defendant No. 7 was issued vide Exh-27 and after attachment of immovable property of defendant No. 7 which is agricultural land the necessary proceedings for auction were going on and at that time the defendant No. 7 appeared through his Ld. Advocate on 01/10/2025 and have given application for taken on board which was rejected by this Court against which the defendant No. 7 have filed Reg. Spe. Civil Application No. 13988/2025 in which the Hon'ble High Court has given direction to pass an order in objection application on the point of 'Non service of notice of the execution proceedings upon petitioner'. Hence, the Opponent No. 7 has filed the present application along with rejoinder affidavit.

3. I have heard the Ld. Advocate for defendant No. 7 and Ld. Advocate for the applicant at length. The Ld. Advocate for the defendant No. 7 has stated that the notice of execution and the notice of attachment of property both are separate proceedings. The notice of execution produced vide Exh-11 was served on defendant's sister-in-law which is not a proper service of notice because the defendant no.7 has no relationship with his sister-in-law and they both are not living in a joint family even they both have different addresses and hence the same cannot be considered to be proper service of notice. The Ld. Advocate for the defendant No. 7 has further argued that whenever the bailiff going for service of notice the defendant no.7 has not been found at his residence even the bailiff has submitted in his report that every time he reached at the defendant no.7 residence he found the

residence in locked condition. The Ld. Advocate has relied upon CPC Order 5, Rule 15 and argued that it clearly provides in which circumstances member of the family can be served the notice. The Ld. Advocate further argued that on perusal of remarks dated 31/01/2024 it is stated that the son of defendant No. 7 Milan Dharmendrabhai Patel was present and he has stated that he is son of defendant No. 7 and his father Dharmendra Ratilal Patel was out of station and not present at home and hence the notice was not served and further in the said remarks it was not stated the exact location of defendant No. 7 or the exact time when he return to his house and hence the said notice was unserved. The Ld. Advocate further argued that vide Exh-32 the notice has been sent to the defendant no.7 through RPAD which was returned with an endorsement that "Returned as owner refused to take the cover of RPAD" but the receipt of the notice has not been present before this Court and no acknowledgment produced vide Exh-33 and hence it cannot be said with surety that the said notice was actually sent to the defendant's residence address and that the defendant no.7 has refused to accept the same and the same has not been confirmed with the post master by the applicant. The Ld. Advocate has further argued that on 21/09/2024 the notice was issued to the defendant No. 7 but he was not present but his wife was present but she has refused to accept the notice and sign the notice and hence the same notice was pasted on the door of the defendant No. 7 but there is no any order for pasting the notice to the defendant No. 7's house. Hence, there is no any proper service of notice to the defendant No. 7 and hence the present objection application should be

allowed and it is required to cancelled all the order passed in present execution.

The Ld. Advocate for the defendant no.7 has relied upon judgment passed in the case of Dayavanti Premchand v/s. Gujarat Electricity Board reported in 2025 (0) AIJEL HC 251532, In the case of Brakewel Automotive Components (India) Pvt. Ltd. v/s. P.R. Selvam Alagappan reported on 2017 (0) AIJEL-SC 59942, In the case of Odisha State Financial Corporation v/s. Vigyan Chemical Industries reported in 2025 (0) AIJEL-SC 75668 and in the case of Leelavantiben Mohanbhai Dabhi v/s. Prakashbhai Nathabhai Sonagara reported as 2008 (0) AIJEL-HC 220605.

4. The Ld. Advocate for the applicant has filed his reply vide Exh-51 and have stated that the present execution has been filed from the award passed by the Arbitration Tribunal and the address of the defendant No. 7 in Arbitration case is same in the present execution. The Ld. Advocate for the applicant has further stated that as per CPC Order 6 Rule 14 (A) it is mandatory for the parties to submit their address in the application. It is the responsibility of the defendant to declare their address if the same has been changed. Further, the defendant No. 7 himself has confirmed in Rejoinder affidavit filed vide Exh-57 that the address mentioned in the present execution is the correct address. The Ld. Advocate for the applicant have relied upon the judgment passed by the Hon'ble Delhi High Court in the case of Gagan Kakkar vs. Dharmapal Chhabra. The Ld. Advocate for the applicant has further argued that the notice issued in the present execution was

issued to defendant no.7 on 26/11/2021 vide Exh-11 at the registered address of the defendant No. 7 but instead of defendant no.7 his sister-in-law has signed and accepted the notice on behalf of defendant no.7 and hence the said notice was properly served to the defendant No. 7 as per Order 5 Rule 15 of CPC as the same can be served on an adult member of the family in absence of actual party i.e. defendant no.7. Further, the defendant No. 7 has argued that he is not living with his sister in law and they are not living in joint family but the defendant No. 7 has not taken any stand that Sharmisthaben Rashmibhai is not his sister in law and there is no any complaint filed regarding any dispute with his sister in law and hence as per Order 5 Rule 15 of CPC it can be said that the notice issued vide Exh-11 was properly served on defendant No. 7. The Ld. Advocate for the applicant has argued that the defendant No. 7 has stated his address in Execution as Patel Vas, Umiyapura, Ta. Kheda, Dist. Kheda thereafter vide Exh-31 he produced new address which is Ambemanu Fadiyu, Umiyapura, Ta. Kheda, Dist. Kheda and the civil application filed before Hon'ble Gujarat High Court the defendant No. 7 has stated his address as Ghodasar Fadiyu and in the rejoinder affidavit filed by the defendant No. 7 vide Exh-57 in which the defendant No. 7 have stated that both the address are same. Further, the defendant No. 7 have no any dispute that the Patelvas, Umiyapura, Ta. Kheda, Dist. Kheda and Ambemanu Fadiyu, Umiyapura, Ta. Kheda, Dist. Kheda are the different address and they are not residing at that address and the same are incorrect. Hence, as per settled principle of Hon'ble Supreme Court, if the notice has been properly served on the registered

address the same presumed to be served and as in the present case on hand the defendant No. 7 have not raised any dispute till date regarding his address and hence the same can presumed to be served. It was further argued that inspite of serving the notice to defendant no. 2 and 7 they did not appear before this Court thereafter, attachment warrant was issued on 10/12/2021 for which an agriculture land of defendant no.2 and 7 was attached and the said land was kept for public auction and for which also another notice issued to defendant no.7 on 31/01/2024 and at that time the son of the defendant no.7 was found to be present at the residence and on asking about his father he declared before the Bailiff that his father - defendant no.7 has gone out of station and while agreeing the notice he stated that he would inform his father about the said matter but he has refused to sign the said notice and therefore the bailiff has noted Electricity connection number (USP 1262015) of the defendant no.7 house and returned the notice to this Court. Thereafter, an application was filed by the applicant vide Exh-32 to serve the notice through RPAD to the defendant no.7 on the same address and subsequently this Court has sent the notice vide Exh-33 to the defendant no.7 but the same has returned with an endorsement "Refused to accept". Thus, despite serving notice to the defendant three times, the defendant has intentionally not been present before this Court for execution and finally this objection application has been filed with a view to delay the proceedings and waste of precious time of this Court without any valid reasons.

Further, on perusal of CPC Order 21, Rule 106 which provides for cancelling the ex-parte order and the time limit prescribed under the said provisions is 30 days but in the present case the defendant No. 7 has not filed any application to cancel the ex-parte order within 30 days and the same has been filed without any delay condone application. It is further argued by the Ld. Advocate for the applicant that every time the notice has been issued to the defendant No. 7 before proceed further in the present execution but the defendant No. 7 was intentionally not remained present before this Court and now he has filed the present objection application to cancel all the order passed by this Court ex-parte but it is pertinent to note that the defendant No. 7 has not filed any application for bi-parte order. Hence, the objection application filed by the defendant No. 7 deserves to be rejected with cost.

5. I have gone through the record of the case, provisions of law, argument of both the sides. On perusal of evidence on record the present execution has been filed by the applicant to recover the entire amount of Rs.4,49,40,822/- in pursuance of the order passed by the Arbitration Tribunal in Dispute No. LVD/10/2018. Further, in the present execution the notices were issued on 26/11/2021 to all the defendants vide Exh-5 to Exh-11 and despite of notice being served only the defendant nos. 5 and 6 were present and the remaining defendants were not present before this Court. Thereafter, this Court has passed an order vide Exh-13 and attachment warrant was issued against the defendants. Thereafter, the defendant Nos. 2, 3 and 4 were appeared before

this Court on 29/12/2021 through their advocate but have not deposited the amount of execution and then they were never appear before this Court. Subsequently, the applicant have filed an application vide Exh-17 for attachment warrant and police protection and the order was passed on 21/01/2022 for attachment warrant. Thereafter, defendant No.5 and 6 appeared through their advocate before this Court and filed Objection vide Exh-20 but at the time of hearing of the above objection application the defendant no.5 and 6 were not present before this Court and hence the same was filed. Thereafter, despite issuing attachment warrant of movable properties from time to time, the amount mentioned in the present execution was not recovered from the movable property of the defendants. Therefore, the applicant filed an application vide Exh-27 for attachment of agricultural land lying in the name of defendant nos. 2 and 7 and issued notice dated 31/01/2024 to the defendants and when the notice went to perform the service, his son namely Milan Dharmendrabhai Patel was found to be present at the address of the defendant and by asking about his father, he had responded that his father had gone out of station and is not present at home and while agreeing the notice he stated that he would inform his father about the said matter but has refused to sign the said notice and by returning the notice the bailiff has noted defendant no.7's Electricity Consumer No. USP 1262015 and attached in the said notice and the notice returned unserved. After that on 06/03/2024 the notice was sent to the defendant no.7 again and the said notice was returned as door locked. Thereafter, the notice was sent through RPAD which was also returned with an endorsement

as 'Owner refused to accept' and the said cover of the notice is produced vide Exh-33. Thus, the notice was refused to be accepted by the defendant no.7 through RPAD. In the present case on hand, the defendant No. 7 have not raised any dispute till date regarding that the address of defendant No. 7 is wrong and the address at which the notice was served to the defendant no.7 is not his real address or the address of the defendant no.7 is changed and only on the basis of that the notice is not served to the defendant No. 7 personally he has filed the present objection application and prayed to quash all the earlier orders. At this stage, considering CPC Order 5, Rule 15 there is a provision to serve any adult member of the family in absence of actual party. In this case, the first notice was served to the sister-in-law Sharmisthaben Rashmibhai on behalf of defendant no. 7 but the defendant No. 7 have never stated that the Sharmisthaben Rashmibhai is not his real sister-in-law. Thereafter, the son of the defendant no.7 has refused to accept the said notice when bailiff of this Court has served the notice and after that the defendant No. 7 has refused to accept the notice when serve through RPAD. Thus, the notice has been sent to defendant No. 7 several time and the defendant himself has not been found present at his residence and the notice sent through RPAD was returned with remarks 'refused to accept'. Thus, as per the provisions of CPC Order 5, Rule 12 it is suggested to serve the defendant himself or his agent as far as possible but if the defendant is not found present at home then as per CPC Order 5, Rule 15 summons/notice can be served on an adult member of the defendant's family. At this juncture, it is profitable to see the

judgment of the Hon'ble Supreme Court in the case of Vishwabandhu v/s. Shri Krishna and others, wherein it is held that, it is to be presumed that the notice sent to the correct address is properly served when it is returned with a note of refusal.

6. Moreover, the Ld. Advocate for the defendant No. 7 have relied upon the case of Dayavanti Premchand v/s. Gujarat Electricity Board reported in 2025 (0) AIJEL HC 251532, In the case of Brakewel Automotive Components (India) Pvt. Ltd. v/s. P.R. Selvam Alagappan reported on 2017 (0) AIJEL-SC 59942, In the case of Odisha State Financial Corporation v/s. Vigyan Chemical Industries reported in 2025 (0) AIJEL-SC 75668 and in the case of Leelavantiben Mohanbhai Dabhi v/s. Prakashbhai Nathabhai Sonagara reported as 2008 (0) AIJEL-HC 220605 and on perusal of the above cited judgment the principles established in the above cited judgment are binding to this Court but on perusal of the record of the case and as per above detailed discussion it is pertinent to note that in the present case the defendant No. 7 was served with the notice three times and hence the above cited judgments are not helpful to the defendant No. 7 in the present case.

7. Thus, from the above detailed discussion it is clearly established that the notice was properly served upon defendant No. 7 as per provisions and settled principle of law and the defendant No. 7 was intentionally not appeared before this Court during the proceedings of the present execution and have filed the present objection application to cancel the earlier orders passed

exparte in present execution but the defendant No. 7 has not filed any application for bi-parte order. Moreover, it is pertinent to note that the defendant No. 7 has filed the objection application but he has not filed any delay condone application and hence the present objection application filed by the defendant No. 7 deserves to be rejected and hence I pass the following order for the interest of justice.

O R D E R

1. The objection application vide Exh-49 is rejected.
2. No order as to cost.

Date: 09/02/2026
Place: Kheda

(Maheshkumar Chimanlal Patel)
Principal Senior Civil Judge
Kheda
GJ01199