


MHKO070021752025 	<u>Order below Exh.5 in Civil Misc. Application No. 43/2025.</u> M/s. Cypher Alloys Pvt. Ltd., Vs. Ghodawat Industries (India) Pvt. Ltd.,
---	---

The applicant has filed the present application under Order XXXIX, Rule 1, 2 of the Code of Civil Procedure, 1908, for a temporary injunction to stay the execution petition No.18/2025 filed before the Principle Senior Civil Judge, Hosapete and also to stay the operation of judgment and decree passed in Regular Civil Suit No.44/2012 dated 17.12.2014 till final disposal of the application for delay condonation filed along with application for setting aside the ex-parte decree passed against the applicant. The non-applicant has filed its say (Exh.26) and objected the application.

Facts of the applicant's case are as follows –

2. According to the applicant, the non-applicant had filed Regular Civil Suit No.44/2012 against it for recovery of an amount of Rs.4,83,663/-. The said suit came to be decreed ex-parte on 17.12.2014. It is the contention of the applicant that the summons and notice of the said suit were not served at its registered address at Pune, nor upon any authorized person or representative of the company. Therefore, according to the applicant, there was no proper service of summons and it had no knowledge of the said proceedings or the decree passed therein. It is further contended that the non-applicant filed Execution Petition No.18/2025 on 17.02.2025, i.e., after about 11 years from the date of the decree. On 26.06.2025, the Attachment Officer visited the applicant's branch office at Hosapete and seized certain movable articles from the office. On that day, the applicant came to know about the said execution proceedings. Thereafter, on

04.07.2025, the applicant obtained the certified copy of the decree passed in Regular Civil Suit No.44/2012, and on that day it first acquired knowledge of the said decree. The applicant has further contended that its registered office is situated at Pune, Maharashtra, the Director of the applicant company resides at Hosapete, Karnataka, and the decree was passed at Jaysingpur. Therefore, some time was required to appoint an advocate before this Court. According to the applicant, there is a delay of about 12 days in filing the application for setting aside the ex-parte decree. Hence, the present application has been filed seeking condonation of delay for filing the application to set aside the ex-parte decree. The applicant has also filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908.

3. The non-applicant has filed its say (Exh.26) and denied the adverse allegations made by the applicant. According to the non-applicant, the summons in Regular Civil Suit No.44/2012 were duly served at the proper address of the applicant company by Registered Post, and the same were received by the concerned office bearer of the applicant company. It is contended that the reasons stated by the applicant for condonation of delay are false and baseless. The non-applicant has further contended that the execution petition has been filed within the prescribed period of limitation. According to it, the applicant was aware of the said decree and, despite that knowledge, the present application was filed after an inordinate and unexplained delay. It is also alleged that the applicant has concealed material facts from the Court. On these grounds, the non-applicant has prayed for rejection of the present application.

4. Heard Shri. S. P. Khurape, learned advocate for the applicant and Shri. C. D. Mane, learned advocate for the non-applicant. Read the

written notes of argument (Exh.39) submitted by the applicant.

5. Perused the application of the applicant, say filed by the non-applicant as well as documents filed on record. The following points arise for determination, and I have recorded my findings thereon for reasons mentioned herein.

Sr. No.	Points	Findings
1.	Whether the prima-facie case is in favour of the applicant ?	No.
2.	Whether balance of convenience lie in favour of the applicant ?	No.
3.	Whether irreparable loss will be caused to the applicant, if injunction is not granted ?	No.
4.	Whether the applicant is entitled to the relief of temporary injunction/stay for the execution of the decree passed in Regular Civil Suit No.44/2012 ?	No.
5.	What order ?	As per final order.

REASONS

AS TO POINT NOS.1 TO 5: -

6. The present application seeking temporary injunction/stay has been filed by the applicant during the inquiry of the delay condonation application, which has been preferred for filing an application to set aside the ex parte decree passed in Regular Civil Suit No. 44/2012. Therefore, the first question that arises for consideration is whether an application seeking stay of execution of the decree can be filed during the pendency of the delay condonation application. In support of the maintainability of the present application, the applicant has relied upon the following decisions **J.K. Chowdhury v. Ashis Benerji, AIR 1981 P & H 51; Amrik Singh v. Jasbir Singh, P & H (1996) 1 CivCC 103; Sunita**

Khanna v. B. L. Gupta and anr., decided on 05.02.2001; Gurmeet Singh @ Gurmit Singh v. Bhinder Singh, CR- 45-2023 decided on 10.08.2023; Surjit Kaur v. Sarabjit Kaur and anr., CR No.5441 of 2018 decided on 16.10.2018 and Subasini Mishra @ Kar v. Jagdeep Pratap Deo and Ors., AIR Online 2019 Ori. 26. In view of the ratio laid down in the aforesaid decisions, it is clear that an application seeking stay of execution of the decree can be filed during the pendency of proceedings for setting aside an ex-parte decree.

7. It is the main contention of the applicant that the summons of the suit was not duly served upon the applicant company. According to the applicant, it was mandatory to serve the summons at the registered office of the company situated at Pune. However, the summons was served at the branch office of the company at Hosapete. The applicant has produced a copy of Form No. 18 (notice of situation or change of situation of registered office) to show that its registered office is situated at Pune. However, on perusal of the record, it appears that in the plaint of Regular Civil Suit No. 44/2012, the address of the branch office of the applicant company at Hosapete has been mentioned. Furthermore, it is not the case of the non-applicant that the summons was served at the registered office of the applicant company at Pune. Therefore, prima-facie it appears that the summons was not issued or served at the registered office of the applicant company at Pune.

8. On conjoint reading of Section 51 with Section 2(15) of the Companies Act, 1956, it appears that suit summons upon a company shall be served at its registered office. So also, the applicant has relied on M/s. Shalimar Rope Works Ltd. v. M/s. Abdul Hussain H. M. Hasan Bhai Rassiwalla and others AIR 1980 SC 1163 and Harendra Nath Ghosal v. Superfoam Pvt. Ltd., 95 CWN 888, wherein it is held that the

summons shall be served on the registered address of the company. In Harendra Nath Ghosal's case (cited supra), it is further held that Sec.51 of the Companies Act, 1956 prevails over Order 29 Rule 2 of Civil Procedure Code. As discussed above the summons of Regular Civil Suit No.44/2012 was not issued and served on the registered office of the applicant company at Pune. Thus, prima facie it appears that the summons of Regular Civil Suit No. 44/2012 was not duly served as per Section 51 read with Section 2(15) of the Companies Act, 1956.

9. Furthermore, according to the non-applicant itself, a summons was received by an office bearer of the applicant company. However, the applicant has relied on **Pravinchandra Dhanjibhai Kotak Vs Murli Agro Product Ltd. 2005(4) Mh.L.J.156** wherein it is held that mere handing over of a summons to an employee not authorised to receive summons does not amount to valid service of summons on the company. Therefore, prima facie it appears that there is no valid service of summons on the applicant company.

10. The learned advocate for the non-applicant has contended that an ex-parte decree cannot be set aside merely on the ground of irregularity in the service of summons, if it is satisfied that the defendant had knowledge of the date of hearing and had sufficient time to appear and answer the plaintiff's claim. In support of the said contention, he has relied upon the decision in **Sunnil Poddar and others v. Union Bank of India, AIR 2008 SC 1006**. On perusal of the roznama of Regular Civil Suit No. 44/2012, it appears that the summons was served at the branch office of the applicant company at Hosapete by Registered A.D. However, the non-applicant has not specifically averred that the branch office at Hosapete had intimated the registered office of the applicant company at Pune about the pendency of the present suit.

It has also not produced any documentary evidence in that regard. Therefore, at this stage, it cannot be held that the registered office of the applicant company knew about the pendency of the said suit. The said issue can be properly decided only after the parties will adduce their evidence. Therefore, prima facie, it appears that the summons of the suit was not duly served upon the applicant company.

11. On perusal of the roznama of Regular Civil Suit No. 44/2012, it appears that the suit summons was issued to the applicant company by way of registered A.D. However, the copy of the plaint was not annexed with the same. As per Order 5 Rule 2 of the Code of Civil Procedure, it is mandatory to annex a copy of the plaint along with the suit summons. The applicant has relied on M/s. Nahar Enterprises v. M/s. Hyderabad Allwyn Ltd., and anr., 2007 AIR SCW 6400, wherein the Hon'ble Supreme Court has taken the view that it is mandatory to annex the copy of the plaint along with the suit summons. A similar view has been taken by the Hon'ble Supreme Court in the case of National Insurance Company v. M/s. National Building Construction India Ltd., and Ors., 2023 LiveLaw (SC) 800. Therefore, it is evident that there was no proper service of summons on the applicant company.

12. Learned advocate for the non-applicant has relied on State Bank of India v. Himalayan Tiles and Marble Pvt. Ltd., 1994 Mh.L.J. 31 and Laxman Zingraji Adhau v. Sushila Zinguji Thakre and others, 1996(1) Mh.L.J. 67 and submitted that when a judgment is passed by invoking the powers under Order VIII Rule 5 of the Code of Civil Procedure, such an ex-parte decree cannot be set aside. However, on perusal of the record, it appears that in the present case the alleged ex-parte decree was not passed by invoking the provisions of Order VIII Rule 5 of the Code of Civil Procedure. It does not appear that during the pendency of

Regular Civil Suit No. 44/2012, the applicant had appeared in the said suit. It appears that due to the non-appearance of the applicant despite service of summons, an ex-parte order came to be passed against it. Therefore, it is clear that ratio laid down in the cases referred by the non-applicant is not helpful to him.

13. The learned advocate for the non-applicant has submitted that a similar application was earlier filed by the applicant before the Executing Court in Execution Petition No. 18/2025. According to him, the applicant has suppressed this material fact, and therefore, he is not entitled to the equitable relief of temporary injunction. In support of the said contention, the learned advocate for the non-applicant has produced a copy of the said application along with the order passed thereon by the Executing Court. Upon perusal of the same, it appears that on 18.06.2022, the applicant had filed the said application in Execution Petition No. 18/2025, wherein the following prayer was made:

- (i) To allow the application for temporary injunction.
- (ii) To stay the execution proceedings arising out of the judgment and decree dated 17.12.2014 passed in Regular Civil Suit No. 44/2012 by the Hon'ble Civil Judge Senior Division at Jaysingpur, Kolhapur till the final disposal of the Regular Civil Suit No. 44/2012, after giving a fair and equal opportunity of hearing to the Judgment Debtor.
- (iii) To grant ad-interim reliefs in terms of prayer clause (ii).
- (iv) To pass any other just and equitable orders as this Hon'ble Court may deems fit may kindly be passed in the interest of justice and equity.

14. On reading of the aforesaid prayer, it reveals that in Execution Petition No. 18/2025, the applicant had sought a direction to stay the execution proceedings arising out of the judgment and decree passed in Regular Civil Suit No. 44/2012 till the final disposal of Regular Civil

Suit No. 44/2012. This indicates that the applicant had sought a similar relief before the Executing Court as claimed in the present application. Furthermore, it is evident from the relief sought in the execution petition that the applicant had prayed for stay of the execution proceedings till the final disposal of Regular Civil Suit No. 44/2012. The applicant had not sought such relief till the filing of the present delay condonation application or till the decision of the present application. Furthermore, it appears that the said application was filed on 16.08.2025, and on the very same day the present application was also filed before this Court. This shows that the applicant has filed two separate applications before two different courts on the same day seeking substantially the same relief. Furthermore, the applicant has not disclosed the said fact before this court. It means that the applicant company has not come before the court with clean hands. It is well settled that a party seeking equitable relief of temporary injunction must approach the Court with clean hands and disclose all material facts. Therefore, the conduct of the applicant in filing similar applications before two different courts on the same day and suppressing the said fact before this Court creates serious doubt about the bona fides of the applicant. In such situation, it is necessary to consider the ratio laid by the Hon'ble Bombay High Court in the case of **Ramjas Foundation and others v. Union of India, (2010)14 SCC 38**, it is held that -

The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by

resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the issue(s) arising in the case. In *Dalglish v. Jarvie* 2 Mac. & G. 231, 238, Lord Langdale and Rolfe B. observed: "It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any fact which he has omitted to bring forward.

15. In view of the ratio laid down in the case (cited supra), it is clear that the applicant is not entitled to the discretionary and equitable relief of a temporary injunction/stay as prayed for in the present application. It is evident that the application filed by the applicant to stay the execution proceeding before the executing court was rejected on merit. As discussed above, the said material fact has been suppressed by the applicant company from this court. Regarding the effect of the suppression of material fact the Hon'ble Supreme Court in the case of **S.J.S. Business Enterprises (P Ltd) v. State of Bihar, AIR 2004 SC 2421** has held that -

As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case.

In view of the ratio laid down in the cases (cited supra), the applicant company is disqualified from obtaining the relief as claimed.

16. In view of the above discussion, it is clear that the applicant has not approached this Court with clean hands and has suppressed material facts from the Court. Therefore, it cannot be held that the

prima facie case or balance of convenience lies in favour of the applicant. The execution petition is filed to recover money. Therefore, it cannot be held that irreparable loss which cannot be compensated in terms of money will be caused to the applicant company if the injunction/ stay is not granted. Hence, the present application is liable to be rejected. Accordingly, Points No. 1 to 4 are answered in the negative, and for Point No. 5, I proceed to pass the following order.

ORDER

1. The application (Exh.5) is rejected.
2. Cost in cause.

Jaysingpur.

Date: 10.03.2026.

(P A. Patil)

Jt. Civil Judge Senior Division,
Jaysingpur.