

MHRG170003012023



IN THE COURT OF DISTRICT JUDGE-1 PANVEL AT PANVEL
(BEFORE S.R.UGALE)
EXHIBIT 39 IN EXECUTION PETITION NO.2/2023
(DATED 11/02/2026)

By way of present application Judgment Debtor is seeking recall/cancellation of attachment warrant dated 09/09/2025.

2] It is the case of Judgment Debtor that the Decree Holder has obtained attachment order by suppressing material facts and documents. The Decree Holder has failed to place the complete and correct factual matrix before the Court. As a result of this the attachment order was passed by the Executing Court. Further it is the case of Judgment Debtor that in order to effectively protect the rights and business interest, the Judgment Debtor by resolution dated 26/11/2025, changed its advocate on record and appointed new advocates who initiated steps forthwith. However, the previous advocates handed over 'no objection' certificate and papers on 05/01/2026. New advocates were appointed on 05/01/2026 as the Judgment Debtor was constrained to change legal representation upon discovering that crucial and urgent steps were not taken earlier in Commercial Arbitration Petition No.669/2022. Further it is stated by Judgment Debtor that previous advocate had failed to

advise and filed application u/sec.36 of the Arbitration and con Act 1996 which was necessary for seeking stay to the execution and operation of the award forming the basis of present proceedings. Upon being appointed, present advocates immediately perused the record, advise the Judgment Debtor appropriately and filed an interim application u/sec.36 of The Arbitration and Conciliation Act, 1996 on 07/01/2026 before the Hon'ble Bombay High Court, seeking stay of the award and all consequential proceeding arising therefrom. Considering the urgency involved and serious consequences likely to arise, the Hon'ble High Court was pleased to grant circulation of said interim application on 16/01/2026 and the said application is presently pending for hearing and orders. In view of pendency of aforesaid interim application before the Hon'ble High Court and urgent issues involved therein, the execution of warrant at this stage would cause grave hardship to Judgment Debtor and would render the proceedings before the Hon'ble High Court nugatory and infructuous. Further it is stated that the Decree Holder has mechanically and improperly invoke the provisions of Order 21 Rules 43, 46 and 54 of The Code of Civil Procedure, 1908 and sought attachment of furniture, fixtures, fittings, machines, tools and other movable articles allegedly lying at the premises of Judgment Debtor without following the mandatory procedure prescribed under law and without placing on record true facts regarding the nature, ownership, possession and attachability of the said property. Further it is stated by Judgment Debtor that the Judgment Debtor was never afforded

an opportunity to place on record the vital facts concerning the said premises and alleged attachable assets. Had such an opportunity been granted the Judgment Debtor would have demonstrated that the property sought to be attached is not liable for attachment under Order 21 Rule 54 of Code of Civil Procedure and the attachment is wholly unsustainable in law.

3] It is also stated by Judgment Debtor that the award dated 27/06/2022, which forms the basis of execution proceedings, has already been challenged by the Judgment Debtor by filing an Arbitration Petition under the applicable provisions of law, challenging the award passed under Section 80 (3) of the MSME Act, 2006 by the Micro and Small Enterprises Facilitation MMR region Mumbai, Continuation of corrosive execution proceeding during pendency of challenge would cause grave prejudice and undue hardship to the Judgment Debtor. Hence, it is prayed by Judgment Debtor that the attachment warrant issued against Judgment Debtor on 08/10/2025 be canceled or recalled.

4] The Decree Holder opposed the application by filing say vide Exh.64. It is stated that the present applicant has been filed with the sole intent of frustrating and delaying the Execution Proceedings pending before this Court and to indirectly to secure a stay on execution which has otherwise not been granted by any competent Court. Further it is stated by Decree Holder that each and every allegation, contention statement,

averment and insinuation made by the Judgment Debtor in the said application are false, erroneous and devoid of merit. Further it is stated that the erstwhile advocate appearing for Judgment Debtor before the Hon'ble High Court in the proceeding u/sec.34 had made a categorical statement that the petition may be finally heard at the administration stage, this statement was accepted and recorded by the Hon'ble High Court in its order dated 24/01/2025. Despite that they did not proceed with the proceedings filed u/sec. 34 nor attempted to appear before this Court. From the aforesaid chronology it is abundantly clear that Judgment Debtor has consistently adopted dilatory, obstructive and abusive tactics solely to frustrate the execution of a lawful arbitral award. Despite being duly served in the Darkhast Proceeding, since July, 2023 and having cautiously persuaded their section 34 challenge without obtaining any interim protection, the Judgment Debtor deliberately remained absent before this Court resulting ex-parte order dated 24/02/2025 and consequential attachment orders.

5] Further it is stated by Decree Holder that the Judgment Debtor has been withholding decretal amount due to decree holder for nearly a decade despite being a financially sound and well established corporeity entity. It is not case of financially incapacity but deliberate and intentional refusal to honour lawful dues. Thereby causing continuous loss and hardship to the decree holder. Beng fully conscious of this position, both the Hon'ble High Court as well as this Court have permitted the

Decree Holder to proceed with the execution including police protection whenever warranted. In these circumstances the present application for recall/cancellation of order dated 09/01/2025 deserves to be dismissed with exemplary cost for abuse of process of law and wastage of valuable judicial time.

6] Heard Ld. Adv. Shri Burad for the Judgment Debtor and Ld. Adv. Shri Loya for Decree Holder. Perused application, say and other material placed on record. Both the Ld. Advocates have made their respective submission on the line of averments made in the application and say respectively.

7] At the outset it is apposite to mention here that the Judgment Debtor has filed petition under section 36 of The Arbitration and Conciliation Act before the Hon'ble High Court seeking stay to the award and other consequential reliefs. Thus the matter is seized before the Hon'ble Bombay High Court. Further more it is also pertinent to note that the Hon'ble Bombay High Court vide its order dated 16/01/2026 passed in Commercial Arbitration Petition No.469/2022 granted liberty to Judgment Debtor for stay upon deposit of 75% of the amount in terms of the award. The Judgment Debtor has not deposited any amount of award till today in the Court. It is also important to mention here that the Hon'ble Bombay High Court in its order dated 12/12/2025 expressly clarified that since no stay has been granted in the petition, the Executing Court is at liberty to proceed with the execution application. By way of present application the Judgment Debtor under the guise of seeking

recall or cancellation of warrant indirectly seeking stay to the execution of award which is not permissible. Considering the aforesaid aspects I do not find any substance in the application. Hence, I pass the following order.

ORDER

1. The application stands rejected.
2. In the peculiar circumstances parties to bear their own costs.

Panvel
Date :-11/02/2026

(Shailesh R. Ugale)
District Judge-1 Panvel-Raigad

CERTIFICATE

I affirm that, the contents of this P.D.F. file judgment/ order are same, word to word, as per the original Judgment.

Name of Stenographer : S. J.Sheth (Grade-1)
Name of Court : District Court-1 & Additional
Sessions Court, Panvel
Date of dictation (direct) : 11/02/2026
Order signed by the
Presiding Officer on : 11/02/2026
Order uploaded on : 18/02/2026