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

+ O.M.P.(EFA)(COMM.) 6/2016

**DAIICHI SANKYO COMPANY, LIMITED** ..... Decree Holder

Through: Mr. Arvind Nigam, Sr. Advocate with Mr. Giriraj Subramaniam, Mr. Nabik Syam, Ms. Samridhi Hota, Ms. Aagam Kaur, Ms. Astha Ahuja, Ms. Shyra Hoon, Mr. Tanmay Arora, Mr. Sidhant Juyal, Mr. Kunal Chatterji, Mr. S. Singh and Mr. Rohan Jaitely, Advocates.

versus

**MALVINDER MOHAN SINGH AND ORS.** ..... Judgement Debtors

Through: Mr. Ishan Nagar and Ms. Aditi, Advs. for respondent/ICICI Bank.  
Mr. Shivank Diddi and Ms. Phalguni Nigam, Advocates.  
Ms. Denina Sehgal, Advocate for JD-16&17.  
Ms. Shyel Trehan, Advocate with Ms. Krushi Barfiwala, Gaurav Vutts, Pranav Sarthi & Ayushi Chaurasia, Advocates for the Applicant.

**CORAM:**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**ORDER**

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**25.01.2024**

The application has been taken-up on being mentioned before Hon'ble the Judge-In-Charge (Original Side).

2. Though the main matter was listed today, since the electronic file has not been updated, and considering the urgency expressed on behalf of



the applicant, the present application is being taken-up on a hard copy of the application being handed-up in court.

**I.A. /2024 (to be numbered)**

3. The Registry is directed to number this application.
4. By way of the present application under Order XXI Rule 58 read with section 151 Code of Civil Procedure 1908 ('CPC'), the applicant M/s One Qube Realtors Pvt. Ltd. (formerly M/s Akshit Properties Ltd.) seeks stay/modification of order dated 15.12.2023, as well as stay of Warrant of Sale of Property dated 18.01.2024 issued pursuant to that order, arising from a precept issued by this court under section 46 CPC in respect of property bearing Plot No.20, Urban Estate, Sector-18, Gurugram, Haryana ('subject property').
5. The copy of the application handed-up in court is taken on record, alongwith the compilation of documents placed under index dated 25.01.2024.
6. Ms. Shyel Trehan, learned counsel appearing for the applicant submits, that the applicant is a subsequent purchaser of the subject property *vide* Sale Deed dated 02.08.2017, which it purchased from an entity called M/s Torus Buildcon Private Limited; and has been in possession thereof ever-since.
7. It is submitted that the applicant has nothing to do with Arbitral Award dated 29.04.2016 that is under enforcement by way of the present proceedings; but it transpires that the subject property has been notified for sale *vide* Warrant of Sale of Property dated 18.01.2024 issued by the learned Civil Judge (Senior Division), Gurugram, Haryana, based on certain orders made by this court.



8. Attention in this behalf is drawn to order dated 11.01.2024 made by learned Civil Judge (Senior Division), Gurugram, which records that a precept has been received by that court issued in the present proceedings, viz. O.M.P.(EFA)(COMM.) No. 6/2016, based upon orders dated 22.03.2021 and 15.12.2023, directing that the subject property be attached and sold.
9. The order issued by the learned Civil Judge accordingly lays-down a schedule for the pasting of the notice on the Court House, on the spot, as also a date for the sale of the subject property (by auction), which is scheduled on 30.01.2024; with the report in respect of the sale to be filed before the learned Civil Judge on 05.02.2024.
10. A perusal of orders dated 22.03.2021, 10.12.2021 and 15.12.2023 made in the present proceedings shows that the subject property was directed to be *attached* and *sold* in the enforcement proceedings.
11. Ms. Trehan however points-out, that in none of the said orders was the applicant shown as the owner of the subject property, and the orders proceeded to record that the subject property belonged variously to “*Meadows Buildtech Private Limited*” and “*Torus Buildcon Private Limited*”.
12. In the circumstances, Ms. Trehan presses for an interim order restraining the sale of the subject property pursuant to the impugned Warrant of Sale issued by the learned Civil Judge.
13. Issue Notice.
14. Mr. Giriraj Subramaniam, learned counsel appears on behalf of the decree-holder on advance copy; accepts notice; and seeks time to file reply.



15. Let reply to the application be filed within 04 weeks; rejoinder thereto, if any, be filed within 03 weeks; with copies to the opposing counsel.
16. Mr. Arvind Nigam, learned senior counsel appearing on behalf of the decree-holder submits, that as is seen from the Declaration filed before the Revenue Authorities in relation to the subject property, as of 31.12.2018, M/s Indiabulls Real Estate Limited was a 50% shareholder in M/s One Qube Realtors Limited, *i.e.* the applicant; to point-out that M/s Indiabulls Real Estate Limited is intrinsically connected with the proceedings against the judgement debtors; and is, in fact, subject matter of contempt proceedings before the Supreme Court.
17. Mr. Nigam accordingly argues, that the applicant cannot feign ignorance of the proceedings pending in the present enforcement petition, or of the other proceedings pending in various courts arising from the same arbitral award; especially when M/s Indiabulls Real Estate Limited was a 50% share-holder in the applicant company even after the date on which the subject property was purchased by them. It is submitted, that as recorded in order dated 22.03.2021, on that date the court was informed that the immovable properties under reference in that order, which included the subject property, belonged to the companies which were owned by two of the judgement debtors and were unencumbered, referencing an affidavit filed before the Supreme Court. It is submitted that it was based on that recording, that the precepts came to be issued.



18. Mr. Nigam also submits, that the last precept for attachment of the subject property was issued *vide* order dated 15.12.2023, which belies any urgency in the matter to warrant an *ad-interim* order without affording to the decree-holder sufficient time to file a reply.
19. The essence of Mr. Nigam's submissions is that the applicant cannot attempt to hide behind a maze of companies and transactions, to evade attachment of the subject property.
20. On a conspectus of the submissions made and of the documents on record, including in particular orders dated 22.03.2021, 10.12.2021 and 15.12.2023 made in the present proceedings, this court is not inclined to grant any *ad-interim* relief to the applicant, at this stage.
21. Re-notify for further consideration on 02<sup>nd</sup> April, 2024.
22. A copy of this order be given *dasti* under signatures of the Court Master.

**EX.APPL.(OS) 108/2024**

23. By way of the present application under section 46 read with 151 of the Code of Civil Procedure 1908 ('CPC'), the decree-holder seeks re-issuance of the precept issued *vide* order dated 30.11.2023, premised on the submission that the precept issued under section 46 CPC lapses after 02 months.
24. Mr. Nigam submits that the last precept has lapsed, before it could even reach the concerned court in Thane, Maharashtra.
25. In view of the prayer made, it is not considered necessary to issue notice on this application.
26. Though this court is of the view that under section 46, it is the 'attachment' of property that lapses after 02 months and not the



precept itself, in order to expedite the proceedings in the matter, let a fresh precept, in terms of orders dated 10.12.2021, be issued to the learned Civil Court, Senior Division, Kalyan, Thane, Maharashtra, by all permissible modes.

27. As prayed for, let a copy of the precept be also given to the decree-holder *dasti*, for communicating to the concerned court.
28. Application stands disposed-of in the above terms.

**O.M.P.(EFA)(COMM.) 6/2016**

29. Re-notify on 02<sup>nd</sup> April 2024.

**ANUP JAIRAM BHAMBHANI, J**

**JANUARY 25, 2024**

*V.Rawat*