

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 13234 of 2025**

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RAMANLAL LILACHAND SHAH & ANR.

Versus

GUJARAT INDUSTRIAL INVESTMENT CORPORATION LIMITED

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Appearance:

MR AS VAKIL(962) for the Petitioner(s) No. 1,2

MR PARTH H SALUJA(13326) for the Petitioner(s) No. 1,2

MR RD DAVE(264) for the Respondent(s) No. 1

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**CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL**

and

HONOURABLE MR. JUSTICE D.N. RAY**Date : 24/09/2025****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE D.N. RAY)**

1. Heard Mr. Apurv S. Vakil, learned advocate with Mr. Parth H. Shukla, learned advocate for the petitioners and Mr. R. D. Dave, learned a.dvocate for the respondent.

2. The factual matrix giving rise to the present proceedings is as under:-

- 2.1 The Respondent herein, namely the Gujarat Industrial Investment Corporation Limited (for short, "GIIC"), instituted Civil Suit No. 2782 of 2004 against the present Petitioners. The said suit was filed for recovery of an

amount of Rs. 9,65,69,685.08, being the alleged outstanding dues as on 01.06.2004, together with future interest calculated at the rate of 18.5% per annum until realization. Along with the relief of monetary recovery, GIIC also sought costs, charges, and expenses from the date of institution of the suit, and further prayed for a decree of permanent injunction restraining the Petitioners from disposing of, encumbering, or creating third-party interests in respect of their properties.

2.2 The aforesaid Suit came to be renumbered as Commercial Civil Suit No. 589 of 2021. The Commercial Court, upon adjudication, by its judgment and decree dated 29.04.2023, decreed the suit in favour of GIIC. The Petitioners were held jointly and severally liable to pay the decretal amount of Rs. 9,65,69,685.08 with pendente lite and future interest at 18% per annum from the date of filing until realization. In addition, the Court awarded costs quantified at Rs. 5,59,848/- in favour of GIIC.

2.3 Being dissatisfied with the decree, the Petitioners preferred First Appeal No. 3487 of 2023 before this Court.

By judgment dated 10.06.2024, this Court dismissed the appeal and thereby affirmed the decree of the Commercial Court. Consequent to dismissal of the appeal, the Respondent-GIIC initiated execution proceedings. An Execution Petition came to be filed on or about 30.09.2024 before the competent Executing Court, praying, inter alia, for enforcement of the judgment and decree dated 29.04.2023. The Executing Court, vide order dated 23.10.2024, admitted the execution proceedings, issued notice to the Petitioners, and made the matter returnable on 18.12.2024.

2.4 The Petitioners entered appearance before the Executing Court on 18.01.2025 and sought time to engage counsel for their representation. Meanwhile, the Respondent-GIIC, by application dated 27.01.2025, prayed for issuance of an attachment warrant against the movable and immovable assets of the Petitioners, including their residence. To this, the Petitioners filed their Objections dated 12.02.2025.

2.5 By order dated 17.03.2025, the Executing Court rejected

the Objections filed by the Petitioners and allowed GIIC's application for attachment. Consequently, warrants of attachment were ordered to be issued against the Petitioners' properties as prayed. It appears that upon learning of the said order, Petitioner No. 1 informed GIIC authorities, by communication dated 02.04.2025, about his temporary absence from his residence until 10.04.2025.

2.6 Thereafter, the Respondent-GIIC preferred an application dated 13.05.2025 under Section 51 read with Order XXI Rule 30 and Section 151 of the Code of Civil Procedure, 1908 (CPC), praying for issuance of arrest warrant against Petitioner No. 1, namely Mr. Ramniklal L. Shah, and for his detention in civil prison. The said application was contested by Petitioner No. 1 by filing a detailed Reply on 25.06.2025. Since the application dated 13.05.2025 had been filed under the signature of the Advocate for GIIC, the same was not pressed. However, GIIC thereafter filed a fresh application dated 27.06.2025 under the same provisions, reiterating its prayer for civil imprisonment of Petitioner No. 1.

2.7 The Executing Court, by the impugned judgment and order dated 12.09.2025, allowed GIIC's application dated 27.06.2025 and directed that Petitioner No. 1 be sent to civil prison for a period of 45 days. At the request of learned counsel for the Petitioners, the Court suspended the operation of the said order for a period of 10 days, i.e., until 22.09.2025.

3. Aggrieved and dissatisfied by the impugned judgment and order dated 12.09.2025, the Petitioners by invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India has preferred this petition with the following prayers:-

“(A) to quash and set aside the judgement and order dated 12.09.2025 (Annexure-1) passed by the Judge, Commercial Court, City Civil Court, Ahmedabad below Application dated 27.06.2025 (Exhibit-19) in Execution Petition No.74 of 2024 and to dismiss the Application dated 27.06.2025 (Exhibit-19);

(B) to stay, pending the hearing and final disposal of the present Special Civil Application, the operation, implementation and execution of the judgement and order dated 12.09.2025 (Annexure-1) passed by the Judge, Commercial Court, City Civil Court, Ahmedabad below Application dated 27.06.2025 (Exhibit-19) in Execution Petition No.74 of 2024;

(C) to provide for the cost of the present Special Civil Application;

(D) to pass such other and further orders as this Hon'ble

Court deems fit and proper in the facts and circumstances of the present case."

4. Mr. Apurv S. Vakil, learned Counsel appearing on behalf of the petitioners primarily submitted that the factum of mere filing of GSTR forms as the Petitioner No.1 is running a business in the name of Jeev Pharmaceuticals cannot be relied upon to conclude that the Petitioner No.1 has misled the Executing Court. The Petitioner No. 1 is running a business at the age of 69 for his own survival and the survival of his wife- Petitioner No.2 who is a homemaker. In so far as the figure of turnover of Rs.45 lakhs to Rs.1.5 crores is concerned, the same is not reflected in the GSTR forms as erroneously observed by the Executing Court but is reflecting on the website of 'India Mart'. The Petitioners submit that what is reflected on the website of 'India Mart' does not have any evidentiary value. In any event, the figure of Rs.45 lakhs to Rs.1.5 crores is the alleged 'turn-over' of the sole proprietorship concern of the Petitioner No.1. The said alleged turnover has been treated as being akin to income by the Executing Court. In fact, the Petitioner No.1 has vide List (Exh.22) dated 05.07.2025 produced the Income Tax Return filed by the Petitioner No.1 for Financial Year 2023-2024

which shows a total income of Rs.4,71,430/-. The Executing Court, however, has not considered, much less referred to the said Income Tax Return.

4.1 He further submitted that the records would indicate that the petitioner aged more than 69 years has several ailments and it would be inequitable for the petitioner to be sent to civil prison due to his persistent ill health which is well documented.

4.2 Mr.Vakil, learned advocate lastly submitted by placing reliance upon the decision of the Hon'ble Apex Court in the case of **Jolly George Varghese and another Vs. The Bank of Cochin** reported in **(1980) 2 SCC 360** that since the petitioner is admittedly unable to pay his debts, the petitioner should not be sent to the civil prison as held by the Hon'ble Apex Court by interpreting the proviso to Section 51 of the CPC.

5. Section 51 of the CPC reads as under :-

"51. Powers of Court to enforce execution.—Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

- (a) by delivery of any property specifically decreed;*
- (b) by attachment and sale or by the sale without attachment of any property;*
- (c) by arrest and detention in prison 3 [for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section];*
- (d) by appointing a receiver; or*
- (e) in such other manner as the nature of the relief granted may require:*

[Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied—

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,—

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation. —In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.]”

6. Having heard Mr. Vakil at great length and having been taken through the records of the case, we are unable to agree with Mr. Vakil due to the following reasons:-

i. On perusal of the medical records at page Nos. '47' to '104' of the paper-book supplied, we find that after a successful coronary intervention in the year 2012, the petitioner has some joint pain and diabetes type 2. There is nothing which is emergent or alarming which requires immediate hospitalisation or that, the petitioner's health can be said to be so morbid that he is non-ambulatory.

ii. From the Income-tax return for the Assessment Year 2024-25 filed on 28.12.2024 at Page Nos. '109' to '112' of the paper-book, it will be seen that the turnover of the petitioner is Rs.72,60,070/-. The perusal of the data from the website of the Ministry of Corporate Affairs, the online details of the petitioner's proprietary firm as reflected on the website of "India Mart" and the

search report on the GST Portal of Jeev Pharmaceuticals would show that the petitioner is in active business with a decent turnover.

iii. The perusal of the impugned order discloses that the petitioner has 33 other cases filed by the financial institutions against him in which claims towards dues of almost Rs.100 Crores are outstanding against the petitioner. In view of the aforesaid circumstances, the decision of the Hon'ble Apex Court in **Jolly Varghese** (Supra) is wholly inapplicable to the petitioner's case. Therefore, this is not a case where the petitioner can be said to be entitled to an equitable relief.

iv. The learned Commercial Court has carefully considered the applicability of the provision of Section 51 read with Order XXI Rule 37 of the CPC and has rightly concluded that the petitioner No.1 in collusion with the third party has taken further loan on the property mortgaged with the respondent-Bank and therefore, has committed an

act of bad faith in relation to his property thereby clearly falling within the Clause (a)(ii) of the proviso to Section 51 of the CPC.

7. In such view of the matter and for the reasons enumerated in the impugned order dated 12.09.2025, the present petition is hereby dismissed. No order as to costs.

(SUNITA AGARWAL, CJ)

BINA SHAH

(D.N.RAY,J)

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: BINA A SHAH(HC00353), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 26/09/2025 18:13:01