

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO.34480 OF 2023
IN
COMMERCIAL EXECUTION APPLICATION NO.323 OF 2022

Rustom Ginwalla ... Applicant

Vs.

Rashna Ginwalla ... Respondent

WITH
INTERIM APPLICATION NO.808 OF 2020
IN
COMMERCIAL EXECUTION APPLICATION NO.323 OF 2022
WITH
INTERIM APPLICATION NO.814 OF 2020
IN
COMMERCIAL EXECUTION APPLICATION NO.322 OF 2022
WITH
INTERIM APPLICATION (L) NO.8493 OF 2022
IN
COMMERCIAL EXECUTION APPLICATION NO.323 OF 2022
WITH
INTERIM APPLICATION NO.827 OF 2021
IN
COMMERCIAL EXECUTION APPLICATION NO.323 OF 2022
WITH
INTERIM APPLICATION NO.4132 OF 2022
IN
COMMERCIAL EXECUTION APPLICATION NO.323 OF 2022
WITH
INTERIM APPLICATION NO.4945 OF 2022
IN
COMMERCIAL EXECUTION APPLICATION NO.323 OF 2022
WITH
APPEAL (L) NO.7691 OF 2024
IN
INTERIM APPLICATION NO.4945 OF 2022

Mr. Sameer Pandit with Ms. Sarrah Khambati and Mr. Jai Sanyal i/by Wadia Ghandy & Co., Advocates for the Applicants in EXA No.323 of 2022.

Mr. Premlal Krishnan with Ms. Nadeema Sharma and Mr. Prashant Bothre i/by M/s PAN India Legal Services LLP, Advocates for the Respondent No.1 in IAL No.34480 of 2023.

Mr. Huzefa Khokhawala i/by M/s Nankani & Associates, Advocate for the Respondent No.8 in IA No.4945 of 2022 in EXA No. 323 of 2022.

Mr. O.A. Das, Advocate for Respondents No. 6 and 7.

CORAM : ABHAY AHUJA, J.

DATE : 16 APRIL, 2024.

P.C. :

1. Pursuant to order dated 1st April, 2024, today when the matter is called out, Mr. Premlal Krishnan, learned counsel appears for the Respondent No.1 and submits that although an affidavit as directed in paragraph No.3 of the said order is sought to be filed today, however, the information in the said affidavit does not fully comply with the said order and the Respondent No.1 is in the process of collecting/collating further information with respect to the disclosures to be made in compliance with the orders of this Court.

2. Mr. Das, learned counsel appears on behalf of the Respondent No. 7-Bank of India and seeks to tender across the Bar affidavit dated 16th April, 2024 of the Respondent No.7- Bank of India seeking to justify the transfer of Rs.45 lakhs from the 1st Respondent's account in Bank of India

to the joint account of the Respondent No.1 and the Respondent No.4 in the same bank.

3. Mr. Pandit, learned counsel appearing for the Applicants would submit that as recorded by this Court earlier not only the Respondent No.1 but also the Respondent No.4 as well as the Respondent No.7-Bank of Indai has been a violation of the injunctive orders of this Court dated 3rd February, 2022, as also observed by order dated 4th May, 2023 of this Court as well as order dated 1st April, 2024 of this Court. Learned counsel also refers to the affidavit-in-reply filed on behalf of the Respondent No.1 and in particular to paragraphs No.7, 8 and 15 to submit that the Respondent No.1 has clearly admitted the transfer of Rs.45 lakhs from her account to the account jointly held with the Respondent No.4-her mother-in-law in Bank of India and that there has clearly been an admitted violation and breach of the orders of this Court. Learned counsel therefore submits that this Court apart from issuing notice of contempt under the Contempt of Courts Act, 1971 consider granting prayer clauses (a) and (c) to the Interim Application.

4. Mr. Krishnan would submit that against the arbitral award there

was an Application under section 34 of the Arbitration and Conciliation Act, 1996 filed by the Respondent No.1 which was dismissed and against the said dismissal there is an application under section 37 of the Arbitration and Conciliation Act, 1996 which is pending before a Division Bench of this Court and that therefore, this Court grant some time until the disposal of the said Application and also seeks some more time to furnish complete details in compliance with order dated 1st April, 2024.

5. Mr. Das relies upon the affidavit that has been filed on behalf of the Respondent No.7- Bank of India and submits to the orders of this Court referring to paragraph No.7 of the said affidavit and that the Bank would comply with the orders of this Court.

6. I have heard the learned counsel and considered the submissions made.

7. On 3rd February, 2022, this Court (Coram : G. S. Kulkarni, J.) in view of the on going pandemic at that time had granted liberty to the parties to move the proceedings after the Court commenced physical hearing of the matters. In the said order, in paragraph No.2 it was

directed that in the meantime the Respondents shall not deal with the assets which were set out in the disclosure affidavit. Paragraph No.2 of the said order is usefully quoted as under :

“(2) In the meantime, the respondents shall not deal with the assets which are set out in the disclosure affidavit.”

8. Thereafter, when the matter came up on 4th May, 2023, this Court (Coram :Smt. Anjuja Prabhudessai, J.) after considering the submissions made by the parties in the light of the order dated 3rd February, 2022, observed in paragraph No.6 of the said order that although this Court had specifically directed the Respondents not to deal with the assets specified in the disclosure affidavit, despite that the Respondent No.1 has dealt with the assets and the bank has allowed Respondent No.1 to transfer the money, even though copy of the order dated 3rd February, 2022 was brought to the notice of the bank. Paragraph No.6 of the said order is usefully quoted as under :

“(6) This Court had specifically directed Respondents not to deal with the assets specified in the disclosure affidavit. In appears that despite to order dated 03/02/2022 Respondent No.1 has dealt with the assets and the Bank has allowed Respondent No.1 to transfer the money even though the copy of the order dated 03/02/2022 was brought to the notice of the Bank. In

such circumstances, it is necessary to bring to the notice of Respondent Nos.3 to 7 order dated 03/02/2022 with further directions not to allow Respondent No.1 to deal with the assets mentioned in the disclosure affidavit until further orders.”

9. When this matter was heard on 1st April, 2024, attention of this Court was drawn to the communication dated 6th April, 2022 by Bank of India to the Advocates and Solicitors for the Applicant where in paragraph No.3, the Chief Manager of the Bank has stated that although the Court by order dated 3rd February, 2022 has directed the Respondents not to deal with the assets set out in the disclosure affidavit, however, since the Court has not directed the bank for holding the assets of the Respondent No.1, the bank permitted the transfer of Rs. 45 lakhs from the 1st Respondent's account to the joint account held by the Respondent No.1 and the Respondent No.4.

10. A perusal of the affidavit filed on behalf of the bank reflects similar position where once again inspite of order dated 1st April, 2024, in paragraph No.3, the Chief Manager of the Respondent No.7-Bank of India has stated that this Court vide order dated 3rd February, 2022 has directed the Respondent No.1 not to deal with the assets set out in the

disclosure affidavit dated 17th October, 2020, whereas this Court has not directed any of the Banks/National Institutions/Mutual Funds AMC including Bank of India for holding assets of M/s Zenobia Poonawalla viz. Respondent No.1. It is quite surprising that a nationalized bank of the stature the Respondent No.7 is taking position contrary settled principles of law which cannot be countenanced. Once an order of this Court is passed injuncting dealing with the assets, all parties who have been informed of the same, ought to abide by the orders of this Court. It is clear from the order dated 4th May, 2023, as well as order dated 1st April, 2024 that the bank has been in breach of the order dated 3rd February, 2022 and despite that the Respondent No.7 is taking a position unknown to law instead of apologizing and undertaking to rectify the breach, for which the concerned officers ought to be held responsible.

11. Mr. Premlal Krishnan, learned counsel for the Respondent No.1, seeks to make further submissions on the merits of the matter. However, considering the breach of the order of this Court, the said request cannot be accepted until the breach is rectified.

12. The above view is fortified by the observations of the Hon'ble Supreme Court in the case of **Prestige Lights Limited Vs. State Bank of India, (2007) 8 Supreme Court Cases 449**, wherein in paragraphs No.24 and 25 the Hon'ble Supreme Court has clearly observed that an order by a Competent Court, interim or final, has to be obeyed without any reservation and if it is disobeyed or not complied with, the Court may refuse the party violating such order to hear him on merits. The said paragraphs are usefully quoted as under :

“24. An order passed by a competent court-interim or final -has to be obeyed without any reservation. If such order is disobeyed or not complied with, the court may refuse the party violating such order to hear him on merits. We are not unmindful of the situation that refusal to hear a party to the proceeding on merits is a “drastic step” and such a serious penalty should not be imposed on him except in grave and extraordinary situations, but sometimes such an action is needed in the larger interest of justice when a party obtaining interim relief intentionally and deliberately flouts such order by not abiding by the terms and conditions on which a relief is granted by the court in his favour.

25. In the leading case of *Hadkinson V. Hadkinson*, 2 1952 P 285:(1952) 2 All ER 567 (CA) the custody of a child was given to the mother by an interim order of the Court, but she was directed not to remove the child out of jurisdiction of the Court without the prior permission of the court. In spite of the order, the mother removed the child to Australia without prior permission of the court. On a summons by father, the Court directed the mother to return the child within the jurisdiction of the

Court. Meanwhile, an appeal was filed by the mother against that order. A preliminary objection was raised by the father that as the appellant was in contempt, she was not entitled to be heard on merits. Upholding the contention and speaking for the majority, Romer, L.J. observed : (All ER P. 572 C).

“.... I am clearly of the opinion that the mother was not entitled, in view of her continuing contempt of court, to prosecute the present appeal and that she will not be entitled to be heard in support of it until she has taken the first and essential step towards purging her contempt of returning the child within the jurisdiction.” In a concurring judgment, Denning, L.J. also stated : (All ER p. 575 C-D)

“The present case is a good example of a case where the disobedience of the party impedes the course of justice. So long as this boy remains in Australia, it is impossible for this Court to enforce its orders in respect of him. No good reason is shown why he should not be returned to this country so as to be within the jurisdiction of this Court. He should be returned before counsel is heard on the merits of this case, so that, whatever order is made, this Court will be able to enforce it. I am prepared to accept the view that in the first instance the mother acted in ignorance of the order, but nevertheless, once she came to know of it, she ought to have put the matter right by bringing the boy back. Until the boy is returned, we must decline to hear her appeal.”

13. Mr. Pandit has pointed out from the affidavit filed on behalf of the Respondent No.1 that the disclosures are not only inadequate but also incorrect. Referring to the Item No.3 of the table set out in paragraph No.2, learned counsel would submit that the Respondent No.1 holds not

only this one account with Bank of India but also the accounts referred to in Exhibit-A to the affidavit filed on behalf of the Respondent No.7 – Bank of India and therefore, ex-facie the disclosure is false and incorrect and therefore, this Court grant relief in terms of prayer clauses (a) and (c) which read thus:

“(a) This Hon’ble court be pleased to direct Respondent Nos.1 and 3 to deposit in court a sum of Rs.169,98,901/-, being the amounts transferred by Respondent No.1 from her bank accounts with Bank of India and ICICI Bank in violation of the order dated February 3, 2022 and that the same be applied towards execution of the Award.

(c) This Hon’ble Court be pleased to direct Respondents No.3 and 4 jointly and severally deposit in court a sum of Rs.45,00,000/- being the amount transferred by Respondent No.1 to Respondent No.4 in violation of the order dated February 3, 2023 and that the same be applied towards execution of the Award.”

14. This Court agrees with Mr. Pandit, however considering Mr. Premlal Krishnan’s request for time to file a further affidavit to comply with order dated 1st April, 2024, for now, this Court deems it appropriate to grant relief in terms of prayer clause (c) as above.

15. Let this order be complied within a period of two weeks. All concerned are directed to abide by the orders of this Court without fail. Let further affidavit in compliance of paragraph No.3 of the order dated

1st April, 2024 also be filed within a period of two weeks.

16. For consideration of prayer clause (a) and other prayers, list on 30th April, 2024 on the supplementary board.

17. Statement made by Mr. Krishnan on the last occasion that the Respondent No.1 would not operate any of the bank accounts standing in her name singly or jointly whether disclosed or undisclosed to continue till the next date except to comply with the orders of this Court.

(ABHAY AHUJA, J.)