

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

EXECUTION APPLICATION (L) NO. 2345 OF 2024

ASLAM SHAIKH)...APPLICANT

V/s.

DINESH SHISHUPAL PUNIA)...RESPONDENT

**WITH
INTERIM APPLICATION (L) NO. 9609 OF 2024
IN
EXECUTION APPLICATION (L) NO. 2345 OF 2024**

Mr.Sarosh Bharucha a/w. Mr.Shrey Fatterpekar, Mr.Ameet Mehta,
Mr.Nirav Marjadi, Ms.Avani Rathod, Ms.Srushti Mehta, Ms.Nishita
Bhuta, Ms.Rebha Dogra, Mr.Rupesh Singh i/by Solicis Lex, Advocate for
the Applicants in EXAL/2345/2024 and IAL/9609/2024.

Mr.Hemant Ghadigaonkar, Advocate for the Respondent.

Mr.Aslam Shaikh, Applicant, present in person.

Mr.Dinesh Punia, Respondent, present in person.

CORAM : ABHAY AHUJA, J.

DATE : 23rd JULY 2024

P.C. :

1. Pursuant to order dated 3rd July 2024, today when the matter is called out, this Court is firstly informed that the Respondent is present in Court. That, as regards his absence before this Court earlier, the Respondent tenders his unconditional apology.

2. Mr.Ghadigaonkar, learned Counsel appearing for the Respondent, submits that as directed by this Court, an affidavit of disclosure has been filed. Mr.Ghadigaonkar submits that in the said affidavit of disclosure, again as directed by this Court, in paragraph 11 a proposal has been set out by which the payment of the decretal dues of approximately Rs.6 crores along with interest would be paid. It is submitted that the Respondent is a 50% partner in the partnership firm by the name of M/s.Oriental Banquet, the other 50% being held by his wife, which firm owns the property being Plot No.1732, 1733 – B/B-1 bearing Survey No.101, Hissa No.38, CTS No.1732 and Survey No.102A, Hissa No.11, C.No.1733/B and CTS No.1733-B/1 situated at Village Erangle, Taluka Borivali West (the “said property”) , and that, the said property was mortgaged in favour of one Apna Sahakari Bank Limited for a loan of Rs.20 crores, which has been assigned by the bank in favour of M/s.CFM Assets Reconstruction Private Limited, by a Deed of Assignment dated 16th July 2019. It has been submitted that the Respondent has paid an amount of Rs.29.5 lacs being 50% out of the total payment of Rs.59 lacs, as part payment of the loan to M/s.CFM Assets Reconstruction Private Limited. That, M/s.CFM Assets Reconstruction Private Limited has initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement

of Security Interest Act, 2002 (the “SARFAESI Act”) and that pursuant to permission from the Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai, the Magistrate had fixed the date for possession of the said property on 23rd July 2024 viz. today at 11.30 a.m. and pursuant to warrant of possession, possession of the said property of M/s.Oriental Banquet would be taken over by M/s.CFM Assets Reconstruction Private Limited. Mr.Ghadigaonkar for the Respondent would submit that since the valuation of the said property in the year 2017 was more than Rs.38.59 crores, and as on date is more than Rs.45 crores, the total outstanding payable to M/s.CFM Assets Reconstruction Private Limited being Rs.20,50,02,452/- as per the books of accounts for the year 2024-25 and the Respondent being 50% owner, the net amount remaining with him after the sale of the said property and after clearing the dues of M/s.CFM Assets Reconstruction Private Limited inclusive of principal, interest and other charges, there would be a balance of Rs.12.25 crores from which the proportionate amount would be sufficient to pay for the decretal amount including interest.

3. In addition to the above proposal, it is submitted that there are other sources also mentioned in the said affidavit by which the decretal

amount along with interest could be paid towards satisfaction of the decree.

4. Mr.Bharucha, learned Counsel appearing for the Applicant, would firstly submit that he would need to put in a response to the disclosure affidavit, after taking appropriate instructions from his client with respect to the inadequacies / insufficiencies of the disclosure. However, with respect to the proposal to satisfy the decree after the sale of the said property mentioned above, learned Counsel would submit that notice be issued to the said M/s.CFM Assets Reconstruction Private Limited, so that after sale of the said property, the balance that remains be deposited in this Court to the extent of the amounts payable under the decree.

5. Mr.Ghadigaonkar, learned Counsel appearing for the Respondent, has no objection if such a notice is issued to M/s.CFM Assets Reconstruction Private Limited.

6. Mr.Ghadigaonkar further submits to this Court, on instructions, that since payment towards workers dues, office rent and house rent need to be made, if this Court can allow the operation of the HDFC

Bank Account No.50100685752839 at Malad West Branch, Sunder Nagar, on the operation whereof there is a restraint by this Court.

7. Mr.Bharucha strongly opposes this request submitting that there are hardly any amounts in which there are any balances and this being the only account which has a balance of Rs.5,65,083/- as on 4th July 2024, as disclosed by the Respondent himself, allowing the Respondent to operate this account may not be permitted.

8. Having heard the learned Counsel and having considered the submissions, the following order is passed :

ORDER

- (i) Registry to issue notice to M/s.CFM Assets Reconstruction Private Limited, returnable in two weeks, on the addresses given below:
 - (a) A/3, 5th Floor, Safal Profitaire,
Near Prahlad Nagar Garden,
Ahmedabad – 380015
 - (b) Corporate office at 1st Floor, Wakefield House,
Sprott Road, Ballard Estate, Mumbai 400038.
- (ii) Let an affidavit in response to the disclosure affidavit dated 16th July 2024 also be filed by the next date with a copy to the other side.

(iii) With respect to the request made on behalf of the Respondent to operate the HDFC Bank Account No.50100685752839 at Malad West Branch, Sunder Nagar, the same will be considered on the next date.

9. List on **7th August 2024** on the **Supplementary board**.

10. The Respondent is directed to remain present in this Court on the next date as well.

(ABHAY AHUJA, J.)