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

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

Aslam Shaikh and Anr. **...Applicants / (Orig. Plaintiffs / Judg. Creditors)**

Versus

Dinesh Shishupal Punia **...Respondent / (Orig. Defendant / Judg. Debtor)**

Mr. Sarosh Bharucha, Mr. Shrey Fatterpekar, Mr. Ameet Mehta, Mr. Nirav Marjadi, Ms. Srushti Mehta, Ms. Rebha Dogra and Mr. Kushal Harnesha i/b. Solicis Lex for the Applicants / Decree Holders.

Mr. Mayank Samuel with Mr. Neelanshu Roy i/b. Sirius Legal for CFM ARC.

CORAM : R.I. CHAGLA J.
DATE : 4TH FEBRUARY, 2025.

ORDER :

1. By the previous Order dated 27th January, 2025, this Court had directed the Respondent / Judgment Debtor to file further Disclosure Affidavit giving better particulars of the transactions mentioned in paragraphs 3(b)(i) to (iii) of the Affidavit in Rejoinder. Reference has been made to loans and advances of Respondent's wife

and sons as well as amounts currently standing to the credit of the Respondent from these transactions. It was further made clear that on the next date, which is today the prayer sought for by the Applicants / Judgment Creditors viz. civil detention of the Respondent under proviso (b) of Section 51 read with Order XXI Rule 40 of the Code of Civil Procedure, 1908 and issuance of show cause notice in respect thereof shall be considered.

2. The learned Counsel appearing for the Respondent has tendered further Affidavit of Disclosure which is taken on record. Upon perusal of the further Affidavit of Disclosure, it is apparent that the Respondent has failed to give any satisfactory explanation as to the aforementioned transactions of family members which includes the Respondent’s wife Manisha Punia and two sons viz. Yash Punia and Rishabh Punia. There is only a bare statement that the Respondent has paid a total amount of Rs.2,62,90,000/- towards Manish Punia’s loan liabilities to Apna Sahakari Bank. This payment is not clear from the ledger account of Apna Sahakari Bank which has been annexed to the Affidavit of Disclosure filed on 16th July, 2024.

3. There is a statement made in the further Affidavit of Disclosure that after the passing of the judgment and decree dated

4th May, 2023 till the date of freezing of the Respondent's bank account on 3rd July, 2024, an amount of Rs.8,23,924/- had been transferred from the Respondent's bank account to Manisha Punia. This transfer would prima facie show that the Respondent had no intention of satisfying the judgment and decree passed on 4th May, 2023 in respect of which the Execution Proceedings have been filed.

4. There is a statement made in the Disclosure Affidavit with regard to the Respondent's son Yash Punia viz. that he had permanently shifted to London and has NRI status and his accounts are not operational for more than last 3 years. There is a further statement that various loan accounts are created and opened in the name of Yash Punia but the benefit of the same are taken by the family members and utilized for family purpose. There is no mention why these loan accounts are opened in the name of Yash Punia and / or the benefit taken by the other family members. The loan amounts are stated to be directly paid by the Respondent and there is an entry showing loan and advances against Yash Punia's books of accounts. There is also mention made of the ledger account statements from 1st April, 2023 to 31st March, 2024 which show the amount of Rs.10,00,000/- paid by the Respondent on behalf of Yash Punia for

repayment of loan account of one Miracle Enterprises through RTGS and amount of Rs.2000/- being transferred through TPT. There are no particulars given of Miracle Enterprises.

5. Mere entries in the ledger account statements will not satisfy this Court as to the nature of the transaction being effected. Further, after the judgment and decree dated 4th May, 2023, there are transactions entered into where monies are paid by the Respondent to third parties instead of satisfying the judgment and decree.

6. With regard to Respondent's other son Rishabh Punia, it has been stated that loans / advances were given by Rishabh Punia as a helping hand to the Respondent and an amount of Rs.73,75,464/- has been shown in the balance sheet under loans and advances. It is stated by the Respondent that out of the loans / advances given to him by Rishabh Punia, the Respondent paid Rs.18,46,605/- and balance amount shown is Rs.55,25,041/-. It is further stated that Rishabh Punia since his engagement i.e. 16th December, 2023 is residing separately and extending his helping hand by giving the Respondent loans and advances.

7. It is pertinent to note that Rishabh Punia is 27 years of age and there is no mention as to how Rishabh Punia would have the means to give such loans and advances to the Respondent amounting to Rs.73,75,464/- and for which the Respondent is repaying such loans / advances to Rishabh Punia. Further, mere reference to the ledger account does not satisfy this Court as to the nature of the transaction between family members. It has further been mentioned that from the Respondent's bank account there is an amount of Rs.21,44,605/- transferred to Rishabh Punia's account for loan / advances repayment after the date of judgment and decree order i.e. 4th May, 2023 till the date of freezing of bank account on 3rd July, 2024. This also prima facie shows that the Respondent had no intention of satisfying the judgment and decree.

8. Although there is statement made in paragraph 6 of the further Disclosure Affidavit that the Respondent is willing to pay a sum of Rs.40,00,000/- on immediate basis upon his current bank account being un-freezed and will try to make further payment before 31st March, 2025 along with awarded interest of 9% p.a., this statement cannot be accepted by this Court given the Respondent's prior conduct.

9. Mr. Sarosh Bharucha, the learned Counsel for the Applicants has relied upon the judgment of this court in ***Trimurti Exports, through its Authorized representative and Ors. Vs. Modelama Exports Ltd. having its Registered Office and Anr.*[1]*,*** wherein this Court has considered Section 51 proviso (b) and has held that this provision is applicable when the Judgment Debtor has or had since the date of the decree, the means to pay the amount of the Decree or some substantial part thereof and has refused or neglected to pay the same. In the present case, the Respondent / Judgment Debtor in my prima facie view though having the means to pay the amount of the decree, has by transferring large sums inter se amongst family members alleged to be loans / advances for which there is no explanation, there is a refusal or neglect to pay the same.

10. Considering that the Application is made under Section 51 (b) read with Order XXI Rule 40 of the CPC for civil detention of the Respondent, an opportunity is given to the Decree Holder to file Affidavit of Evidence in respect of the Application which shall be filed within a period of two weeks from the date of this Order.

11. The Respondent / Judgment Debtor upon service of

1 2016 SCC OnLine Bom 3567 Paragraphs 17 to 19.

Affidavit of Evidence shall file Affidavit in Reply thereto showing cause why he should not be detained in civil prison and which shall be filed within a period of two weeks thereafter. It is made clear that Order XXI Rule 40 read with Section 51 (b) does not provide for oral evidence and the Application will be decided on the basis of Affidavits filed before this Court and after oral hearing to the parties.

12. The Interim Application along with Execution Application shall be placed on 17th March, 2025 for further consideration.

13. The earlier Order directing the Respondent / Judgment Debtor to remain present in Court shall continue to operate.

[R.I. CHAGLA J.]