

jsn

Digitally
signed by
JITENDRA
SHANKAR
NIJASURE
Date:
2025.04.30
18:09:06
+0530

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 & Anr.

...Applicants /
Ori. Plaintiffs /
Judg. Creditors

Versus

Dinesh Shishupal Punia

...Respondent /
Ori. Defendant /
Judg. Debtor

Mr. Sarosh Bharucha, Mr. Shrey Fatterpekar, Mr. ameen Mehta, Mr. Nirav Marjadi, Ms. Avani Rathod, Ms. Srushti Mehta, Ms. Rebha Dogra, Mr. Sanil Gada and Mr. Kushal Harnesha i/b. M/s. Solicis Lex for the Applicants.

Mr. Hemant Ghadigonkar with Mr. Om Gandhi for Respondent / Judg. Debtor.

CORAM : R.I. CHAGLA J.
DATE : 25TH APRIL, 2025.

ORDER :

1. This Interim Application has been taken out in execution of the judgment and decree dated 4th May, 2023 passed by this Court in Summary Suit No.20 of 2022. Under the decree, the Applicants / Decree Holders are entitled to recover the sum of Rs.4,00,00,000/- along with interest at the rate of 9% p.a. till payment and / or

realization.

2. This Court had by an order passed on 27th January, 2025 recorded the statement of Mr. Bharucha, the learned Counsel appearing for the Applicants / Decree Holders, wherein he had submitted that orders be passed under provision (b) of Section 51 of the Code of Civil Procedure, 1908 for civil detention of the Respondent on the ground that the Respondent has deliberately failed to satisfy the decree or part thereof, despite having the means to do so.

3. By a subsequent order dated 4th February, 2025, this Court had directed issuance of show cause to the Judgment Debtor / Respondent as to why he should not be detained in the civil prison and to file Affidavit in Reply to an Affidavit of Evidence being filed by the Applicants / Decree Holders.

4. Thereafter, the Applicants / Decree Holders had filed Affidavit of Evidence and Respondent / Judgment Debtor filed Affidavit in Reply thereto.

5. This Court has perused the prayers in the above Interim

Application and from the prayer it is noted that there is no specific prayer sought for by the Applicants / Decree Holders seeking for orders to be passed under Order XXI Rule 40 read with Section 51 (b) of the CPC for civil detention of the Respondent / Judgment Debtor on the grounds provided in Section 51(b) read with the proviso thereto, in particular sub section a(ii) thereof. This is on the premise that 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.

6. Accordingly, the Applicants / Decree Holders are permitted to amend the prayer in the above Interim Application for seeking such Order.

7. This Court subject to hearing the Respondent / Judgment Debtor on their Affidavit in Reply to the show cause, has expressed a prima facie view that Section 51 (b) read with the said proviso thereto would be attracted.

8. The Applicants / Decree Holders shall carry out amendment of the prayer of the Interim Application within a period of one week from today. Re-verification is dispensed with.

9. The learned Counsel appearing for the Respondent / Judgment Debtor has filed an Interim Application in the above Execution Application which is yet to be numbered. Subject to numbering, the Interim Application taken out by the Respondent / Judgment Debtor shall also be placed on the next date.

10. The Applicants / Judgment Creditor is at liberty to file Affidavit in Reply to the Interim Application after it is numbered, within a period of one week from today.

11. The Respondent / Judgment Debtor shall remain present on the next date.

12. Interim Application shall be placed on 6th May, 2025 on the supplementary board.

[R.I. CHAGLA J.]