

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

INTERIM APPLICATION APPLICATION (L) NO. 15796 OF 2024  
IN  
COMMERCIAL EXECUTION APPLICATION (L) NO. 23308 OF 2021

Kamal Sevaram Jadhvani	...Applicant
<u>In the matter between</u>	
Manbhupinder Singh Atwal	...Applicant
V/s.	
Neeraj Kumarpal Singh and Ors.	...Respondents

Mr. Farhan Dubhash with Mr. Harshal Manik and Mr. Karan Shah i/b  
Mr. Vijendra Kumar Rai, Advocate for the Applicant.  
Mr. Kamal Sevaram Jadhvani, Applicant in person present.  
Mr. Kirat Nagra with Mr. Rohaan Pajnigar i/b DSK Legal, Advocate for  
the Respondent in IAL 15796/24.

CORAM : ABHAY AHUJA, J.  
DATE : 9<sup>th</sup> MAY, 2024

PC. :

1. This Interim Application has been filed seeking recall of the order dated 26<sup>th</sup> April, 2024, passed against the Applicant and for cancellation of theailable warrant issued against the Applicant pursuant to the said order.

2. Mr. Dubhash, learned Counsel appearing for the Applicant has submitted that although when the matter was listed on 17<sup>th</sup> April, 2024

and since the balance daily board could not be taken up, the matter was stood over to 13<sup>th</sup> June, 2024 and despite that only pursuant to a circulation sought for by the Judgment Creditor in that behalf that the matter was taken up on 26<sup>th</sup> April, 2024, which was without any notice to the Applicant herein and bailable warrant was issued against the Applicant in addition to an order directing the Applicant not to leave the country without prior permission of the Court and to deposit his passport with the Prothonotary and Senior Master within a period of two weeks. Learned Counsel, however, fairly submits that the vakalatnama in the matter had been filed by his client on 29<sup>th</sup> April, 2024 and that his client has tendered affidavit of disclosure before this Court only today morning.

3. Mr. Dubhash, would submit that there have been neither any averments on any prayers made by the Applicant in that application submitting or demonstrating that the Applicant herein would abscond and that his passport should be deposited with the Prothonotary and Senior Master. Mr. Dubhash, therefore, submits that now that his client is present in the Court the bailable warrant be cancelled and also the condition to deposit the passport be modified, as there is no material demonstrating that his client would abscond, however, submitting, on

instructions, that his client is willing to give an undertaking, that he would remain present in Court on every date that the execution proceedings would be listed and that he would not leave the country without the prior permission of this Court.

4. On the other hand, Mr. Nagra, learned Counsel appears for the Applicant and submits that no notice of the circulation sought for 26<sup>th</sup> April, 2024 was given to the Applicant herein viz. Mr. Kamal Sevaram Jadhvani, as firstly no vakalatnama had been filed on his behalf and secondly, considering the past conduct to avoid the orders of this Court he as he was likely to abscond.

5. Mr. Nagra, submits that a cursory look at the affidavit of disclosure on behalf of the Applicant handed over yesterday, reveals that the Applicant, who frequently travels to the middle east including Dubai, has shown only Rs. 2,30,000/- in his bank account and gold worth 50 gms only, which is unbelievable considering that he has multiple businesses and is facing multiple litigations and therefore, the said affidavit is insufficient and inadequate. Mr. Nagra, therefore, submits that the conduct of the Respondent No.1 is such that this Court direct him to deposit the outstanding decretal dues in this Court as

there is no stay on the award under execution although he fairly submits that in an application filed under Section 34 of the Arbitration and Conciliation Act, 1996 before the Gujarat High Court, the orders have been reserved and are being dictated in the open Court on day to day basis. Mr. Nagra would, therefore, submit that the application filed on behalf of the Respondent No. 1 be rejected and the order dated 26<sup>th</sup> April, 2024 be sustained.

6. I have heard the learned Counsel at some length.

7. The order dated 26<sup>th</sup> April, 2024, has been passed after hearing the learned Counsel for the Applicant in Interim Application No. 1390 of 2022 and after considering the submissions made.

8. Mr. Dubhash, learned Counsel for the Applicant in Interim Application (L) No. 15796 of 2024 has submitted that no notice of the said hearing was given to his client. Mr. Nagra, has submitted that the notice was not given to the Respondent No. 1 in as much as considering the past conduct and the likelihood of the Applicant to abscond that no notice of said hearing was given and moreover no vakalatnama had been filed. It is an admitted position that the vakalatnama on behalf of

the Applicant herein who is Respondent in Interim Application No. 1390 of 2022, had been uploaded on 29<sup>th</sup> April, 2024.

9. It is not in dispute that there had been no compliance of the order of the disclosure dated 13<sup>th</sup> March, 2024, passed by this Court and on the basis of the submissions made by the learned Counsel for the Applicant regarding the Applicant's conduct as recorded in the arbitration proceedings and failure to comply with orders of this Court or remain present or be represented that the order dated 26<sup>th</sup> April, 2024 came to be passed.

10. Today, the Applicant viz. Mr. Kamal Jadhawani is present in the Court and request is being made on his behalf that theailable warrant be cancelled and that the order for the deposit of his passport also be modified.

11. It is not in dispute that an affidavit of disclosure is sought to be filed only today. No submissions countering the observations of this Court in paragraph 4 of the order dated 26<sup>th</sup> April, 2024 have been put forward except that the orders challenging the arbitral award under Section 34 of the Arbitration and Conciliation Act,1996 have been

reserved and are being dictated on a day to day basis by the Gujarat High Court. The Applicant is present today in the Court only pursuant to issuance of bailable warrant by this Court. No payment has been made in satisfaction of the award. It has also not been disputed that the Applicant travels from Mumbai to Dubai frequently. In the above circumstances, the apprehension that the Applicant would abscond was reasonable.

12. In this view of the matter and considering the submissions made by Mr. Dubhash, on instructions, that his client would undertake to remain present in the Court every date the matter is listed and not leave the country without the prior permission of this Court, the following order is passed:-

**ORDER**

- i) Let the amount of the bail of Rs. 5,00,000/- be deposited with the Prothonotary and Senior Master within a period of two weeks and the said amount be adjusted against the dues to be paid by the Respondents to the Applicant in Interim Application No. 1390 of 2022.
- ii) The bailable warrant to stand discharged and the Applicant be released, subject to an undertaking by way of an affidavit to this Court that he will remain present in the Court on every date that the

execution proceedings including Interim Application No. 1390 of 2022 are listed and not leave the country without the prior permission of this Court, upon an application be made in this behalf to this Court.

iii) In view of the above, for now the Applicant/Respondent No. 1 is not required to deposit his passport.

iv) The order dated 26<sup>th</sup> April, 2024 in Interim Application No. 1390 of 2022 stands modified as above and the Interim Application (L) No. 15796 of 2024 to stand disposed in the above terms.

13. List the Execution Application (L) No 23308 of 2021 and Interim Application No. 1390 of 2022 on **10<sup>th</sup> June, 2024**.

**(ABHAY AHUJA, J.)**

Digitally  
signed by  
NIKITA  
YOGESH  
GADGIL  
Date:  
2024.05.09  
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+0530