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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO (OS) (COMM) 107/2021 & CM APPLs. 27824-27826/2021**

M/S VK BAJAJ AND CO Appellant
Through **Mr. Y.P. Narula, Senior Advocate**
with Mr. Abhey Narula, Advocate

versus

NAYATI HEALTHCARE AND
RESEARCH NCR PVT. LTD & ANR..... Respondents
Through **Mr. Giriraj Subramaniam,**
Mr. Simarpal Singh Sawhney and
Mr. Abhishek Choudhary, Advocate
for R-1.
Ms. Shruti Garg and Mr. Niranjana
Rao, Advocates for R-2.

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Date of Decision: 24th August, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J: (Oral)

1. The hearing has been conducted through video conferencing.
2. Present appeal has been filed challenging the order dated 10th August, 2021 passed by the learned Single Judge of this Court in I.A. No. 9962-2021 and CS(Comm.) No. 469-2020 whereby the prayer of Appellant in the

application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure seeking interim injunction restraining the Respondent No 1, Nayati Healthcare and Research NCR Pvt. Ltd., from alienating its assets was allegedly not granted. Appellant further seeks an order restraining Respondent No.1, from disposing of its asset, namely, multi-specialty hospital project in DLF City Phase I, Sector 28 Gurugram, Haryana, in any manner. Appellant also seeks a direction to the Respondents to disclose their assets so that appropriate orders and directions can be passed for their attachments and/or for the purpose of furnishing a security to ensure satisfaction of the decree in the present suit.

3. Learned senior counsel for the appellant states that the appellant is a Chartered Accountant Firm which had filed a suit for recovery of Rs.2,71,59,605/- towards professional services rendered to the Respondent No.1 which have been acknowledged by Respondent No. 2, former Managing Director of Respondent No 1, vide email dated 28.08.2018. He states that the Appellant had been informed by sources that the account of the Respondents had been declared as a Non-Performing Asset by one of its bankers, Yes Bank and the Respondents are seeking to sell their assets including their Multi-Specialty hospital project.

4. Learned senior counsel for the appellant relies on the decision dated 22th April, 2021 of the Hon'ble Supreme Court in **Rahul S Shah v. Jinendrakumar Gandhi, 2021 SCC OnLine SC 341** wherein it has been held as under:-

“40.With pragmatic approach and judicial interpretations, the Court must not allow the judgment debtor or any person instigated or raising frivolous claim to delay the execution of the decree. For example, in suits relating to money claim, the Court,

may on the application of the plaintiff or on its own motion using the inherent powers under Section 151, under the circumstances, direct the defendant to provide security before further progress of the suit. The consequences of non-compliance of any of these directions may be found in Order XVII Rule 3.

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42. All Courts dealing with suits and execution proceedings shall mandatorily follow the below-mentioned directions:

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9. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.....”

5. Per contra, learned counsel for respondent no. 1 states that the present appeal is not maintainable as it does not fall within the purview of Order XLIII Rule 1(r) of CPC read with Section 10 of the Delhi High Court Act, 1966.

6. In rejoinder, learned senior counsel for the appellant states that non-grant of injunction is an appealable order and in support of his submission he relies upon the judgment of the Supreme Court in **A. Venkatasubbiah Naidu Vs. S. Chellappan and Others, (2000) 7 SCC 695.**

7. Without going into the maintainability of the present appeal, this Court is of the view that by the impugned order the learned Single Judge has only fixed the matter for hearing arguments on the maintainability of the application and no final view has been taken by the learned Single Judge

with regard to the injunction application filed by the appellant.

8. This Court is also of the view that the acknowledgement issued by Respondent no. 2, former Managing Director of Respondent no. 1 cannot be accepted as 'gospel truth' and would have to be verified from the contemporaneous records of the Respondent no. 1-Company.

9. In any event, for a demand of Rs.2,71,59,605/-, sale of a hospital, whose worth is many times over, cannot be stayed without a detailed hearing.

10. Further, the Appellant by filing applications under Order XXXVIII Rule 5 and Order XXXIX CPC cannot convert its unsecured debt into a secured debt [See *Raman Tech. & Process Engg. Co. & Anr. Vs. Solanki Traders*, (2008) 2 SCC 302].

11. Also, the Supreme Court in *Rahul S Shah* (supra) has nowhere stipulated that it is mandatory for the Courts in each and every suit to demand security from the defendant in accordance with the prayer clause. The said judgement vests discretion with the trial court to direct the defendant to disclose its assets and/or furnish security, if the fact so warrant and that too before settlement of issues.

12. The judgment in *Rahul S Shah* (supra) does not overrule the earlier judgement of the Supreme Court in *Raman Tech. & Process Engg. Co. & Anr.* (supra).

13. This Court is constrained to observe that the appellant is using the present court proceedings to force the Respondent to settle its claim on priority basis by repeatedly filing fresh applications and not allowing the Court to decide the previous applications filed by it. Accordingly, present appeal and applications being bereft of merit are dismissed.

14. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

AUGUST 24, 2021
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