

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO. 1643 OF 2024**

IN

COMMERCIAL EXECUTION APPLICATION (L) NO. 8465 OF 2024

Aditya Birla Finance Limited ... Applicant/Award Holder

Versus

Bhagwandas Ramchandra Bhattad
and others ... Respondents/Award Debtors

Mr. Vishal Maheshwari alongwith Mr. Mihir Beradia instructed by VM Legal, Advocates for the Applicant/Award Holder.

Mr. Aditya Shiralkar instructed by P. Kumar N. Jain, Advocate for the Respondents.

**CORAM : ABHAY AHUJA, J.
DATE : 25 NOVEMBER 2024**

P.C. :

1. Pursuant to the order dated 22nd October 2024, today when the matter is called out, Mr. Maheshwari, learned Counsel appears for the Execution Applicant and tenders across the bar a convenience note which contains the amount of balances in the accounts disclosed by the Judgment Debtors, submitting that the said amounts are insufficient to meet the amount of Rs.2,72,97,319/8 in respect whereof the disclosures had been sought on an assumption that the Applicant was

secured to the extent of the value of the mortgaged property i.e. Rs.24,79,50,000/-.

2. Mr. Maheshwari, submits that the value of the properties which were presumed to secure the Applicant have also fallen down to about Rs.21 crores and that therefore the disclosure and the injunction are inadequate to meet the amounts due to the Applicant and that therefore this Court pass appropriate orders.

3. Mr. Shiralkar, learned Counsel, appearing for the Respondents would submit that in view of paragraphs 28, 29 and 30 of the order dated 26th January 2024 passed by the learned Arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996, any request as above by the Applicant would have to be made before the learned Arbitrator before whom the said proceedings are still pending.

4. I agree with Mr. Shiralkar. Paragraph 28 of the order dated 26th January 2024 of the learned Arbitrator clearly records that prima facie the claim of the claimant is secured to the extent of the value of the mortgaged property i.e. Rs.24,79,50,000/- and the protective orders were only to secure the claim over and above the value of the mortgaged property i.e. only to the extent of Rs.2,72,97,319/8. That since the particulars of the assets and properties of the Respondents were not known, the learned Arbitrator was constrained to pass an

order not only restraining the Respondents from dealing with their properties including the bank accounts maintained with the Bank of India but also direct the Respondents to file Affidavit of disclosure in terms of sub-clause (a) of clause 30 of the said order, which is usefully quoted as under :

“(a) Respondents are directed to file Affidavits to disclose on oath, the current status, along with supporting documents of all their assets, movable and immovable, including all investments, bank accounts held jointly and/or severally by any or all of them, and disclose any encumbrances thereon and Income Tax Returns and balance sheets for the preceding three (3) financial years. Such Affidavits of disclosure must be filed within 15 days from the passing of this Order.”

5. Mr. Shiralkar's client admittedly has already filed three Affidavits of disclosure in compliance with the aforesaid order and Mr. Maheshwari has no objection to the same except to submit that the said disclosures do not satisfy the amounts due to the Applicant. Since the order that has been passed by the learned Arbitrator is only an order under Section 17 of the Arbitration and Conciliation Act, 1996 without any adjudication or direction to deposit the outstanding amount being an executing court, this Court cannot go beyond the decree in view of the decision of the Hon'ble Supreme Court in the case of ***Rameshwar***

*Das Gupta vs. State of U.P.*¹ and therefore, this Court is unable to give any further directions to the Respondents as sought for by the learned Counsel for the Applicant.

6. In this view of the matter, the Applicant may approach the learned Arbitrator for any further reliefs concerning the merits of the matter.

7. The Interim Application and the Execution Application accordingly stand disposed.

(ABHAY AHUJA, J.)

1 (1996) 5 Supreme Court Cases 728