

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12517 OF 2025

Harshvardhan Parikh ...Petitioner
Versus
J. K. Dall Mills ...Respondent

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Mr. Jayendra Khairnar, (through VC), a/w Gauri Kulkarni, i/b
Asha Shah, for the Petitioner.
Mr. P. Chande, i/b Sanjay Chatruvedi, for the Respondent.

CORAM: N. J. JAMADAR, J.
DATED: 30th SEPTEMBER, 2025

Order:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 29th August, 2025 in Notice of Motion No.2488 of 2025 in Summary Suit No.227 of 2018, whereby the petitioner - defendant has been directed to furnish security to the tune of 50% of the principal amount within one month from the date of said order under the provisions for Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 ("the Code").
3. The respondent - plaintiff has instituted the summary suit to recover a sum of Rs.64,19,275/- being the unpaid price of the goods sold and delivered by the plaintiff to the petitioner -

defendant under the invoices raised by the plaintiff. The cheques drawn by the petitioner for the amount Rs.64,20,000/- towards the discharge of the said liability came to be dishonored and, hence, the summary suit on the dishonored cheques.

4. By an order dated 29th June, 2024 in Summons for Judgment No.137 of 2018, the learned Judge, City Civil Court, granted leave to defend the suit subject to the condition of deposit of 50% of the principal amount within a period of 60 days from the date of the said order.

5. The defendant assailed the said order in WP/12012/2024. As the Court expressed its disinclination to entertain the petition, the defendant had then sought time to deposit the amount in terms of the order passed by the learned Judge, City Civil Court. Thus, by order dated 6th January, 2025, the said petition came to be disposed by extending the time to deposit the amount of Rs.32,00,000/- by three months from the said date. The defendant did not comply with the said order.

6. Thereupon, the plaintiff took out the Notice of Motion for attachment before the judgment under the provisions of Order XXXVIII Rule 5 of the Code. By the impugned order, after noting the conduct and repeated defaults on the part of the defendant and finding that the defendant has not shown any

sufficient cause for not depositing the amount of Rs.32,00,000/-, the learned Judge directed the defendant to furnish security to the tune of 50% of the principal amount.

7. Mr. Khairnar would urge that the defendant could not comply with the direction to deposit the amount within the extended period as, in the intervening period, there were negotiations for amicable settlement of the dispute between the parties. Mr. Khairnar sought further time to make the deposit.

8. The material on record *prima facie* indicates that the defendant has been resorting to devices to avoid the deposit of the amount in terms of the orders passed by the courts. The conduct of the defendant, as is evincible from the record, indicates that the defendant with a view to delay the execution of the decree that may be passed against him is resorting to steps to dispose of his property and, therefore, an order for furnishing security is wholly justifiable. It appears that the defendant had made promises, time and again, and did not honour the same. The plaintiff has made out a very strong *prima facie* case which would warrant a direction for furnishing security, especially, in the context of the default on the part of the defendant to make the deposit despite grant of three months

time by this Court. In these circumstances, the petition does not deserve to be entertained.

9. The petition stands dismissed.

[N. J. JAMADAR, J.]