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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
COMMERCIAL APPEAL FROM ORDER NO. 18 OF 2025
WITH
INTERIM APPLICATION NO. 10181 OF 2025**

Prashant @ Bittu Sureshbhai Shah ... Appellant/Applicant

V/s.

Prashant Suresh Gupta and Ors. ... Respondents

Mr. R.R. Varma with Mr. Yogesh Dharra and Sachin Suware for the
Appellant/Applicant

**CORAM : ALOK ARADHE, CJ. AND
SANDEEP V. MARNE, J.**

DATE : 29 JULY 2025

Oral Order (Per Chief Justice) :

1. This Appeal under Section 13(1-A) of the Commercial Courts Act, 2015 is directed against the order dated 21 March 2025, passed by the Trial Court by which Notice of Motion filed by the Appellant/Plaintiff seeking a direction to Respondent to furnish a security for a sum of Rs.25,00,000/- and to issue a warrant of attachment of the properties of the Respondent has been rejected.

2. Facts giving rise to filing of the Appeal briefly stated are that according to the Appellant/Plaintiff, he has supplied diamonds worth

Rs.82,76,000/- to the Respondent No.1. However, the Respondent No.1 failed to repay the value of the diamonds. Thereupon, the Appellant/Plaintiff registered a First Information Report with the D.B. Marg Police Station on 17 April 2014 for offences under Section 406 and 420 of Indian Penal Code against the Respondent No.1 and its partners viz. Respondent Nos. 2 and 3.

3. Thereafter, a settlement agreement dated 11 July 2014 was executed between the Appellant/Plaintiff and Respondent No.1. Under the aforesaid settlement agreement, the Respondent No.1 agreed to pay a sum of Rs.35,00,000/- to the Appellant/Plaintiff within a period of six months. The Respondent Nos. 2 and 3 were guarantors to the aforesaid settlement agreement for payment of a sum of Rs.25,00,000/-. The Respondent No.1 was released on a conditional bail on 14 July 2024. Thereafter, again an Memorandum of Understanding (MOU) on 14 November 2014 was entered into between the Appellant/Plaintiff and the Respondent No.1, by which the Respondent No.1 agreed to return the diamonds worth Rs.6,50,000/- or to make payment on the same value. According to the Appellant/Plaintiff, the Respondent No.1 failed to comply with the conditions of the order granting bail as well as the MOU dated 14 November 2014 and undertaking and the MOU signed by Respondent No.1. Thereupon, the Appellant/Plaintiff filed a Suit for recovery of amount of Rs.82,76,000/-. Along with the Suit, the

Appellant/Plaintiff also filed an application under Order 39 Rule 1 and 2 for the Code of Civil Procedure seeking a direction to the Respondent No.1 to furnish a security in a sum of Rs.25,00,000/- and to issue warrant of attachment of properties of Respondent at Kanpur, Gurgaon, Uttar Pradesh. The aforesaid application has been rejected by the Trial Court vide order dated 21 March 2025. Hence, this Appeal.

4. The learned Counsel for the Appellant submitted that the impugned order be set aside and the matter be remitted to the Trial Court afresh for decision on the application filed by the Appellant/Plaintiff as the Trial Court has not taken into consideration the averments made in the rejoinder filed on behalf of the Appellant/Plaintiff.

5. We have considered the submissions made by the learned Counsel for the Appellant and have perused the record.

6. The Trial Court has rejected the application filed by the Appellant/Plaintiff *inter-alia* on the ground that the prayers made in the Notice of Motion are similar to those made in the Suit and therefore, at the interlocutory stage, the aforesaid prayer cannot be granted. The Appellant/Plaintiff has to lead evidence and has to prove in the Suit that the Defendant is liable to pay the amount claimed in the Suit. We find that the discretion to deal with the prayer for injunction has been exercised on sound

principles of law. The impugned order therefore does not call for any interference in exercise of powers in this Appeal as the impugned order is neither arbitrary nor capricious. However, the Trial Court shall make an endeavour to conclude the proceeding in the Suit expeditiously.

7. Accordingly, the Appeal from Order and Interim Application are disposed of.

(SANDEEP V. MARNE, J.)

(CHIEF JUSTICE)