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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 3092 OF 2025

IN

COMMERCIAL EXECUTION APPLICATION (L) NO. 1790 OF 2019

Gurudev Singh Sehra and others

... Applicants

Versus

Parthesh K.L. Developers and another

... Respondents

.....
Mr. Anand Pai with Mr. Hubab Sayyed and Mr. Sahil Sayyed i/b Sayyed Associates for the Applicants/Decree Holders.

Mr. Murtaza Najmi alongwith Mr. Dilip Shukla and Ms. Ekta Patil, Advocate for the Respondents.

.....
CORAM : ABHAY AHUJA, J.

DATE : 7 JULY 2025

PC. :

1. This Interim Application has been filed by the Execution Applicant seeking arrest and detention of Respondent No.2 in civil prison as per Section 51 and Order XXI Rule 11A and Rule 38 of the Code of Civil Procedure, 1908 (the "CPC").

2. Mr. Najmi, learned Counsel, appearing for the Respondent No.2 raises a preliminary objection on the maintainability of the

application submitting that under Rule 11A of Order XXI of the CPC, the Application has to be accompanied by an affidavit and that the word “or” in Rule 11A has to be read as “and”.

3. Learned Counsel relies upon the decision of the Hon’ble Kerala High Court in the case of *Joseph K. Mathai vs. Luckose Kurian*¹ and submits that the said decision clearly requires that it is obligatory to file an affidavit showing grounds of arrest alongwith the Application for execution.

4. Mr. Najmi also relies upon the decision of Hon’ble Supreme Court in the case of *Bhudev Mallic alias Bhudeb Mallick and another vs. Ranajit Ghoshal and others*², and in particular paragraph 35 thereof, submitting that filing of an affidavit is mandatory and merely an application would not be enough.

5. Mr. Pai, learned Counsel, appearing for the Applicant submits that although the reference in the two decisions is to an Execution Application and in support thereof an Affidavit, setting out the grounds, whereas in the present case an Interim Application has been filed setting out the grounds, however in view of the objection raised by the Mr. Najmi he would file Affidavit in support of the Interim Application. In view of the aforesaid, this Court is not deciding the

1 AIR 1979 Kerala 235

2 2025 SCC Online SC 360

objection raised by Mr. Najmi.

6. List on **4th August 2025**.

7. Let the Affidavit be filed within a period of two weeks with copy to the other side.

(ABHAY AHUJA, J.)