

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO.2553 OF 2025
IN
COMMERCIAL EXECUTION APPLICATION (L) NO.7058 OF 2024**

M L DEVELOPERS)...APPLICANT

V/s.

SHASHANK BUPATRAI KAPADIA)...RESPONDENT

Mr.Vivek Kantawala a/w Mr.Amey Patil, Mr.Vivek M. Sharma, Mr.Manav Kantawala i/b Mr.Vivek M. Sharma, Advocates for the Applicant.

Mr.Rishabh Shah (through video conferencing) a/w Mr.Manshi Thakkar i/b Raval Shah & co., Advocate for the Respondent.

**CORAM : ABHAY AHUJA, J.
DATE : 28 JULY, 2025**

P.C. :

1. Pursuant to order dated 23rd June, 2025, today when the matter is called out, Mr.Vivek Kantawala, learned Counsel appears for the Applicant and submits that despite orders of this Court to remain present the Respondent has chosen to remain absent. That this Court may accordingly pass orders to secure his presence through the State machinery and also consider passing orders under the Contempt of Courts Act, 1971.

2. Mr.Rishabh Shah, learned Counsel appears through video conferencing on behalf of the Respondent. Mr. Manshi Thakkar, a colleague of Mr.Rishabh Shah, who is present in Court, tenders across the bar an affidavit dated 26th June, 2025, submitting that the Respondent could not travel as he has been advised rest by a Doctor.

3. It is observed from the Affidavit of the Respondent that the said affidavit has been made three days after the date of the order. Today we are on the 28th July, 2025 which is more than a month from the date of the said affidavit. In the said affidavit there is a pre-meditation to remain absent in the Court as it has been stated that despite the order of the Court to remain present on every date due to health issues he has been unable to travel from Gujarat to Mumbai. That he is suffering from Sciatica on both sides and has been medically advised rest from one Dr.Ajay Baxi. The said certificate is perused. The certificate is dated 26th June, 2025, which is more than a month prior to today. The said certificate, as has been pointed out by Mr.Kantawala, learned Counsel is not to be used for medico legal purpose and clearly therefore is not to be presented before any Court including this Court.

4. The said certificate advises rest and abstinence from his work from 26th June, 2025 for at least 6 to 8 weeks as the Respondent who is aged of 75 years is unable to travel due to sciatica and knee arthritis.

5. Neither the affidavit nor the certificate is satisfactory. This is certainly not the first time the Respondent has avoided this Court in complete breach of the undertaking filed by him in this Court. On the last occasion also this Court had recorded the breaches by the Respondent and passed the following order dated 23rd June, 2025 :

“1. Pursuant to order dated 11th November 2024, when the matter is called out today, Mr. Thakkar, learned Counsel appears for the Respondent/Judgment Debtor and submits that some time be granted as the Judgment debtor is unwell.

2. Mr. Kantawala, learned Counsel appearing for the Applicant/Judgment Creditor submits that the Judgment Debtor is firstly in breach of the order dated 11th November 2024 and the undertaking given on the said date to remain present in this Court on each and every date when the matter is listed. Secondly, Mr. Kantawala submits that the undertaking not to deal with or dispose of assets is also being breached, as after filing of the undertaking, the Respondent and his brother have gone ahead and filed a suit with respect to their properties claiming partition. Mr. Kantawala submits that the same is only to defeat the fruits of the Applicant's decree. Mr. Kantawala submits that a disclosure affidavit has been filed by the Respondent, however, the same is completely inadequate and also indicative of breach of the undertaking.

3. This Court does not appreciate the conduct of the Respondent for whatever reason for not remaining present in Court. Proper course is, if the Respondent is not well, he has to

make an application in advance seeking exemption from remaining present in Court and that has not been done. The Respondent is clearly in breach of the undertaking having exposed himself to action in contempt.

4. Let a detailed affidavit along with supporting medical reports be filed in this Court clearly explaining as to how and why the Respondent has been unable to remain present in Court today.

5. Let the said affidavit on behalf of the Respondent be filed within a period of one week with a copy to the other side.

6. Let the Respondent positively remain present in Court on the next date, failing which, this Court will be left with no option but to secure his presence through the State Machinery, in addition to issuance of notice under the Contempt of Court's Act, 1971 for aggravated contempt.

7. Also let an Affidavit, in response to the disclosure Affidavit be filed by the next date with a copy to the other side.

8. List on **28th July 2025.**"

6. As can be seen not only that this Court has deprecated the conduct of the Respondent but also recorded that an application had to be made in advance for seeking exemption from remaining present in Court which was not done and therefore the Respondent was clearly in breach of the undertaking having exposed himself to action in contempt. Therefore a detailed affidavit along with supporting medical reports was directed to be filed. As can be seen and as noted above that has clearly not been done.

7. The Respondent was directed to positively remain present in Court today, failing which this Court had recorded that there would be no option but to secure his presence through the State machinery.

8. Accordingly, this Court directs the Registry to issue a non-bailable standing warrant returnable on the next date against the Respondent to secure his presence in Court on the next date along with instructions in the matter.

9. The Applicant to assist the Registry as well as the Police Department in executing the warrant.

10. A copy of this order also be served upon the Commissioner of Police, Vadodara to secure the presence of the Respondent in this Court on the next date.

11. Mr.Kantawala, learned Counsel further submits that in view of the collusive Suit that has been filed by the Respondent against his own brother as has been recorded in paragraph 2 of order dated 23rd June, 2025 in view of the breaches by the Respondent of the undertaking/injunction, this Court may attach the property of the Respondent as indicated in prayer clause (A) of the Interim Application.

12. List on **8th September, 2025**, when this Court will also hear arguments on prayer clause (A) of the Interim Application.

(ABHAY AHUJA, J.)

Digitally
signed by
KIRAN
SANJAY
GHUGE
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