

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 2553 OF 2025

IN

COMMERCIAL EXECUTION APPLICATION (L) NO. 7058 OF 2024

M L Developers

... Applicant

Versus

Shashank Bhupatrai Kapadia

... Respondent

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Mr. Vivek Kantawala alongwith Mr. Amey Patil, Mr. Shanay Bafna and Mr. Manav Kantawala instructed Mr. Vivek Sharma, Advocate for the Applicant.

Ms. Manshi Thakkar instructed by Ravan Shah & Co., Advocate for the Respondent.

Mr. Shashank Kapadia, Respondent present in-person.

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CORAM : ABHAY AHUJA, J.

DATE : 3 NOVEMBER 2025

P.C. :

1. This matter was kept back in the morning session as the Respondent, it was stated by the learned Counsel, had a medical emergency.

2. When the matter is called out in the afternoon session, Ms. Thakkar, learned Counsel, appears for the Respondent and submits that the Respondent is present in Court, however, the payments could not

be made as the Respondent has not been able to make arrangements to make the payments.

3. Ms. Thakkar also submits that an Interim Application (L) No. 35095 of 2025, which is not on board has been filed seeking extension of time to comply with the order of the Court dated 8th September 2025.

4. Mr. Kantawala, learned Counsel, appearing for the Applicant/ Decree-holder submits that the Respondent is in breach of the undertaking given to this Court on 8th September 2025. Mr. Kantawala however submits that he is agreeable to the Interim Application being allowed, provided Rs.75 lakhs is paid by 19th November 2025 and the balance amount by 5th December 2025 in addition to costs.

5. Ms. Thakkar submits on instructions that his client does not have money and cannot make arrangements during the above period. Ms. Thakkar has apologized for the Respondent having failed to comply with the undertaking given to this Court and has submitted that this Court may allow the application, so that the timelines to make payment of Rs.1,44,00,000/- is extended till January 2026. Mr. Kantawala submits that it does not appear that the Respondent is or will be in a position to make any arrangement to comply with the orders of this Court and that instead this Court may direct attachment and sale of

property against which this Court had granted an injunction on 8th September 2025, as the said prayers are in his Interim Application filed in support of the Execution Application.

6. On 8th September 2025, this Court had cancelled the non-bailable standing warrant against the Respondent, subject to the undertakings as under :

- (i) that he will remain present in this Court on every date the matter is listed;
- (ii) that he will within 6 to 8 weeks make payments of the outstanding amount of approximately Rs.1.45 Crores;
- (iii) that till the outstanding amount is paid to the Applicant, the Respondent shall not in any manner whatsoever deal with or dispose of the said property viz. Plot No.5, CTS No.4 on West Avenue, Santacruz (West), Mumbai – 400 054.

7. Today when the matter was called out in the morning session, the Respondent was absent despite the undertaking given to this Court that he would remain present on every date that the matter is listed. It is only after the matter was kept back and called out again in the afternoon session, the Respondent has presented himself on the stated explanation that he had a medical emergency which is not supported by any material.

8. This Court, as submitted had restrained the Applicant on 8th September 2025 from dealing with or disposing of Plot No.5, CTS No.4 on West Avenue, Santacruz (West), Mumbai – 400 054 (“the said Plot”) until the outstanding amount was paid. Admittedly, the Respondent has been unable to abide by the undertaking given to this Court for cancellation of non-bailable warrant of arrest.

9. Interim Application (L) No. 35095 of 2025, which is not on board has been filed by the Respondent seeking an extension of time for payment of Rs.1,44,00,000/- till the end of January 2026. Mr. Kantawala has opposed the Application and submitted an alternate proposal that Rs.75 lakhs be paid by 19th November 2025 and the balance by 5th December 2025. To this suggestion, Ms. Thakkar, learned Counsel, appearing for the Respondent has submitted that her client is not in a position to adhere to the said timelines.

10. Mr. Kantawala has drawn this Court’s attention to prayer clauses (A) and (B) of the Interim Application, submitting that this Court may direct attachment and sale of the said property in pursuance of the execution.

11. Having perused the earlier orders of this Court and particularly orders dated 23rd June 2025, 28th July 2025 and 8th September 2025, it does not appear that the Respondent would even be

able to make arrangement to make payment of Rs.1,44,00,000/- by the end of January 2026. The Interim Application (L) No. 35095 of 2025 is taken on record and for the aforesaid reasons rejected.

12. Since an apology has been tendered to this Court, this Court is not proceeding with the issuance of any further notice under the Contempt of Courts Act, 1971 as it does not appear that the Respondent is in a position to make arrangements for the funds undertaken to be paid to the Applicant. The Interim Application clearly seeks attachment and sale of the properties of the Respondent.

13. Accordingly, I direct the department to proceed with the execution in terms of prayer clauses (A) and (B), which read thus :

(A) That this Hon'ble Court be pleased to issue a warrant of attachment under Order XXI, Rule 43, 47 and 54 of the Code of Civil Procedure, 1908 of the said property viz. Plot No.5, CTS No.4 on West Avenue, Santacruz (West), Mumbai – 400 054 so as to secure the claim of the Claimant which amounts to over Rs.1,20,96,000/- (Rupees One Crore Twenty Lakhs and Ninety Six Thousand Only).

(B) That this Hon'ble Court be pleased to issue further warrant of sale under Order XXI Rule 64 of the Code of Civil Procedure, 1908 of the said Property viz. Plot No.5, CTS No.4 on West Avenue, Santacruz (West), Mumbai – 400 054 to recover the amounts under the Arbitral Award.

14. Until then, the Respondent not to, in any manner whatsoever, deal with or dispose of the said Plot alongwith any construction on it.
15. Interim Application No. 2553 of 2025 and Interim application (L) No.35095 of 2025 stand disposed.
16. It is expected that the Respondent will not in any manner whatsoever obstruct the execution proceedings involving attachment and sale of the said Plot alongwith the construction thereon.

(ABHAY AHUJA, J.)