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

INTERIM APPLICATION NO. 3512 OF 2025
IN
EXECUTION APPLICATION NO. 1492 OF 2025

UNITED INDIA INSURANCE CO LTD.)…APPLICANT / RESPONDENT NO. 4

IN THE MATTER BETWEEN

DR. ARVIND AGARWAL)… APPLICANT

V/s.

M.V. PETER DUTOV AND ORS)…RESPONDENTS

Ms.S.S.Dwivedi Advocate for the Applicant/Respondent No. 4.

Mr.Abdul Majid Dar Senior Advocate a/w Mr. Siddhesh Pilankar Advocate for the Execution Applicant.

CORAM : ABHAY AHUJA, J.

DATE : 10TH OCTOBER 2025

ORDER :-

1. This Interim Application has been filed by the Applicant / Respondent No.4 primarily seeking the following prayer :

(a) Direct the Plaintiff to furnish legible and readable copies of the documents mentioned in paragraph 9 to the Applicant, on in the alternative, to file the same before this Hon'ble Court.

2. Paragraph 9 of the application lists the following documents:

(i) Interim Application (L) No. 3758 of 2021 along with annexures

(ii) Documents submitted by Dr. Arvind Agarwal, sole proprietor of Shilpi Modes, to United India Insurance Co Ltd for processing the claim, which were returned by the Insurance Company vide letter dated 22nd February 1994 upon repudiation

(iii) Complete record of proceedings in Admiralty Suit No. 23 of 1994

(iv) Order dated 12th July 2002 passed in Admiralty Suit No. 23 of 1994.

3. Mr.Darr, learned Senior Counsel for the Execution Applicant submits that the present Interim Application has been rendered infructuous in as much as the Applicant – Insurance Company has filed its Counter Affidavit dated 26th June 2025 pursuant to order dated 12th June 2025 and therefore this Application which seeks the aforementioned documents to file the required affidavit be dismissed and this Court may proceed with the hearing of the Execution Application on the issue of repudiation.

4. Ms.Dwivedi, learned Counsel for the Applicant – Insurance Company would submit that the Interim Application is not rendered

infructuous as in paragraph 4 of the said Counter Affidavit it is stated that the same is filed only in compliance of the Order dated 12th June 2025 and the Applicant- Insurance Company has reserved its right to file an additional affidavit upon receipt of the aforementioned documents and that this Court may, therefore, decide this Application.

5. Ms.Dwivedi, submits that by Order dated 2nd January, 2025 passed by this Court allowed the Application being Interim Application (L) No. 3758 of 2021 taken out by the Decree Holder in the above Execution Application under Section 146 of the Code of Civil Procedure, 1908 ("CPC") in terms of prayer Clause (a) viz. to array the Applicant herein as Respondent to the Execution Application. That the appeal against the said judgment is pending before the Division Bench of this Court although there is no stay on the said order.

6. Ms.Dwivedi submits that in the said order dated 2nd January, 2025, this Court has held that since the question of repudiation of the insurance claim is still required to be decided in the execution proceedings, prior to any orders being passed in aid of execution of the decree, the Applicant-Insurance Company was given the liberty to raise the issue of repudiation.

7. Ms.Dwivedi submits that the Execution Applicant had, at the relevant time, submitted documents to the Applicant- Insurance Company for processing the insurance claim under the applicable policy terms and conditions and upon the scrutiny of the said documents the Applicant – Insurance Company had repudiated the claim and returned all papers to the Plaintiff. Ms.Dwivedi submits that since the claim stood repudiated the Applicant- Insurance Company did not retain any claim-related documents and returned the entire set to the Plaintiff.

8. Ms.Dwivedi further draws this Court's attention to the Policy for Maintenance of Insurance and Other Records as per regulatory guidelines of the Applicant – Insurance Company and submits that in compliance with the policy guidelines in respect of every loss or damage claim of 20 lakhs or more it is obligated to retain records only for a period of 12 years and thereafter the records are routinely destroyed due to space constraints and it is likely that the documents pertaining to the present claim have also been disposed of, as they are no longer traceable.

9. Ms.Dwivedi futher submits that the Applicant's Advocate, by letter dated 12th June 2025, called upon the Plaintiff / Execution Applicant to furnish legible and readable copies of the following: (i) Interim Application (L) No. 3758 of 2021 along with annexures, (ii) Documents submitted by Dr. Arvind Agarwal, sole proprietor of Shilpi Modes, to United India Insurance Co Ltd for processing the claim, which were returned by the Insurance Company vide letter dated 22nd February 1994 upon repudiation, (iii) Complete record of proceedings in Admiralty Suit No. 23 of 1994, (iv) Order dated 12th July 2002 passed in Admiralty Suit No. 23 of 1994 or in the alternative, to file the same before this Court. That in response, the Execution Applicant vide email dated 18th June 2025, has stated that the old records are not available and hence cannot be furnished.

10. Ms.Dwivedi submits that the said Application be allowed as unless the Plaintiff/Execution Applicant is directed to produce the necessary documents, in the absence of the aforementioned documents, the Applicant will be unable to file the required affidavit, no proper adjudication of the issue of repudiation on merits can take place as the said documents sought are vital. That, therefore, the said documents must be placed on record before this Court.

11. Mr.Darr, learned Senior Counsel has submitted that the Execution Applicant has submitted all relevant papers including claim documents to the Insurance Company for the purpose of claiming the insured amount as per the policy vide letter dated 09.03.1994 and confirmation dated 16.03.1994. Learned Senior Counsel would submit that all the relevant documents related to the policy were given to the Applicant-Insurance Company and that the documents which were returned to the decree holder were not complete as several annexures enclosed with the letter dated 27th January 1994 were not returned to the decree holder and were still in the possession of the Applicant – Insurance Company.

12. Mr.Darr, learned Senior Counsel submits that the relevant documents and whatever was in the custody of the decree-holder, the same stands already delivered to the Insurance Company through its standing counsel and if any further documents particularly the admiralty suit and its annexures are still required by the Applicant – Insurance Company, they can very well apply for issuance of the certified copies from the Registry of this Court. Mr. Darr has also submitted that the said documents are also annexed to the Rejoinder

Affidavit of the Applicant dated 05th July 2025 at Annexure D collectively to Annexure J collectively

13. I have heard the learned Counsel for the Applicant/Respondent No. 4 and the learned Senior Counsel for the Execution Applicant.

14. As noted above the Interim Application is filed seeking direction to the Execution Applicant/Plaintiff to furnish legible and readable copies of the following:

(i) Interim Application (L) No. 3758 of 2021 along with annexures,

(ii) Documents submitted by Dr. Arvind Agarwal, sole proprietor of Shilpi Modes, to United India Insurance Co Ltd for processing the claim, which were returned by the Insurance Company vide letter dated 22nd February 1994 upon repudiation,

(iii) Complete record of proceedings in Admiralty Suit No. 23 of 1994,

(iv) Order dated 12th July 2002 passed in Admiralty Suit No. 23 of 1994 or in the alternative, to file the same before this Court.

15. It has been pointed out to this Court that of the aforementioned documents the Execution Applicant has annexed the following documents to its Rejoinder Affidavit (i) Copy of Plaint of the Admiralty Suit No. 23 of 1994, (ii) Copy of order of the Admiralty Suit dated

16.07.2002, (iii) Copy of decree dated 02.09.2009 passed in Admiralty Suit No. 23 of 1994, (iv) Copy of execution application No. 3758 of 2021 along with the annexures (v) Copy of Interim Application under section 146 along with all the documents relied upon (vi) Copy of Letter dated 04.10.1993, 18.11.1993 and 27.01.1994. The Execution Applicant has also submitted that all the relevant documents related to the subject policy were given to the Insurance Company, while the Insurance Company did not return all the documents and some of the annexures were missing. The Applicant – Insurance Company has itself submitted that it is likely that the documents pertaining to the present claims have also been disposed of as they are no longer traceable in view of the policy to routinely destroy old records after twelve years for claims of Rs.20,00,000/- or more due to space constraints. In fact, in the application itself, the Applicant has, at the end of paragraph 9 acknowledged that in response to a request made by the Applicant's Advocate, the Execution Applicant has, vide email dated 18th June 2025, stated that the old records are not available and hence cannot be furnished. This Court cannot direct the Execution Applicant to furnish documents which are not available with the Execution Applicant and which the Applicant/Respondent No. 4 themselves have submitted may have been disposed of.

16. The Applicant has already filed its counter Affidavit on 26th June 2025. No dispute has been raised with respect to the submission that the documents which were returned to the Decree holder by the Insurance company were not complete and several annexures annexed with the letter dated 27th January 1994 were not returned to the Decree holder.

17. I, therefore, agree with Mr.Darr, learned Senior Counsel for the Execution Applicant, that if documents such as Admiralty Suit and its annexures are still required by the Applicant / Insurance company, they can very well apply for issuance of certified copies from the Registry of this Court and that the said documents are also annexed to the Rejoinder Affidavit of the Applicant dated 5th July 2025 at Annexure D Collectively to Annexure J Collectively.

18. In this view of the matter, I do not find any merit in this application and the application, accordingly, stands dismissed.

19. List the Execution Application for hearing on the issue of repudiation on 4th December 2025.

(ABHAY AHUJA, J.)