



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

3 INTERIM APPLICATION NO. 3260/2025

In

COMMERCIAL EXECUTION APPLICATION NO. 565/2019

PARASRAM H BHOJWANI

..APPLICANT

VS

PRAVINCHAND SEHGAL

..RESPONDENT

Adv. Divya Yajurvedi, Adv. Pradeep Kumar i/b. C. R. Naidu & Co. for
applicant/judgment creditor.

Adv. Jamsheed Master a/w. Adv. Aniket Worlikar for judgment debtor
nos.1 & 3.

Mr. Balasaheb V. Baravkar, Court Receiver, High Court Bombay
present in Court.

CORAM : RAJESH S. PATIL, J.

DATE : 17 JUNE 2026.

P.C. :

1) This Interim Application has been filed by the Decree
Holder in November 2024, seeking permission to withdraw the
amount deposited with the Prothonotary & Senior Master of this
Court.

2) In the present execution application earlier the judgment debtor raised an objection with regard to attachment to insurance policy of judgment debtor. Hence, the learned Single Judge of this Court, framed a question of law “Whether or not proceeds of an insurance policy on the life of a judgment debtor can be attached after maturity of the policy or whether by virtue of Section 60(1)(kb) of the Code of Civil Procedure, 1908 (for short ‘CPC’), the proceeds continue to be protected against attached judgment debtors.”

3) By order dated 24 August 2021, learned Single Judge held that once the payment of maturity value is made by the insurance company and the funds are paid out by the insurance company, the funds would lose protection of Section 60(1)(kb) of the CPC. The Court considered Explanation-I to Section 60 (1) of the CPC which clarifies that the matters mentioned in clauses (g), (h), (i), (ia), (j) (l) and (o) are exempt from attachment or sale whether before or after they are actually payable. The Single Judge of this Court concluded that as the policy has matured, the insurance company cannot retain the funds, hence, they were directed to deposit the amount with the Prothonotary & Senior Master of this Court.

4) The judgment debtor being dissatisfied with the order passed by the Single Judge of this Court, filed Special Leave Petition (SLP) before the Supreme Court. By an order dated 26 November 2024, the SLP filed by the judgment debtor stood dismissed as withdrawn. The said order of the Supreme Court reads as under:-

ORDER

Learned counsel for the petitioners, upon instructions, states that she may be permitted to withdraw the present petition.

In view of the statement made, the Special Leave Petition is dismissed as withdrawn. However, the question of law is kept open.

5) In my view, all that the Supreme Court has done is kept open the question of law to be decided in appropriate proceeding, however, as far as the order dated 24 August 2021, passed by the Single Judge of this Court is concerned, the same stood confirmed as the judgment debtor chose not to further argue on the issue, and withdrew his SLP.

6) Yesterday and today, before me, learned counsel appearing for the judgment debtor has attempted to interpret the order passed by the Supreme Court in an entirely different manner. According to

them, the question of law has been kept open, therefore, they can further raise the issue in this execution proceeding also. Repeatedly, they tried to argue on the judgment passed by the Single Judge of this court on 24 August 2021 and according to them, the issue should be referred to a Larger Bench.

7) Though this Court made it clear that once this issue is answered by the Single Judge of this Court and the party who is dissatisfied with this judgment had carried it to the Supreme Court and after being heard in the Supreme Court, they voluntarily withdrew the SLP, such party cannot now seek to raise the very same issue before the Executing Court again and contend that the issue ought to be referred to a Larger Bench of this Court.

8) Yesterday, on this point, learned counsel for the judgment debtor sought indulgence from this Court in order to obtain instructions from his client. Accordingly, the matter was kept today. Today again, learned counsel for the judgment debtor submitted that he has instructions to invite order on merits and again made submission that the issue be referred to a Larger Bench of this Court.

9) Learned counsel appeared for the decree holder submitted that the present execution application has been filed pursuant to a

decree passed in a Summary Suit on 3 May 2018 and the decree holder is waiting for last eight years to enjoy fruits of decree. Against the said money decree, an appeal has been filed and in the appeal, the judgment debtor was directed to deposit monies in this Court. However, till date no amount has been deposited by the judgment debtor. Mr. Naidu also referred to the judgment delivered by the Division Bench of this Court in the case of *Cipla Limited versus Competent Authority and the District Deputy Registrar, Co-operative Society and others*¹ and the judgment delivered by Single Judge of Gujarat High Court in the case of *Hemal Ishwarbhai Patel versus Veer Narmad South Gujarat University and others*².

10) Both the authorities are on the issue that when the Supreme Court records, that the question of law is kept open, undoubtedly it is meant to be reconsidered in future by the Supreme Court only. The question of law is not kept open for the High Court. Paragraph 182 of the judgment in the case of *Cipla Limited* (supra) reads as under:-

182. Gujarat High Court in the case of *Hemal Ishwarbhai Patel v. Veer Narmad South Gujarat University* (supra) after adverting to the Judgments in the cases of *Kunhayammed v. State of Kerala* (supra) and *Gangadhara Palo v. Revenue Divisional Officer, (2011) 4 SCC 602*, has held that Special Leave Petition can be dismissed on variety of grounds. It is held that when the Supreme Court records that the question

1 2021 SCC OnLine Bom 622

2 2016 SCC OnLine Guj 10037.

of law is kept open, undoubtedly it is meant to be reconsidered in future by the Supreme Court only. Question of law is not kept open for the High Court. In our view, Mr. Seksaria, learned counsel for the respondent nos. 3 and 4 is right in his submission that the said question of law was kept open to be considered by the Hon'ble Supreme Court while setting aside the judgment delivered by consent of parties and not for the High Court. In our view, the petitioners cannot be allowed to urge on one hand that the entire judgment of this Court in the case of *Paul Parambi, Chief Promoter, Springs CHS Ltd. v. The Bombay Dyeing and Manufacturing Co. Ltd.* (supra) was set aside by the Hon'ble Supreme Court in the said judgment after granting leave to appeal and at the same time the question of law was also kept open. In our view, this submission of the learned senior counsel is mutually inconsistent and self-destructive. We are in respectful agreement in the views expressed by the Gujarat High Court in the case of *Hemal Ishwarbhai Patel v. Veer Narmad South Gujarat University* (supra).

(Emphasis supplied)

11) Paragraph nos. 17, 18 and 20 of the judgment in the case of *Hemal Ishwarbhai Patel* (supra) read as under:-

17. Now, when the decision of the Division Bench in Siddharth Ashvinbhai Parekh (supra) was carried before the Supreme Court, while dismissing the Letters Patent Appeal No. 19868-19869 of 2016 on 12th August, 2016, the Supreme Court passed the following order, extracting the relevant portion.

"Keeping in view the special features of the case, we are not inclined to interfere. Needless to say, when we have used the words 'special features of the case', the question of law, as decided by the High Court, is kept open."

18. The bone of contention turned out was that when the Supreme Court did not interfere, but kept the question of law open, whether it was permissible for this Court to take a different view. It was attempted to contend by learned advocate for the University in a naive way that the Supreme Court had not dismissed the SLP, but used the words 'not inclined to interfere'. One fails to fathom, what differentiation learned advocate

wanted to establish thereby. It was harped that because of clarification by the Supreme Court about keeping the question of law open, this Court can take different view and may take a departure in light of facts of the present case.

20. The question as to the precedential effect of the observation and clarification of the Supreme Court when it in its order provides that though the Special Leave Petition is dismissed but question of law is kept open, was considered by the binding Division Bench judgment of this Court in *Collector v. Liquidator-Petrofills Cooperative Limited* being Miscellaneous Civil Application (For Review) No. 1412 of 2015 decided on 23rd October, 2015.

21. A clear answer is provided from the discussion from paragraph 26 to 28, reproduced hereinbelow.

"The question therefore is, in the present case was the SLP dismissed by citing reasons or was a simplicitor order of dismissal. We have reproduced the order of SLP in the earlier portion of this judgment. The order records that on facts of this case, the Court was not inclined to exercise jurisdiction under Article 136 of the Constitution of India. While therefore, dismissing the SLP the Court proceeded to observe However, the question of law is kept open. In our understanding neither the expression that on the facts of the case, the Court was not inclined to exercise jurisdiction under Article 136 or that the question of law is kept open, would indicate the reasons for not entertaining the SLP. As has been observed in case of *Kunhayammed v. State of Kerala* [(2000) 6 SCC 359] and *Gangadhara Palo v. Revenue Divisional Officer* [(2011) 4 SCC 602], SLP can be dismissed for variety of grounds, could be on the ground of delay, laches, equity or simply because the Supreme Court thinks in a given set of facts, it is not appropriate to exercise discretionary power to entertain the SLP. The thrust of the order was that the Court was not inclined to exercise jurisdiction under Article 136 of the Constitution. Mere expression of disinclination coined in a slightly different phraseology does not amount to giving reasons."

12) In my mind, there is no doubt, once the SLP filed by the judgment debtor stood dismissed as withdrawn, it is not left for the High Court to decide the question of law whether after maturity of

the policy by virtue of Section 60 (1) (kb) of CPC, the proceeds continue to be protected. It is also pertinent to note that there is no reference of clause (kb) in the Explanation-I of Section 60(1) of CPC.

13) In view of the same, Interim Application No. 3260 of 2025 stands **allowed** in terms of prayer clauses (a) and (b).

14) Learned counsel appearing for the decree holder has also pressed for prayer clause (d) which reads - “That cost of this Interim Application be provided for”.

15) I have heard this matter yesterday extensively. Though it was pointed to learned counsel appearing for the judgment debtor, in my view, since the judgment passed by the Single Judge of this Court on 24 August 2021, was confirmed by the Supreme Court, in the SLP filed by the judgment debtor stood withdrawn and the question of law to be decided in another matter by the Supreme Court. However, learned counsel still kept on arguing the issue. The action on part of judgment debtor’s Advocate has unnecessarily consumed this Court’s valuable time, as I could have passed order in this matter yesterday itself. The Advocate for the judgment debtor knows the fact about how many matters are listed daily on board of this Court. In my view, such misuse of judicial process warrants a

strong deterrent, which can be ensured through imposing costs.

16) Hence, cost of Rs.50,000/- is imposed on the judgment debtor to be paid to the decree holder within a period of four weeks from today.

17) All parties to act on an authenticated copy of this Court.

18) At this stage, the Advocate of judgment debtor is seeking stay to the execution of this order.

19) Ms. Yajurvedi, learned counsel appearing for the decree holder has opposed the said request made by learned counsel appearing for the judgment debtor. She submits that the decree is passed in the year 2018 and for last eight years, the decree holder is running from pillar to post for executing the decree, including attending Court proceeding in this Court and the Supreme Court. Hence, the request made by judgment debtor is rejected.

20) Interim Application stands disposed of accordingly.

(Rajesh S. Patil, J.)