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

INTERIM APPLICATION NO. 6724 OF 2025
IN
COMM. EXECUTION EXECUTION APPLICATION NO. 894 OF 2019

Arbaaz Khan Productions Pvt. Ltd. …Applicant

In the matter between :

Arbaaz Khan Productions Pvt. Ltd. …Claimant

Versus

1. Kinesis Films Private Limited
2. Binay Mandal
3. Samir Gupta …Respondents

WITH
INTERIM APPLICATION NO. 8010 OF 2025
IN
COMM. EXECUTION EXECUTION APPLICATION NO. 894 OF 2019

Binay Mandal …Applicant

In the matter between :

Arbaaz Khan Productions Pvt. Ltd. …Claimant

Versus

Kinesis Films Pvt. Ltd. …Respondent

Mr. Raj Patel *a/w. Mr. Samartha Chaudhary, Deeksha Jani i/b M/s. Jani and Parikh, for Applicant in IA-1624-2025.*

Mr. Karl Tamboly *a/w. Mr. Aditya Khare, Mr. Atharva Bhilare i/b M/s. Naik Naik and Co., for Respondents in IA-6724-2025 and in IA-1624-2025.*

CORAM : RAJESH S. PATIL, J.
Date : 27th January, 2026

PC :

1. Interim Application No. 6724 of 2025 seeking various prayers, including that of arrest and detention in prison of Respondent Nos. 2 and 3, disclosure of assets by the judgment debtor, attachment of movables and immovable assets and properties of Respondent No. 1 and injunction restraining the Respondents from creating any rights in respect of three films.

2. By an order dated 27th November, 2025, the Counsel appearing for the judgment debtor voluntarily made a statement, on instructions of his client, that as regards two films, his client is ready and willing to give the rights of commercial exploitation to the decree holder. As far as the third film is concerned, it is admitted that the same is not available with this client and further, his client was ready to file affidavit of disclosure.

3. The decree holder, thereafter, on the next date of hearing, submitted that his client tried to exploit the two films, however they were not able to exploit them. Therefore, they wanted to move ahead

with the execution application. The judgment debtor then filed additional affidavit of disclosure mentioning that the only amount available with them was Rs. 3,76,550/-. The said amount was deposited by the judgment debtor with the Prothonotary and Senior Master of this Court.

4. Today, Mr. Patel appearing for the decree holder submitted that in the affidavit of disclosure filed in the year 2019, there is a reference of a sum of Rs. 1,49,78,585/-, which was available with the judgment debtor. However, the judgment debtor did not deposit the said amount with this Court and/or did not pay this amount directly to the judgment creditor. He referred to the provision of Order XXI Rule 1 of the Code of Civil Procedure, 1908 ("***Code***") and submitted that the Supreme Court is the judgment of ***Jolly George Verghese & Anr. Vs. The Bank Of Cochin*** [1] in paragraph No. 11, has clarified the it was the duty of the judgment debtor, that as soon as funds are available with them, they should voluntarily come forward, and either pay that amount to the decree holder or else deposit it in Court. He submitted that since the judgment debtor has not done this act and going by the additional

1 *1980 (2) SCC 360*

affidavit filed by the judgment debtor on 20th January, 2026, the only remedy would be to arrest and detain the judgment debtor in prison.

5. Mr. Tamboly appearing for the judgment debtor submitted that the provisions of Order XXI Rule 1 of the Code does not state that the judgment debtor should, as soon as a decree is passed, voluntarily come forward before the Court and deposit whatever amount is available with him. He referred to the provisions of Section 51- *Proviso (b)* and the provisions of Order XXI Rule 37 of the Code. He submitted that there was no demand from the decree holder to deposit the amount or no attachment of amount was sought from the decree holder. He submitted that it was not the case of the decree holder that there was suppression from the judgment debtor that funds were not available with them. He submitted that whatever funds were available with the judgment debtor has been specifically mentioned in the disclosure affidavit filed in the year 2019. Subsequently in the year 2021, a settlement offer was given to the decree holder that the available funds of Rs. 1,49,000 with the judgment debtor can be accepted by the decree holder as full and final payment. He submitted that however the decree holder refused to accept this amount. Even at that stage, the decree holder could have made an

application either to freeze the bank account of the judgment debtor or else directing them to deposit the amount with this Court. None of this was done.

6. Mr. Tamboly, thereafter, referred to the judgment of Supreme Court passed in ***Jolly George Verghese & Anr.*** (Supra) and referred to Paragraph 11 of the said judgment. He also referred to the judgment of the Single Judge in ***Pundlik Mahadu Nazire Vs. Maharashtra State Farming Corporation*** [2] and the Division Bench judgement of Allabahad High Court passed in the matter of ***Ch. Harpal Singh & Others Vs. Lala Hira Lal*** [3]. And the judgment of Kerala High Court passed in the matter of ***Xavier Vs. Canara Bank*** [4]. He submitted that considering the law laid down in above authorities, there will be no question of arresting the judgment debtor. So far as the other prayers are concerned, the same have already been answered.

7. I have heard Counsel for both the sides and also gone through the judgments referred by both the sides. The proviso (b) to Section 51 of the Code reads as under :

2 1992 Mh.L.J. 455
3 AIR 1955 All 402
4 1969 KLT 927 / 1969 SCC OnLine Ker 147

Section 51 - Powers of Court to enforce execution.—Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

(a) ....

(b) ....

(c) ....

(d) ....

(e) ....

Provided that, where the decree is for the payment of money, execution by detention in prison shall notbe ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied—

(a) ....

(b) that the judgment-debtor has, or has had since the date of the decree the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

[Emphasis Supplied]

Therefore, as per the provisions of proviso (b) of Section 51 of the Code, the judgment creditor has to show that after passing of the decree, the judgment debtor though had means to pay the amount of the decree, but refuses or neglect to pay the same.

8. In the present case, admittedly, in the first disclosure affidavit was filed in November 2019, in which the judgment debtor has specifically disclosed that a sum of Rs. 1,49,78,585/- was lying in his bank account. They never said that they are refusing to pay this amount. Even at that stage, the judgment creditor did not prefer any application before the Court to direct the judgment debtor to deposit the said amount. In the affidavit dated 20th January, 2026, in paragraph No. 12, details of the bank account on the judgment debtor, have been mentioned. It has been further mentioned that the funds available with the judgment debtor have been spent on account of professional fees for defending proceedings initiated by Ministry of Corporate Affairs, Service Tax matters, ROC filings, Challans, and Staff Salary etc.

9. Similarly, Chamber Summons No. 1106 of 2019 filed by the decree holder on 3rd September, 2019, a prayer was sought of disclosure of movables and immovables found including the source of income and/or and <u>amounts to be received</u> from third party. Though this prayer was sought by the decree holder, admittedly, no such relief was granted to the decree holder. In such a situation according to me, it cannot be said that the judgment debtor neglected or refused to deposit whatever

amount was available with them in Court or directly to the judgment creditor.

10. Refusal will mean that the judgement debtor was told to deposit the amount and he did not deposit the amount. Similarly, neglect to pay would mean that the judgement debtor was told to deposit or to pay the decretal amount and he did not comply with the said direction. In the present case, it is nobody's case that the judgement debtor has suppressed that he had the amount and did not disclose it. He has volunteered that he had the amount. Supreme Court in the judgment of ***George Verghese & Anr.*** (Supra) has held that what has to be proved by the decree holder that the judgement debtor has neglected or refused to pay the decretal amount. Para 11 of the said judgment reads as under :

> *11 The words which hurt are "or has had since the date of the decree, <u>the means to pay the amount of the decree</u>". This implies, superficially read, that if at any time after the passing of an old decree the judgment-debtor had <u>come by some resources</u> and <u>had not discharged the decree</u>, he <u>could be detained in prison even though at that later point of time he was found to be penniless</u>. This is not a sound position apart from being <u>inhuman</u> going by the standards of Article 11 (of the Covenant) and Article 21 (of the Constitution). The <u>simple default to discharge is not enough</u>. There must be some element of <u>bad faith beyond mere indifference to pay,</u>*

some deliberate or recusant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it. The provision emphasises the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and straitened circumstances will play prominently. We would have, by this construction, sauced law with justice, harmonised Section 51 with the Covenant and the Constitution.

*[**Emphasis Supplied**]*

11. Single Judge of this Court in ***Pundlik Mahadu Nazire*** (Supra) has considered the judgment of Supreme Court in ***Jolly George Verghese & Anr*** (Supra) and has come to the same finding that what will be important to see whether the judgement debtor was negligent or refused to pay the decretal amount. Similar view has been taken by the Allahabad High Court in ***Ch. Harpal Singh & Others*** (Supra) and the Single Judge of Kerala High Court in ***Xavier*** (Supra).

12. As already disclosure affidavit had been filed, so also the relief prayed by the decree holder as regard to the three films have been satisfied by the order passed earlier. According to me, no case is made out in terms of prayer clause (a), which reads as under :

(a) This Hon'ble court be pleased to pass an order

arresting and detaining the Respondent Nos. 2 & 3 in prison.

13. Interim Application No. 6724 of 2025 stands ***disposed of*** and the prayer clause (a) stands rejected.

14. Decree Holder can take such steps to execute the decree as permitted in law.

15. At this stage, Mr. Patel on behalf of decree holder orally makes an application for withdrawal of the amount of Rs. 3,76,550. He submits that once a part of the decretal amount is deposited by the judgment debtor in Court, then there is no stay in favour of the judgment debtor, then in that situation, as a matter of right, the decree holder should be allowed to withdraw the said amount. Counsel appearing on behalf of the judgment debtor has opposed the application on the ground that that there is no written application preferred by decree holder to withdraw the amount. The judgement debtor has opposed this request of withdrawal only on this limited ground.

16. Considering the fact that the total decretal amount is Rs. 5.44 Lakhs on the date of the filing of the execution application in the year

2020 and as of now the said amount according to decree holder is Rs. 12 Crores, the amount deposited is only Rs. 3,76,550/-. According to me, the said amount should be allowed to be withdrawn by the decree holder.

17. Hence, the decree holder is allowed to withdraw a sum of Rs. 3,76,550/- along with accrued interest, if any.

18. Parties to act on an authenticated copy of this order.

[RAJESH S. PATIL, J.]

Shraddha