



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
: NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 4886 OF 2024

BABJOTSINGH BAVINDARSINGH KHANDUJA

VERSUS

MUKESH S/o NASIKRAO TIRPUDE, HUF THRU. ITS KARTA MUKESH N TIRPUDE & OTHS

with

WRIT PETITION NO. 4512 OF 2024

GURPREET SINGH HARJINDER SINGH KHANDUJA

VERSUS

MUKESH S/o NASIKRAO TIRPUDE, HUF THRU. ITS KARTA MUKESH N TIRPUDE & OTHS

Office Notes, Office Memoranda of Coram,
appearances, Court's Orders or directions and
Registrar's order

Court's or Judge's Order

Writ Petition No. 4886 of 2024

Mr. Anand S. Jaiswal, Senior Advocate with Ms. Radhika Bajaj and Mr. Mohd. Ateeque, Advocates for the petitioner

Mr. Y. B. Sharma, Advocate for respondent no.1

Mr. D. V. Chavan, Sr. Advocate with Mr. S. P. Bodalkar, Advocate for respondent no.3

Writ Petition No. 4512 of 2024

Mr. D. V. Chavan, Senior Advocate with Mr. S. P. Bodalkar, Advocate for the petitioner

Mr. Y. B. Sharma, Advocate for respondent no.1

Mr. Anand S. Jaiswal, Senior Advocate with Ms. Radhika Bajaj, Advocate for respondent no.3.

CORAM : M. W. CHANDWANI, J.

DATE : FEBRUARY 23, 2026.

1. Both the petitions arise out of the execution proceeding bearing Spl. Darkhast No. 19/2021 in R.C.A. No. 111/2015 and hence, they are being disposed of by this common judgment.

2. The petitioner in W.P. No.4886/2024 is Judgment Debtor no.2 (J.Dr.2) whereas, the petitioner in W.P. No. 4512/2024 is Judgment Debtor No.3 (J.Dr.3) in the execution proceedings filed by the respondent/Decree

Holder (DH) in both the petitions. They will hereinafter be referred to by their nomenclature in the execution proceedings.

3. **W.P. No. 4886 of 2024** : The petitioner/J.Dr.2 in this petition challenges the order dated 17.08.2024 passed by the learned 2nd Additional Judge, Small Causes Court, Nagpur whereby, the explanation submitted by the petitioner/J.Dr.2 vide Exh.114 pursuant to the common order dated 20.7.2024 passed below Exh. 98 came to be rejected.

4. **W.P. No. 4512/24** : The petitioner/J.Dr.3 in this petition challenges the order dated 08.04.2024 below Exh.68 passed by the learned 2nd Additional Judge, Small Causes Court, Nagpur whereby, the petitioner was directed to be detained in civil prison and to undergo simple imprisonment for two months as well as the order dated 20.07.2024 below Exh.104 passed by the learned 2nd Additional Judge, Small Causes Court, Nagpur whereby the application for recalling the order dated 08.04.2024 below Exh.68 came to be rejected.

5. By order dated 08.04.2024 below Exh.68, J.Dr.2 and J.Dr.3 were directed to be detained in civil prison for non-filing of affidavits of assets and liabilities as directed by the executing Court vide order dated 22.12.2023. J.Dr.2 challenged the said order by filing Writ Petition No.

2536/2024, which came to be allowed by the judgment and order dated 07.05.2024, thereby setting aside the order of detention in civil prison to the extent of J.Dr.2, with a direction to file his affidavit of assets and liabilities on 09.05.2024 before the Executing Court. Whereas, J.Dr.3 filed an application (Exh.104) for recalling the order dated 08.04.2024 passed below Exh.68.

6. The respondent/Decree Holder, filed an application (Exh.98) under Order XXI Rule 41(3) of the Code of Civil Procedure for disobeying the order passed by the High Court under Order XXI Rule 41(2) of the CPC as well as application (Exh.109) for grant of police aid. Meanwhile, J.Dr.2 in wake of the direction by this Court, filed the affidavit of his assets and liabilities.

7. The learned executing Court by common order dated 20.07.2024 rejected the application (Exh.104) of J.Dr.3 for recalling of the order of detaining in civil prison, whereas allowed the application (Exh.109) of the respondent/DH. By the said order, the executing Court in the application (Exh.98) held that J.Dr.2 has suppressed some property in the affidavit and asked him for explanation. Accordingly, J.Dr.2 filed explanation vide Exh.114, which came to be rejected by order dated 17.8.2024.

8. Feeling aggrieved with the order below Exhs.68 and 104 and the order below Exh.114, J.Dr.3 and J.Dr.2 are

before this Court.

9. It appears that J.Dr.2, after the direction given by this Court, had filed the affidavit of assets and liabilities. However, the executing Court found that there was no reference of Hotel Embassy, whereas the MOU shows that J.Dr.2 is the exclusive owner of Hotel Embassy. Therefore, by the order dated 20.07.2024, J.Dr.2 was asked to submit an explanation for suppression of the said fact. Accordingly, J.Dr.2 filed an explanation vide Exh.114 stating that Hotel Embassy is owned by Executive Club Hotels India Ltd. and is a subsidiary of M/s Jagvidya and Sons Hotel and Resorts LLP. Hotel Embassy is managed and controlled by M/s Jagvidya and Sons Hotel and Resorts LLP in which J.Dr.2 and his family members have 12.5% each share, the value of which is mentioned in the earlier affidavit.

10. The contention of the learned Senior Counsel Mr. Jaiswal is that J.Dr.2 has mentioned in the affidavit the investments in the business of Jagvidya and Sons LLP to the tune of Rs.75.06 lakhs which is 12.5% of the share capital of Jagvidya and Sons LLP. The Executing Court did not appreciate this aspect and rejected the explanation on the ground that the earning from the capital investment in M/s Jagvidya and Sons Hotel and Resorts LLP has not been shown.

11. No doubt, the capital investment by J.Dr.2 in M/s

Jagvidya and Sons has been shown, which owns Hotel Embassy. Perhaps, the Executing Court was of the view that the assets of M/s Jagvidya and Sons to the extent of J.Dr.2 has not been shown and therefore, an explanation was sought from J.Dr.2 as to why the income from Hotel Embassy has not been shown in the affidavit of assets and liabilities. While explaining the said fact, it was stated by J.Dr.2 that Hotel Embassy is owned by M/s Jagvidya and Sons and the investments made by him in M/s Jagvidya and Sons is shown in the earlier affidavit. Perhaps, no direction was given in the impugned order to J.Dr.2 to file assets of the firm to the extent of his share and therefore, while giving explanation, J.Dr.2 did not mention the assets of M/s Jagvidya and Sons to the extent of his share in the said company. Therefore, the impugned order in WP No.4886/24 cannot be sustained.

12. Be that as it may, *prima facie*, it appears that J.Dr.2 does not want to run away from compliance and undertakes to file the details of assets to the extent of his share in the partnership firm M/s Jagvidya and Sons. In this scenario, an opportunity should be given to J.Dr.2 to satisfy the Executing Court by filing additional affidavit in this regard.

13. So far as J.Dr.3 is concerned, no doubt inspite of the directions given by the Executing Court, he did not file the affidavit of his assets and liabilities till 08.04.2024.

However, later on he filed an application seeking permission to file affidavit of assets and liabilities before the Executing Court along with a Demand Draft of Rs.5,00,000/-. Though, at a later stage, but filing of affidavit of assets and liabilities itself *prima facie* shows that J.Dr.3 is not running away from compliance of filing the affidavit, directed by the Executing Court.

14. Since the purpose of the Executing Court is to satisfy the decree and the affidavit of assets and liabilities of J.Dr.3 is already on record, no fruitful purpose would be served by detaining J.Dr.3 in civil prison, more particularly when he complied the direction of the Executing Court and also issued a Demand Draft of Rs.5,00,000/-. In this scenario, the Executing Court ought to have recalled the order of detaining the J.Drs. in civil prison.

15. In view of the above, I proceed to pass the following order :

- i) The Writ Petitions are partly allowed.
- ii) The impugned orders dated 20.07.2024 below Exhs.98, 104 and 109, order dated 08.04.2024 below Exh.68 (to the extent of J.Dr.3) as well as order dated 17.08.2024 below Exh.114 passed by the learned 2nd Additional Judge, Small Causes, Court, Nagpur in Spl. Darkhast No. 19/2021, are hereby set aside.

- iii) J.Dr. No.2/petitioner in W.P. No. 4886/2024 is directed to file additional affidavit showing assets to the extent of his share in M/s Jagvidya and Sons Hotel and Resorts LLP by 23.03.2026.
- iv) The Decree Holder may take appropriate steps for getting the decree executed.
- v) The Executing Court to see that the matter is disposed of at the earliest, since the decree is old.

16. The writ petitions stand disposed of.

(M.W.Chandwani, J.)

Diwale