



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

INTERIM APPLICATION (L) NO. 16702 OF 2023
IN
COMMERCIAL EXECUTION APPLICATION (L) NO. 16273 OF 2023

Cherag Shah)... Applicant

V/s.

Harshwardhan H. Sabale)... Respondent

WITH

SHOW CAUSE NOTICE (L) NO. 26194 OF 2024

Mr. Rashmin Khandekar with Ms. Karishmi Khanna, Mr. Utkarsh Singh,
Mr. Turab Ali Kazmi, and Ms. Hardika Kukkeja and Mr. Priyam Tiwari
i/by S. K. Partners for Applicant/Award Creditor.

Mr. Vikas Sharma for Respondent No.1.

Mr. Vijay Salokhe alongwith Mr. Ankit Upadhyay i/b BLAC Co. for RBI-
Respondent No.7.

CORAM : ABHAY AHUJA, J.

DATE : 12 SEPTEMBER, 2024

PC. :

1. Pursuant to the order dated 26th August 2024, today when the matter is called out, Mr. Sharma appears for the Respondent and firstly submits that the show cause notice under the Contempt of Courts Act, 1971, has not been received by his client and secondly submits that although he has informed and advised the Respondent to remain

present in this Court as per directions, the Respondent has not remained present in Court.

2. Mr.Khandekar, learned Counsel for the Applicant, submits that in this view of the matter, besides instituting an enquiry into the failure to serve the show cause notice issued under the Contempt of Courts Act, 1971, this Court issue non-bailable warrant against the Respondent to secure his presence in Court and for refusing to remain present in Court.

3. Upon enquiring with the Court Associate, it is also pointed out by the Court Associate that pursuant to the said order dated 26th August 2024, a reminder with respect to the service of show cause notice issued under the Contempt of Courts Act, 1971 has been sent by the Registry to the Registrar of Small Causes Court at Bandra, Mumbai by hand-delivery and District and Sessions Judge, District and Sessions Court, Pune, Maharashtra via e-mail and also by speed post which have been received by them on 3rd September 2024, however, till date the service report is awaited. The said service report is dated 6th September 2024 and we are on 12th September 2024 and despite that the show cause notice issued by this Court under the Contempt of Courts Act,

1971, has not been served nor is the Respondent present despite clear directions to do so today and even on earlier dates.

4. On 26th August 2024, the following order was passed :

“1. Pursuant the order dated 12th August 2024, today when the matter was called out in the morning session, this court was informed that the amount of Rs.2 crores has been deposited in the account of the Prothonotary and Senior Master with the Reserve Bank of India (RBI).

2. Mr.Sharma, learned Counsel appearing for the Respondent no.1 informs this Court that the Respondent could not remain present in Court as he apprehends arrest and due to hypertension could not come to Mumbai. Mr.Sharma, learned Counsel for the Respondent, has sought to tender an affidavit explaining the same. Let the said affidavit be filed in the Registry. Let a copy of the same be furnished to the learned Counsel for the Applicant for instructions.

3. Ms.Pathak, learned Counsel, appearing for the RBI submits that the payments have been received in the account of the Prothonotary and Senior Master. This Court, therefore, enquired from the Associate of this Court as to whether, infact, the monies had been received in the account of the Prothonotary and Senior Master and the matter was sought to be kept back.

4. As regards the issuance of the show cause notice under the Contempt of Courts Act, 1971, which was directed to be served upon the Respondent, the Associate has pointed out that the service report is still awaited and sought time to ascertain the exact status. Therefore, this Court kept back the matter to await the aforesaid information.

5. In the afternoon session, when the matter is called out, this Court is informed that the show cause notice issued by this Court under the Contempt of Courts Act,

1971, has been forwarded for service to the Registrar of the Small Causes Court at Bandra, Mumbai, by hand delivery, and to the District and Sessions Judge, District and Sessions Court, Pune, by speed post and that the service report is awaited.

6. With respect to deposit of the amount of Rs.2 crores by the Respondent, the Master and Assistant Prothonotary (Judicial) has confirmed that the amount of Rs.2 crores has been deposited by Mr.Vikas Sharma, Advocate for the Award debtor on 14th August 2024 and realization / clearance has also been received by the RBI on 22nd August 2024.

7. Mr.Khandekar, learned Counsel for the Applicant, also submits that pursuant to earlier orders of this Court, a complaint has been lodged with the Economic Offences Wing (EOW), Mumbai and the Police authorities are yet to register a First Information Report (FIR) in this regard. Mr.Khandekar also submits that pursuant to order dated 9th August 2024, an affidavit dated 23rd August 2024, in response to the affidavit filed on behalf of the Respondent, has also been filed and a copy has been furnished to the learned Counsel for the Respondent.

8. In the morning session, this Court had also enquired from Mr.Sharma for the Respondent, as to when he would keep his client present in Court. In the afternoon session, Mr.Sharma, after taking instructions, submits that his client has requested for two weeks to remain present in Court. The statement is accepted. As regards the instructions with respect to the balance amount, Mr.Sharma submits that his client has no money.

9. Mr.Khandekar points out that the Respondent has not only been in contempt of the orders of this Court but by not remaining present today, he has aggravated the contempt, and that, this Court pass appropriate orders under the Contempt of Courts Act, 1971, before passing any orders under the Code of Civil Procedure, 1908 (CPC).

10. I have heard the learned Counsel and considered the submissions. It is clear that Mr. Harshwardhan Sabale, the Respondent, has failed to remain present, despite directions of this Court to positively remain present in the Court today. However, from the record as it appears, the report of the service of the notice under the Contempt of Courts Act, 1971, is yet awaited. The Office of the Prothonotary and Senior Master has confirmed that Rs.2 crores have been credited to his account with the RBI. Mr. Sharma, learned Counsel for the Respondent, has filed an affidavit, a copy whereof has been furnished to Mr. Khandekar, learned Counsel for the Applicant.

11. Let instructions be taken / response be filed to the affidavit of the Applicant dated 23rd August 2024 as well as to the affidavit of the Respondent furnished today to the learned Counsel for the Applicant. Let the Applicant file a response to the affidavit served on behalf of the Respondent today by the next date with a copy to the other side.

12. List on 12th September 2024.

13. This Court once again directs the Respondent to remain present in Court along with complete instructions in the matter.

14. Registry is directed to expedite/send reminder with respect to the report of service of the show cause notice issued to the Respondent.”

5. Earlier on 12th August 2024, the following order was passed :

“1. Pursuant to the earlier orders of this Court ending with order dated 9th August, 2024, today when the matter is called out, this Court is informed by Mr. Khandekar, learned Counsel appearing for the Applicant that no payment has been received by his client as was undertaken by the Respondent on the last date. It has also been submitted that the Respondent is also not present in the Court as was directed. That in view of the observations of this Court in

paragraphs 6,9,11 and 14 to 18 of the order dated 9th August, 2024, this Court issue a show cause notice under the Contempt of Court's Act as this Court has prima facie observed that the Respondent has committed contempt of this Court.

2. Mr. Sharma, learned Counsel appears for the Respondent and submits that he would now be representing the Respondent and seeks to tender across the bar an affidavit filed on behalf of the Respondent. Mr. Sharma has also furnished a copy of the same to Mr. Khandekar, learned Counsel for the Applicant.

3. Mr. Sharma submits that although the Respondent had undertaken to furnish a Demand Draft for a sum of Rs. 20 Crs in favour of the Award Creditor by today 4.30 p.m. and also remain present in the Court and also not leave the jurisdiction of the municipal limits of Mumbai until further orders of this Court, in view of the circumstances mentioned in the affidavit, he has had to leave the jurisdiction and has set out the same in the affidavit and also apologized for the inconvenience caused to the Court and requested that the proceedings be adjourned to 20th August, 2024.

4. Mr. Sharma submits that the Respondent has also made an arrangement to deposit an amount of Rs. 2 Crs with the Prothonotary & Senior Master and refers to a copy of the Demand Draft issued by the Union Bank of India, Sawantwadi Branch in favour of the Prothonotary & Senior Master at page 39 of the said affidavit, which Mr. Sharma submits he will receive by today evening and deposit the same with the Prothonotary & Senior Master by tomorrow, 10.30 a.m. Mr. Sharma submits that the Respondent has also given his no objection to withdrawal of the same by the Award Creditor.

5. Mr. Sharma further submits that application under Section 95 of the Insolvency and Bankruptcy Code, 2016 has been filed against the Respondent and that therefore, there

is a statutory interim moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016 in respect of the Respondent and refers to Exhibit A to the said affidavit and submits that therefore, this Court cannot proceed further in the execution proceedings.

6. Mr. Khandekar, learned Counsel appears for the Applicant and submits that the said application at Exhibit A does not have any number nor any acknowledgment of having been filed and that the statutory interim moratorium only commences when an application is filed under Section 94 or Section 95 of the Insolvency and Bankruptcy Code, 2016.

7. To this, Mr. Sharma refers to page 40 of the Respondent's affidavit and submits that the case number of the said application has been given there as part of the case details and that therefore, in view of the statutory interim moratorium period, any legal action or proceedings pending in respect of any debt including this execution proceedings shall be deemed to have been stayed and the creditors of the debtor shall not initiate or continue any action or proceedings in respect of any debt.

8. As far as the payment of Rs. 20 Crs is concerned, it has been submitted by Mr. Sharma that since all the assets of the Respondent have been attached and the Respondent has no money or resources or assets to pay the outstanding dues, he had bona-fide depended on the third parties for these payments, in respect whereof, affidavits had also been furnished by those third parties as he had no option but to rely on the third parties to fulfill the payment obligations on his behalf. With respect to the balance amounts, Mr. Sharma submits that he would need to take instructions from the Respondent.

9. Mr. Khandekar has cursorily gone through the said affidavit of the Respondent sought to be filed in this Court and submits that this is yet another instance of the Respondent's dishonest and contumacious conduct which

ought not be spared and exemplary punitive action be taken against him.

10. Mr. Khandekar, learned Counsel submits that the affidavit has been notarized this morning, which suggests that the Respondent was in Mumbai this morning and has deliberately chosen to leave the city as the hearing was fixed in the afternoon. That although the reason for his absence is stated to be an urgent and unforeseen personal emergency of the deteriorating health of his elder sister, there is no supporting medical record or document to substantiate the same and that the Respondent is in the habit of filing affidavits of this nature and evading and avoiding Court proceedings and breaching undertakings with impunity which should not be tolerated by this Court.

11. Mr. Khandekar submits that in view of the decision of the Division Bench of this Court in the case of **Rajendra Prasad Banal Vs. Reliance Communication Limited**¹ the said proceedings before the NCLT would only be limited to the assets / properties of the Judgment Debtor and not to actions or proceedings or assets which are beyond the said proceedings. That the monies deposited in this Court would not be the assets or properties of the Judgment Debtor nor would proceedings in execution or the proceedings that would be initiated against the Respondent under Order 21 Rule 40 or Rule 41 or proceedings for breach of orders of this Court under the Contempt of Courts Act and that this Court also direct that the Respondent be taken into custody under Order 21 Rule 40 (2) for failing to respond / give satisfactory explanation to the show cause notice issued pursuant to order dated 11th March, 2024 and also direct his arrest under Order 21 Rule 41 (3) for disobeying the orders of this Court.

12. Mr. Khandekar also submits that the conduct of the Respondent is not only is willfully disobedient for

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committing willful breaches of undertakings given to this Court but also scandalizes and tends to lower the authority of this Court and therefore, strictest of punishments be awarded to him.

13. Having heard the learned Counsel and having considered their submissions, the following order is passed:-

ORDER

i. There is no doubt and it is self-evident that the Respondent has not only breached the undertakings given to this Court, which although is sought to be explained by way of an affidavit dated 12th August, 2024, tendered across the bar today by a new Advocate who is yet to file his vakalatnama, but as recorded in earlier orders this Court including order dated 9th August, 2024 also been in contumacious and egregious breach of the orders of this Court.

ii. On 9th August, 2024, this Court had passed the following order:

“1. Pursuant to order dated 6th August 2024, today when the matter is called out, Mr.Kamat, learned Senior Counsel, appears on behalf of Mr.Harshwardhan Sabale, the Respondent in the matter and submits that there is a moratorium operating in respect of the Respondent in view of an application having been filed on 8th August 2024 before the National Company Law Tribunal (“NCLT”) and that this Court cannot proceed in execution in view of Section 96 of the Insolvency and Bankruptcy Code, 2016. No affidavit or document in support thereof has been furnished to this Court.

2. Mr.Kamat also submits that since there have been operational difficulties in the functioning of the co-operative bank from where the funds were to be transferred by NEFT after the same is investigated, this Court can take a view in the matter.

3. Upon a query from this Court with reference to the

affidavit cum undertaking furnished by the Respondent, Mr.Harshwardhan Sabale, on 6th August 2024 undertaking to furnish a demand draft of an amount of Rs.20,00,00,000/- in favour of the Applicant by today Mr.Kamat submits that his client has not been able to do so.

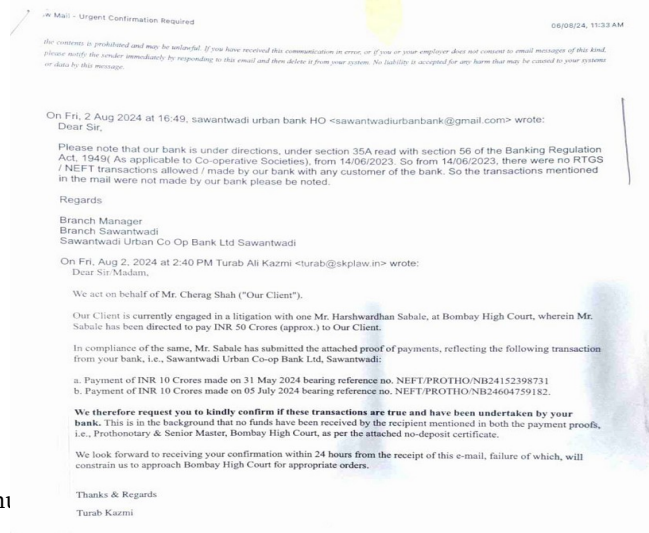
4. Mr.Khandekar, learned Counsel appearing for the Applicant, also submits that, today, much to his shock and surprise, the real Mr.Govind Wadkar, is present in Court and on the other day, the person who was present through video conferencing, styling himself as Mr.Govind Wadkar, was not the real Govind Wadkar. Mr.Khandekar submits that Mr.Govind Wadkar, who is present in Court, has furnished his Identity-card as well as his photograph and submits that he is the Deputy Chairman of the Sawantwadi Urban Co-operative Bank and that the Branch Manager is also present in Court and both of them have informed that firstly, the email dated 6th August 2024 furnished by Mr.Parekh, the then learned Counsel appearing for the Respondent and as also reproduced by this Court in paragraph 3 of the order dated 6th August 2024, is not an email sent by Mr.Govind Wadkar. The learned Counsel submits that not only that, Mr.Govind Wadkar and the Branch Manager have also informed that the two NEFT transactions referred to in the said email or referred to anywhere else, could not have been undertaken by the bank, in as much as the bank was, with effect from 14th June 2023 subjected to the directions of the Reserve Bank of India under Section 35A read with Section 56 of the Bank Regulation Act, and further confirm the email dated 2nd August 2024 referred to in paragraphs 1 and 2 of the order dated 6th August 2024. Mr.Khandekar submits that the fraud saga does not stop here and that both the Vice Chairman and the Bank Manager present in Court today, have also informed that there is no account in the name of Balasaheb Yuvak Sanghtan (Society) nor in the name of the Kishore Arjun Jadhav nor in the name of Balasaheb

Education Services Trust nor in the name of Deepak Krishna Jadhav opened with the Sawantwadi Urban Co-operative Bank. The Vice Chairman and the Branch Manager of the bank confirm the aforesaid and also submit that there is an account opened in the name of Streamcast Education Services Private Limited in which the Respondent is a director and the balance in the said account is only Rs.2,070/-.

5. On 6th August 2024, this Court had passed the following order :

“1. Pursuant to the order dated 31st July, 2024, today when the matter was called out, this Court was informed that the bank which had supposedly generated the National Electronic Fund Transfer (“NEFT”) reference numbers with respect to the two purported transactions of Rs.10 Crs each is subject to directions of the Reserve Bank of India (“RBI”) under Section 35A read with Section 56 of the Banking Regulation Act, 1949 as applicable to the cooperative societies with effect from 14th June, 2023 and therefore, there have been no RTGS/NEFT transactions allowed / made by the bank with any customer of the bank and therefore the subject NEFT transactions were not made by the bank.

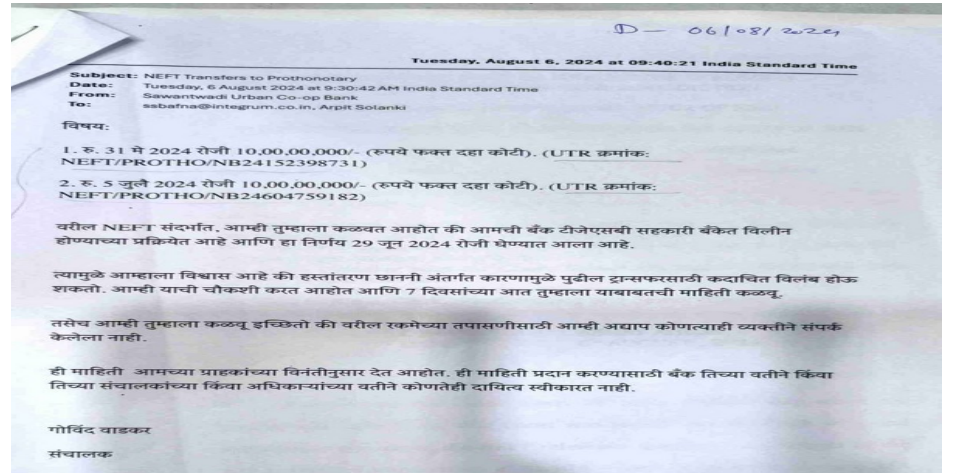
2. Mr. Khandekar, learned Counsel appearing for the Applicant tenders across the bar two e-mails dated 2nd August, 2024 in support of his contention, the relevant extract whereof is usefully reproduced as under:-



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3. Mr. Parekh, learned Counsel appearing for the Respondent also seeks to tender across the bar an email dated 6th August, 2024, purportedly from the Sawantwadi Urban Co-operative Bank with respect to the two transfers whereby it is informed that the Sawantwadi Urban Co-operative Bank is in the process of being merged with the TJSB Co-operative Bank and the decision has been taken on 29th June, 2024. That therefore, there may have been delay in the transfer of the two amounts and that they are investigating and within seven days they would give information regarding the same. That in respect to the aforesaid two amounts they have not contacted any person. That the information is being provided at the request of the client and that no responsibility is being undertaken with respect to the said information by the bank. The email appears to have been sent by Mr. Govind Wadkar, whose designation is mentioned as director. The said email is also usefully reproduced as under:-



4. Further, pursuant to the directions of this Court, Mr. Jatin Rawal, General Manager, Public Accounts Department, RBI is also present in the Court along with his legal advisor.

5. Mr. Rawal, has confirmed that no monies have been received into the account of the Prothonotary & Senior Master of this Court, whether Rs. 10 Crs that were purportedly transferred on 31st May, 2024 or the second Rs.

10 Crs purported to be transferred on 5th July, 2024. Mr. Rawal, has also explained that normally the NEFT numbers are generated by the concerned bank pursuant to an application by the customer and at a time when the transaction is being executed, there is a UTR number also that is generated.

6. In the present case before the Hon'ble Supreme Court as well as this Court, it has been stated on oath and also submitted through Counsel which has been recorded in the orders of both the Hon'ble Supreme Court and this Court that the said payments had been made by NEFT.

7. This Court, therefore, kept back the matter, so as to get assistance on whether the NEFT has been executed and whether there was a UTR code generated and therefore the concerned official of the Sawantwadi Urban Co-operative Bank, Mr. Govind Wadkar, was directed to be available online to explain the same.

8. After a while i.e. at 11.30 a.m., Mr. Govind Wadkar came online, however, he was unable to throw any light on the specific questions with respect to the above and sought some time in the matter, submitting that he was not the one who had executed the transactions and the same were being executed through the bank in Thane.

9. This Court therefore put it to Mr. Rawal of the RBI, whether he would like to add anything to the answers given by Mr. Govind Wadkar and Mr. Rawal submitted that he would not like to add anything more than what he has already submitted.

10. Mr. Viraj S. Rane, Clerk, from the office of the Prothonotary & Senior Master is present in the Court and he has confirmed that since no payment had been received on 31st May, 2024, a certificate of Non-Deposit dated 31st July, 2024 has been issued. That as regards the second transaction of Rs. 10 Crs, no certificate has been issued as it has been recorded in the order dated 11th July, 2024 that the

Applicant has received the money, however, submitting that neither the first payment of Rs. 10 Crs nor the second purported payment of Rs. 10 Crs has been received in the account of the Prothonotary & Senior Master of this Court, maintained with the RBI.

11. The Respondent is present in the Court pursuant to the directions of this Court. Mr. Parekh, learned Counsel for the Respondent, on instructions, submits that the Respondents would in view of the above circumstances make payment of the amount of Rs. 20 Crs by 9th August, 2024 by way of Demand Draft of Rs. 20 Crs and that the statement may be accepted as an undertaking to this Court.

12. Mr. Khandekar, learned Counsel appearing for the Applicant, firstly, submits that from the events that have transpired, it is clear that the conduct of the Respondents is deliberate, contumacious and egregious and be met with the strictest punishment and apart from punitive orders with respect to the breaches of the orders of this Court, the payment of Rs. 20 Crs by Demand Draft offered to be paid by the Respondent by 9th August, 2024 ought to be in the name of the Applicant. Mr. Khandekar further submits that the amount of Rs. 2,00,70,121/- lying in the following accounts also be directed to be transferred to the account of Applicant:

- 1.Axis Bank Account No. 921010013529564 – Rs. 26,14,530*
- 2.ICICI Bank Account No. 333701501301- Rs. 1,38,809/-*
- 3.ICICI Bank Account No. 344901000352- Rs 27,79,228/-*
- 4.ICICI Bank Account No. 344905500008-Rs. 94, 042/-*
- 5.ICICI Bank Account No. 3122401500240- Rs. 26,574/-*
- 6.HDFC Bank Account No.50100677161031-Rs. 1,64,16,938/-*

13. Mr. Parekh, learned Counsel for the Respondent, has in anticipation of orders of this Court, offered to this Court, that his client, the Respondent, would attend to the office of the Prothonotary & Senior Master of this Court at 11.00 am

and mark his presence everyday.

14. I have heard the learned Counsel and also the officials of the RBI, and the Bank.

15. On 31st July, 2024, the following order was passed:-

“1. Pursuant to the order dated 11 July 2024, today when the matter was called out in the morning session, this Court was informed by Mr. Khandekar, learned Counsel for the Award Creditor that none of the two payments of Rs.10 Crore have been received in the account of the Prothonotary & Senior Master of this Court and that the Judgment Debtor has played a fraud. Accordingly, this Court had kept back the matter for the Judgment Debtor to remain present in Court in the afternoon session. Mr. Khandekar has also tendered across the bar a certificate of non-deposit from the Prothonotary & Senior Master as regards, the non-deposit of Rs.10 Crores that was due by 31st July 2024.

2. In the afternoon session, when the matter is called out, Mr. Parekh, learned Counsel appears for the Judgment Debtor and seeks to tender across the bar a communication from the Judgment Debtor seeking indulgence on humanitarian grounds for not being able to remain present in the Court today afternoon. Mr. Parekh also submits that Section 34 Application challenging the Award has been withdrawn by the Judgment Debtor and that he has sought time to settle the matter after the RBI responds to their communication and follow-ups as pursuant to the letter dated 19th July 2024 whereby on behalf of the Judgment Debtor, the RBI has been requested to, with extreme urgency, ascertain as to why the two payments by NEFT amounting to Rs.20 Crores are not traceable or available in the account of the Prothonotary & Senior Master, High Court, Bombay. Mr. Parekh also seeks to tender across the bar two Affidavits both dated 22nd July 2024 of two persons who have respectively sought to transfer Rs.10 Crores each, one on 31st May 2024 and the other on 5th July 2024 on

behalf of the Judgment Debtor in the account of the Prothonotary & Senior Master with the RBI. Mr. Parekh submits that although the said amounts have been debited from the respective accounts, they are not traceable and the RBI is in the process of investigating the same.

3. Mr. Khandekar, learned Counsel for the Award Creditor submits that since the Application under Section 34 of the Arbitration and Conciliation Act, 1996 has been withdrawn, this Court consider passing further orders in execution, so that the amounts due under the Award are recovered.

4. Be that as it may, this Court is deeply concerned that the monies that have been sought to be transferred to the account of the Prothonotary & Senior Master by way of NEFT have not been credited into the said account and therefore, this Court deems it appropriate to issue notice to the General Manager of the Public Accounts Department of the RBI to attend this Court on 6th August 2024 at 10.30 a.m. and to give an update in the matter and as to when the monies would be credited to the account of the Prothonotary & Senior Master of this Court.

5. Let the Judgment Debtor positively remain on the next date, failing which this Court will pass necessary orders to secure his presence.

6. Stand over to 6th August 2024 at 10.30 a.m. on supplementary board.”

16. As can be seen, this Court was deeply concerned with respect to the monies that had to be transferred to the account of Prothonotary & Senior Master by way of NEFT and which had not been credited to the said account with the RBI and therefore, this Court had issued notice to the General Manager of the Public Accounts Department of the RBI to attend this Court and to give an update in the matter and as to when the Rs. 20 Crs would be credited into the account of the Prothonotary & Senior Master of this Court.

17. From the above submissions, it is clear that the monies purported to be transferred by NEFT into the account of Prothonotary & Senior Master with the RBI have neither been credited into the account nor have such monies even been received by the RBI. Prima facie it also appears that although the NEFT numbers have been given by the drawer's bank viz. the Sawantwadi Urban Co-operative Bank, but the transactions have not been executed as there is no UTR code or number. Although in the email dated 6th August, 2024, from the bank to the Advocate for the Respondent, there is a mention of the UTR number but it is mentioned alongwith the NEFT number and which number is statedly the same. This Court has shown the said email to Mr. Rawal, the General Manger of the RBI, who has clarified that it cannot be the same number. Therefore, it appears that the said reference as "1. रु. ३१ मे २०२४ रोजी 10,00,00,000/-; (रुपये फक्त दहा कोटी)(;UTR क्रमांक: NEFT/PROTHO/NB24152398731), 2. रु. 5 जुलै 2024 रोजी 10,00,00,000/-;(रुपये फक्त दहा कोटी)(;UTR क्रमांक : NEFT/PROTHO/NB24604759182)" appear to be misleading.

18. For want of better words this is serious and cannot be taken lightly. This court is aware that these are execution proceedings where the Respondent has agreed to make payment of approximately Rs.50 Crs to the Applicant under the Consent Terms filed before the Hon'ble Supreme Court and also this Court in which, as stated on oath before the Hon'ble Supreme Court and recorded in the orders of the Hon'ble Supreme Court Rs. 10 Crs had purportedly been deposited with the Prothonotary & Senior Master on 31st May, 2024 and later on under the same consent terms, modified by consent of the parties another Rs. 10 Crs were purportedly deposited in the account of the Prothonotary and Senor Master on 5th July, 2024, by two individuals : Mr. Dipak Krushna Jadhav, has confirmed on oath by affidavit

dated 22nd July, 2024 that NEFT payment of Rs. 10 Crs has been made to the account of the Bombay High Court on 31st May, 2024 and has given the transaction details in paragraph 2 of the said affidavit as under:-

“2. Details of transaction:

** Account Name : 8443 Prothonotary & Senior Master, High Court, Bombay.*

**Bank Name and Branch: RBI, Mumbai
Regional Office, S. B. Singh Road, Fort, Mumbai-400 001*

** Account Type: Personal Ledger Account*

**Account No. :01514601100*

**IFSC Code: RBISOMBPA04*

**UTR No. : NEFT/PROTHO/NB2415298731”*

19. The purpose of the payment is mentioned in the said affidavit as payment being made on behalf of Mr. Harshawardhan Sabale viz. Respondent in the matter in compliance with his matter involving Mr. Cherag Shah viz. Applicant in this matter.

20. In paragraph 5 of the said affidavit there is a confirmation and undertaking that the payment has been duly made and that the affidavit is to be treated as an official undertaking from the deponent confirming the payment. The said affidavit has been verified and notarized by a Notary from Sindhudurg.

21. A similar affidavit dated 22nd July, 2024, has been given by another individual by the name Kishor Arjun Jadhav that on 5th July, 2024 NEFT payment of Rs. 10 Crs was made to the account of the Bombay High Court with the following details:-

“Amount : Rs. 10,00,00,000/- (Rupees Ten Crores only)

** Account Name : 8443 Prothonotary & Senior Master, High Court, Bombay.*

**Bank Name and Branch: RBI, Mumbai
Regional Office, S. B. Singh Road, Fort, Mumbai-400 001*

** Account Type: Personal Ledger Account*

**Account No. :01514601100*

**IFSC Code: RBIS0MBPA04*

**Date of Payment : 5th July 2024*

**UTR No. : NEFT/PROTHO/NB24604759182”*

22. That the purpose of the payment was on behalf of the Respondent for compliance in the matter with the Applicant. In this affidavit it has also been stated that the payment has been made into the High Court account from the deponent's account bearing No. 0020005090000035 with the Sawantwadi Urban Co-Op Bank Ltd., Sawantwadi. The said affidavit has also been verified and notarized by a Notary in Sindhudurg.

23. The email dated 2nd August, 2024 from the bank as quoted above and the email dated 6th August, 2024 also quoted above, clearly suggest that the transactions in respect whereof the aforesaid two affidavits have been furnished are doubtful requiring further investigation by an independent agency.

24. This Court, therefore, enquired from Mr. Rawal, General Manager of the RBI, whether the RBI can undertake the investigation. Mr. Mahanta, Deputy Legal Advisor of the RBI informs this Court that the RBI only has supervisory powers to carry out sample inspections under Section 35A of the Banking Regulation Act, 1949 but does not have the power to carry out investigation into fraudulent transactions.

25. This Court therefore sought to peruse Section 35A of the Banking Regulation Act, 1949 which is usefully quoted as under:-

“35-A. Power of the Reserve Bank to give directions.-

(1) Where the Reserve Bank is satisfied that-

(a) in the public; or in the interest of banking policy; or

(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interest of the

banking company; or

(c) to secure the proper management of any banking company generally, it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.”

26. A perusal of the aforesaid Section makes it clear that where the RBI is satisfied in public interest or in the interest of banking policy or to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company or to secure the proper management of any banking company considers that it is necessary to issue directions to the banking company (ies) it may, issue such direction(s) as it deems fit, and the banking company(ies) shall be bound to comply with such directions.

27. Section 56 of the Banking Regulation Act, 1949, provides that the Banking Regulation Act shall apply to co-operative societies with the modifications mentioned therein. In other words, the Banking Regulation Act, 1949 also applies to co-operative banks of the nature of Sawantwadi Urban Co-operative Bank.

28. From the aforequoted email of 2nd August, 2024 purportedly from the branch manager of the said co-operative bank, it appears that the bank is already under directions issued under Section 35A read with Section 56 of the Banking Regulation Act, 1949 and that it has been stated in the said mail that with effect from 14th June, 2023 there

have been no RTGS / NEFT transactions allowed by the bank with any customer of the bank. It, therefore, prima facie appears that the affidavits filed by Mr. Dipak Krushna Jadhav and Kishor Arjun Jadhav are false as there is a clear contradiction in view of the said email of the Bank, which position of non deposit / non receipt has also been confirmed by the office of the Prothonotary & Senior Master as well as the Applicant.

29. While the RBI can continue to monitor the compliance of directions given under Sections 35A read with 56 of the Banking Regulation Act, 1949 with respect to the Sawantwadi Urban Co-operative Bank, this Court is of the view that the matter with respect to the purported payments of Rs. 10 Crs. on 31st May, 2024 and 5th July, 2024 requires to be investigated by the police authorities.

30. Let the police authorities register a First Information Report in this matter at the instance of the Applicant, within a period of two weeks and thereafter the investigation be preferably completed within a period of three months, keeping in mind the above prima facie observations of this Court and submit report to this Court in addition to taking steps as per law including filing of chargesheet against concerned persons.

31. The Respondent, Mr. Harshawardhan Hanmant Sabale, to furnish an undertaking to this Court that he would make the payment of Rs. 20 Crs by way of Demand Draft in the name of the Applicant viz. Cherag Shah by 9th August, 2024. In addition, the Respondent to also undertake that he would not leave the Mumbai city under any circumstances and remain present in the Court on every date when the matter is called out. Let the said affidavit/undertaking be furnished during the course of the day.

32. Let the amounts lying in the banks accounts mentioned in paragraph 12 above be transferred to the

account of the Applicant within a period of two weeks upon a communication being addressed in this behalf by the Applicant to the said banks.

33. While this Court appreciates the assistance rendered by the RBI officials, this Court directs them to remain present on the next date as well, with an update, if any, in the matter.

34. List on 9th August, 2024. However, Mr. Parekh, learned Counsel for the Respondent requests that the matter be listed at 02:30 p.m. on the said date. Accordingly, list on 9th August, 2024 at 2.30 p.m., when this Court will also consider passing appropriate orders with respect to the breach of the orders of this Court including under the Contempt of Courts Act, 1971 as well as under Article 215 of the Constitution of India.

35. All to act on an authenticated copy of this order.”

6. From the aforesaid facts and the series of orders passed by this Court, it prima facie appears that the Respondent has not only disobeyed the orders of this Court but has also defrauded this Court as well as the Hon’ble Supreme Court and also failed to comply with the undertaking given to this Court and that his conduct is contumacious and egregious.

7. As can be seen, on 6th August 2024, this Court had recorded that this Court would consider passing appropriate orders with respect to the breach of the orders of this Court including under the Contempt of Courts Act, 1971 as well as under Article 215 of the Constitution of India.

8. The orders clearly bear out that neither Rs.10,00,00,000/-, as claimed to be deposited by the Respondent on 31st May 2024 before the Hon’ble Supreme Court as well as this Court has been deposited, nor the Rs.10,00,00,000/- claimed to have been deposited pursuant to the Consent Terms filed in this Court, as modified by

orders by consent and claimed to be deposited on 5th July 2024, has been deposited as that could not have been deposited, as is clearly borne out from the above facts. There was an undertaking given to this Court on 6th August 2024 that a demand draft of Rs.20,00,00,000/- in favour of Mr.Cherag Shah, the award creditor, would be presented before this Court on 9th August 2024 at 2.30 p.m., which undertaking has also admittedly been breached, as even at 4.39 p.m., there is no sign of the demand draft and the learned Senior Counsel appearing for the Respondent fairly submits that the said demand draft is not in place.

9. That being the position, the above facts, prima facie demonstrate that the Respondent has committed contempt of this Court.

10. Just when this order is being dictated and this Court was considering the provisions of the Contempt of Courts Act as well as Article 215 of the Constitution of India and the connected High Court Rules, Mr.Kamat, learned Senior Counsel for the Respondent, submits that he be given an opportunity to confer with his client to take appropriate instructions.

11. After Mr.Kamat has conferred with his client and taken instructions in the matter, Mr.Kamat submits that he has put to his client to given an undertaking to the Court which would be honoured and not like the ones given earlier and submits, on instructions, that if time be given till Monday, 12th August 2024, 4.30 p.m., his client would make good the payment. Mr.Kamat submits that the Respondent would furnish a fresh undertaking seeking extension of time to make the payment of Rs.20,00,00,000/- to the Applicant by 4.30 p.m. on Monday, 12th August 2024.

12. Mr.Khandekar, learned Counsel for the Applicant, vehemently opposes any request for time, submitting that the conduct of the Respondent, thus far, in no way inspires any confidence that he would honour his commitment even

by Monday, 12th August 2024 and that this Court apart from issuing show cause notice under the Contempt of Courts Act, can immediately commit the Respondent to civil prison under Order XXI Rule 40(2) of the Code of Civil Procedure, 1908, (“CPC”) in as much as the notice under Order XXI Rule 37 of the CPC was issued pursuant to order dated 11th March 2024 and that the current chain of events clearly demonstrate that the Respondent has not been able to explain as to why he should not be committed to civil prison in execution of the award and the subsequent Consent Terms.

13. Mr.Khandekar also points out that even if a show cause notice is issued under the Contempt of Courts Act, pending determination of the charge, this Court can also direct the Respondent to be detained in such custody, as it may specify.

14. I have heard the learned Counsel and also considered the submissions. From the aforesaid facts, as noted above, prima facie the conduct of the Respondent appears to be deliberate, willful and contumacious. However, despite the aforesaid finding, just so as to honour the request made by Mr.Kamat, learned Senior Counsel appearing for the Respondent, to give time to the Respondent till 4.30 p.m. on Monday, 12th August 2024, this Court deems it appropriate to list the matter on Monday, 12th August 2024, at 4.30 p.m. Let the undertaking as submitted by Mr. Kamat, learned Senior Counsel be furnished today itself.

15. Even though this Court, in view of the submissions made by the learned Senior Counsel, is granting time to the Respondent to make payment of Rs.20,00,00,000/- in the name of the Applicant by Monday, 12th August 2024, in view of the breaches of the orders of this Court and prima facie contumacious and egregious conduct of the Respondent, as described above, this Court is inclined to issue show cause notice under the Contempt of Courts Act.

16. However, just as this part of the order has been dictated, Mr.Kamat, learned Senior Counsel for the Respondent, urges this Court to postpone the issuance of the show cause notice till Monday, 12th August 2024, in as much as, the learned Senior Counsel believes that one last opportunity be granted to the Respondent to purge the contempt.

17. Therefore, only by way of sheer indulgence to the learned Senior Counsel this Court postpones the issuance of show cause notice under the Contempt of Courts Act till Monday, 12th August, 2024. List on **12th August 2024 at 4.30 p.m.**

18. The Respondent is also directed to remain present in Court on the next date. The Reserve Bank of India officials as well as the officials of the Sawantwadi Urban Co-operative Bank Officials also to remain present on the next date.”

iii. This Court had accordingly recorded that in the facts of the case, prima facie there was contempt of this Court committed by the Respondent. Thereafter, only to give one last indulgence at the request of the learned Senior Counsel then appearing for the Respondent in the matter, as recorded in the said order dated 9th August, 2024, this Court had posted the matter today at 4.30 p.m. However, despite a second undertaking dated 9th August, 2024, to this Court to make payment of Rs. 20 Crs in favour of the Award Creditor and to remain present in this Court at 4.30 p.m. today and not to leave the jurisdiction of the municipal limits of Mumbai, the Respondent has breached the undertaking and this time in toto.

iv. On 9th August, 2024, as noted in the order reproduced above, this Court was inclined to issue a show cause notice against the Respondent under the Contempt of Courts Act but only at the request of learned Senior Counsel appearing for the Respondent to grant one last opportunity to the

Respondent to purge his contempt, this Court had granted indulgence and postponed the issuance of show cause notice till today.

v. Accordingly, having inter alia noted that even the undertaking given on 9th August, 2024 to make the payment of Rs. 20 Crs and not to leave the jurisdiction of this Court and also to remain present on every date when the mater is listed, has been breached, this Court deems it appropriate to direct the Registry to issue a show cause notice under the Contempt of Courts Act, 1971 in Form I as provided in the High Court Rules, to appear before this Court on 26th August, 2024 and to show cause as to why he should not be punished with maximum punishment of imprisonment and fine, in accordance with the Contempt of Courts Act, 1971.

vi. Let the Respondent positively remain present in the Court on the next date, when this Court will also consider the submissions made on behalf of the Applicant urging this Court to pass appropriate orders under Order 21 Rule 40 (2) and order 21 Rule 41 (3) of the Code of Civil Procedure, 1908.

vii. Let the Demand Draft of Rs. 2 Cr., copy whereof is at page 39 of the affidavit of the Respondent dated 12th August, 2024, as in the name of Prothonotary & Senior Master be deposited with the Prothonotary & Senior Master by the end of tomorrow.

viii. Let Mr. Sharma take instructions as to when the balance amount would be deposited in Court.

ix. Let a response to the Respondent's affidavit dated 12th August, 2024 be filed by the Applicant by the next date.

x. Let Mr. Sharma file his vakalatnama within a period of one week.

*xi. List on **26th August, 2024 First on Board.***

6. The aforesaid series of orders indubitably demonstrate the egregiously recalcitrant, grossly disobedient, contumacious and contemptuous conduct of the Respondent and therefore, this Court on the basis of *prima facie* findings as recorded in these orders had directed issuance of notice under the Contempt of Courts Act, 1971. It is, therefore, unfathomable that the authorities of the Small Causes Court at Bandra and the District and Sessions Judge at Pune have casually and without any seriousness of the matter not even cared to effectively respond to even the reminder sent by the High Court of the State under which these courts function.

7. Accordingly, this Court is compelled to institute an enquiry into the matter to be headed by the learned Prothonotary and Senior Master of this Court to furnish a report as to why till date the show cause notice issued by this Court under the Contempt of Courts Act, 1971 has not been served upon the Respondent despite his egregiously recalcitrant, grossly disobedient, contumacious and contemptuous conduct.

8. Let the Prothonotary and Senior Master of this Court take all necessary steps as required under law to conduct a detailed enquiry

into the matter and furnish a detailed report to this Court within a period of two weeks.

9. However, notwithstanding the aforesaid inquiry, in view of the egregiously recalcitrant, grossly disobedient, contumacious and contemptuous conduct of the Respondent and continued audacious breaches not only of the directions of this Court but also of the undertakings given to this Court, despite advice of the Respondent's Advocate to the Respondent as noted above to remain present before this Court, this Court directs the issuance of non-bailable standing warrant of arrest against the Respondent to be arrested as and where found and his presence be secured in this Court on 18th September 2024 at 10.30 a.m. without fail.

10. A copy of this order be forwarded to the Director General of Police, State of Maharashtra as well as the Commissioner of Police, Mumbai and Pune for ensuring the execution of the warrant.

11. All concerned to act on an authenticated copy of this order.

12. Mr. Khandekar for the Applicant further requests that the amount of Rs.2 Crores deposited in the account of the Prothonotary and Senior Master of this Court at the behest of the Respondent be allowed to be withdrawn by the Applicant. Mr.Sharma raises no objection. The Prothonotary and Senior Master is accordingly directed to permit the withdrawal of Rs.2 Crores alongwith accrued interest upon an Application made in this behalf.

13. List on **18th September 2024, First on board.**

KANCHAN
PRASHANT
DHURI

Digitally signed
by KANCHAN
PRASHANT
DHURI
Date: 2024.09.13
12:26:48 +0530

(ABHAY AHUJA, J.)