IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL(L) NO.9162 OF 2026

WITH

INTERIM APPLICATION(L) NO.9179 OF 2026

Sailam B.V.B.A.]
A registered partnership firm,]
Having its office at Hoveniersstraat,]
2-8, 4th Floor, office No.439 2018]
Antwerpen Bus-337, Belgium]
(through its Partner Mr. Kanwal Shah)] … Appellant/
Judgment Creditor

V/s.

1. Helios Jewelry Pvt Ltd]
A Private Limited Company]
incorporated under the]
Companies Act, 1956, having its]
office at 324, Surat Trade House]
Unapani Road, Surat 395001 and]
office at 7 Pratik Arcade, Tata]
Road No.2, 1st Floor, Opera]
House, Mumbai – 400 004]
2. Hayagriv Ashok Jogani]
3. Aditya Ashok Jogani]
4. Vikram Ashok Jogani]
5. Ashok Jogani (since deceased)]
All of Mumbai Indian inhabitants]
residing at 61/A, 6th Floor,]

Tahnee Heights Building D, Petit]
Hall, Nepean Sea Road]
Mumbai – 400 006.] … Respondent Nos.1-5/ Judgment Debtors

6. Kailash Ashok Jogani]
of Mumbai Indian Inhabitant]
residing at 61/A, 6th Floor]
Tahnee Heights Building D, Petit]
Hall, Nepean Sea Road]
Mumbai – 400 006.] … Respondent/ Garnishee

Mr. Archit Jayakar a/w Mr Kshittij Abbhi i/by Jayakar & Partners for the Applicant/Appellant.
Mr. Ashish Kamat, Senior Advocate a/w Mr. Aseem Naphade, Ms. Kausar Banatwala, Ms. Riya Thakkar, Mr. Dhaval Gandhy, Mr. Sanjay Maji i/by Mr. Tushar Goradia for the Respondent & Garnishee.

CORAM : A. S. GADKARI AND KAMAL KHATA, JJ.
RESERVED ON : 6th August, 2026.
PRONOUNCED ON : 20th August, 2026.

JUDGMENT (Per : Kamal Khata, J) :-

1) The Appellant is aggrieved by the Order dated 6th March, 2026, passed in Chamber Summons No.66 of 2019 in Execution Application No.1271 of 2015, whereby the Appellant's Application seeking to recover a sum of Rs.4,00,36,551/- from Respondent No.6-Garnishee, was dismissed.

2) Mr. Jayakar on behalf of the Appellant, contended that, the issue arising for our determination is whether a debt existed between the Garnishee (Judgement debtor's mother) and the Judgement Debtor on the

date of the Decree i.e. 20th August 2014. He narrated the facts of the matter and took us through the various dates and events to submit that, the Respondent No.2-Debtor owed a sum of money to the Appellant prior to 5th December, 2011, on which date the Summary Suit was filed. By an order passed on 6th March, 2014, the Respondent No. 2 was directed to pay the entire principal amount of Rs.3,76,85,654/- as a condition precedent for granting leave to defend the Summary Suit. The Appellate Court reduced the payment to 25% of the principal amount and the Supreme Court dismissed the Special Leave Petition (SLP) therefrom. Thus, confirming the payment of 25% of the principal sum. Since even this amount was not paid, the Appeal was dismissed and the Summary Suit was decreed for a sum of Rs.3,76,85,654/- together with interest at 18% per annum on 20th August, 2014.

3) Mr. Jayakar submitted that the Respondent No.2 (Judgement Debtor) who claims to have advanced a loan to his mother, Respondent No. 6, had mischievously and with a view to deprive the Appellant of his rightful dues, claimed to have *written off* the loan on 1st April, 2014. Notably, this was done immediately after the conditional leave order dated 6th March 2014. He therefore submitted that the entire defence set up by Respondent No.2, backed by his mother Respondent No.6–the Garnishee, was fraudulent. He further submitted that a decree passed is nothing but the Court granting its imprimatur to the debt claimed to be due and payable by the debtor. Thus,

the decree, though granted later, would relate back to the date of institution of the suit. Consequently, the *writing off* of the debt on 1st April 2014 would be of no relevance and cannot be construed so as to deprive the Appellant of the right to contend that the debt was due from the Garnishee both on the date of filing of the suit and on the date of passing of the conditional order of deposit.

4) He drew our attention to the Affidavits of Disclosure, particularly the third, wherein for the first time, it was mentioned that the loan had been *written off.* On comparing this Affidavit with various other Affidavits filed by Respondent No.6-Garnishee and Respondent No.2, he submitted that the stand taken was that, the loan was 'capitalized', meaning that the interest was added to the admitted debt giving rise to a new outstanding amount that included principal and interest. The Income Tax Returns filed as on 20th March, 2015, for the Assessment Years 2013-14 and 2014-15 clearly evinced that the loan was outstanding notwithstanding the assertion that it had been written off. Thus, the Income Tax Returns for Assessment Year 2015-16 filed on 17th May, 2016, that is, almost two years after the Decree were irrelevant for ascertaining whether the debt was indeed *written off* on 1st April, 2014. It in fact indicates a miscalculated move that evidently indicates the attempt to deprive the Appellant of his rightful dues. In these circumstances, the contradictions evident on a comparison of the income tax records and the contention of the Appellant, certainly aroused a

reasonable doubt and therefore, the learned Judge ought therefore to have relegated the parties to a trial by framing an issue in that regard.

5) He relied upon the Judgment in *Jatin Keshruwala vs. Dag Creative Media* reported in *2019 SCC Online Bombay 1346,* wherein the Court held that, when a Decree Holder is seeking an Order against the Garnishee, the Court has to ascertain whether the debt is actually due and payable by the Garnishee to the Judgment Debtor.

6) Mr. Jaykar then placed reliance on the Judgment in *Global Trust Bank Vs. Fargo Freight Limited* reported in *AIR 2002 Del 13,* wherein the Delhi High Court held that, even if there is a reasonable doubt about the debt payable by the Garnishee to the debtor, the matter should be tried like a Suit.

7) He also relied upon *Mackinnon Mackenzie & Company Private Limited Vs. Anil Kumar Sen & Anr.* reported in *AIR 1975 Cal 150,* wherein the Calcutta High Court held that, a Garnishee proceeding under Order XXI Rule 46 of the Civil Procedure Code is akin to the proceedings under Order XII Rule 6 of the CPC, which provides for a Judgment / Decree on admission. It further held that, where a claim by the Garnishee is bonafide and the dispute is not frivolous, the matter should be tried like a Suit.

8) In view of the above he prayed that the impugned Order be set aside and the parties be relegated to a trial by framing the issue.

9) Mr. Kamat learned senior counsel appearing on behalf of the

Respondent No. 2 and 6, submitted that the Appellant has waived his right to go for trial and therefore cannot fault the Judge for dismissing the Chamber Summons. He argued that the issue formulated by the Appellant was misconceived.

10) We have heard Mr. Jayakar for Appellant and Mr. Kamat for the Respondents and perused the entire record including the impugned Judgment.

11) We find merit in Mr. Kamat's contentions. The impugned Order does not merit any interference.

12) Mr. Jayakar's submission, that the learned Judge ought to have framed an issue on the basis that the transaction was shown to be suspicious and ought to have relegated the parties to a trial, has no bearing, since the Appellant elected to argue the matter on documents alone, without leading evidence. The relevant paragraphs are reproduced hereinbelow for ready reference:

> "9. Mr. Cama has submitted that the contention on behalf of the Respondents that this Court would have to adjudicate upon whether there has been a debt and whether the same was illegally written off on account of the declaration sought in prayer clause (a), is a complete bogey. He has submitted that this declaration had been sought on the basis of the Respondent No. 2 having stated in his third Disclosure Affidavit that the loan was written off. Such a declaration does not require evidence, but merely on the admitted facts on record, the declaration was sought to aid in issuing garnishee orders. He has submitted that even without such a prayer, this Court would have to determine and would in fact determine as to whether the defence of writing off is a *bona fide*,

real and actual defence. **He has submitted that this is not a matter that would require any evidence, as there is no dispute as to the fact that there was a loan, the loan was shown in the Books of Accounts and in the Income Tax Returns and the same has now been removed from the Income Tax Returns for the financial year ending 31st March 2014.** He has submitted that the only question that this Court would require to decide is whether there is any case of write-off pleaded and if so, can the same be believed given the facts and circumstances narrated.

47. **The Applicant has contended that there is no question of any evidence being required to ascertain whether there is debt in the present case as there is no dispute that there was a loan and that a debt exists.** It is further contended that the only defence of the Respondent No.2 in the pleadings is of capitalization of the loan. As has been held above the use of the word "capitalization" by Respondent No. 2, in the subsequent Affidavits is an obvious error given that the Applicant has not been able to establish that there was a loan agreement between Respondent No.2 and Respondent No.6 indicating the existence of any debt, the terms and conditions of such a debt, the rate of interest and / or period of repayment. Capitalization can only be if the interest charged on the loan is added back to the capital which is not case here. **Thus, the loan being written off would be the only plausible reason for the loan no longer appearing in the Income Tax Returns on 17th May, 2016 for Assessment Year 2015-16 i.e. for the year ending 31st March, 2014. Thus, there is misplaced reliance by the Applicant on Section 58 of the Indian Evidence Act, 1872 and the judgments in support of its contention that when there is an admission of a particular document or fact, there is a dispensation of proof in this regard.**"

(Emphasis supplied)

13) It is apparent from the above that the Appellant had conceded, before the learned Single Judge, that he did not wish to lead evidence. Such a concession is binding on the Appellant and he cannot be permitted to resile therefrom.

14) Thus, the learned Single Judge had accordingly considered this issue and thereafter dismissed it, drawing the conclusion that there was no merit in the Appellant's Application. In our view, the learned Single Judge has considered all the facts and the law in their correct perspective, and the same cannot be faulted.

15) In *Union of India vs. Ibrahim Uddin* reported in (2012) 8 SCC 148, particularly in paragraph 39, the Supreme Court held that a party who had ample opportunity to lead evidence before the first Court, but failed to do so or elected not to do so, cannot raise a plea regarding evidence in Appeal.

16) In the backdrop and facts of the present case, the Appellant's reliance on the Judgments in *Global Trust Bank Vs. Fargo Freight Limited* reported in *AIR 2002 Del 13, Mackinnon Mackenzie & Company Private Limited Vs. Anil Kumar Sen & Anr.* reported in *AIR 1975 Cal 150,* is misconceived and will be of no avail to him.

17) Since the Appeal was confined to this limited issue, we have not delved into other contentions advanced by the Appellant's Advocate.

18) In these circumstances, the Appeal is dismissed with no order as to costs.

19) In view of disposal of Appeal, Interim Application does not survive and is accordingly disposed off.

(KAMAL KHATA, J.) **(A.S. GADKARI, J.)**

20) At this stage, learned counsel appearing for the Appellant requested this Court to grant stay to the effect and implementation of the present Judgment so as to, enable him to test the correctness of the present Judgment before the Apex Court, however for the reasons stated in the Judgment, the said prayer is rejected.

(KAMAL KHATA, J.) **(A.S. GADKARI, J.)**