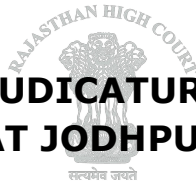




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**



S.B. Civil Writ Petition No. 9973/2022

CNR: RJHC010469112022 | URN: CW / 20293U / 2022

M/s. Rajlaxmi Pipes Pvt. Ltd., Through Its Director Ganpat Lal Dhoot S/o Lt. Sh. Ramakishan Ji, Having Its Registered Office At 23, Haji Street Line, Cheergarh, Jodhpur.

-----Petitioner

Versus

M/s Shri Polyplast, Through Its Proprietor Smt. Neeta Bhandari, Having Its Place Of Business At 30, Raj Sarovar, Pal Road, Jodhpur.

-----Respondent

For Petitioner(s) : Mr. Muktesh Maheshwari
For Respondent(s) : Mr. Ramit Mehta
Mr. Tarun Dudia

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable

DATE OF CONCLUSION OF ARGUMENTS : 13/07/2026
DATE ON WHICH ORDER IS RESERVED : 13/07/2026
FULL ORDER OR OPERATIVE PART : Full Order
DATE OF PRONOUNCEMENT : 05/10/2026

BY THE COURT:-

GREIVANCE

1. The instant writ petition under Articles 226 and 227 of the Constitution of India has been preferred on behalf of the petitioner assailing the order dated 11.05.2022 passed by the learned Commercial Court No.1, Jodhpur Metropolitan, in Civil Original Suit No.58/2021, whereby the learned Court below, while granting a



last opportunity to the petitioner to file its written statement on the same day, further directed the petitioner to furnish the particulars of its movable and immovable properties as also the details of the personal properties of its Director. The petitioner has also assailed the subsequent order dated 28.06.2022 passed by the learned Court below, whereby the right of the petitioner-defendant to lead its defence evidence was closed.

FACTS IN BRIEF

2. The concise facts of the case are that the respondent-plaintiff instituted a suit for recovery of Rs.49,06,062/- against the petitioner-company before the learned Commercial Court No.1, Jodhpur Metropolitan. The petitioner was proceeded ex-parte on 17.08.2021, whereafter its application under Order IX Rule 7 CPC was allowed on 19.01.2022 subject to payment of costs. Despite repeated applications seeking time to file the written statement on account of the illness of the petitioner's Director, the learned Court below, vide order dated 11.05.2022, granted a final opportunity subject to costs and directed disclosure of the movable and immovable properties of the petitioner-company and its Director, failing which the right to contest was to stand closed. The petitioner submitted its written statement along with an application under Sections 148 and 151 CPC on the same day and deposited the costs. However, vide order dated 28.06.2022, the learned Court below closed the petitioner's opportunity to lead defence and proceeded to record the plaintiff's evidence, giving rise to the present writ petition.



SUBMISSIONS ON BEHALF OF THE PARTIES

3. Learned counsel for the petitioner submitted that the learned Court below has acted with undue haste and committed manifest illegality in closing the petitioner's right to defend the suit. It was contended that the written statement had already been filed on 11.05.2022 along with an application under Sections 148 and 151 CPC, yet the learned Court below failed to take the same on record. It was further submitted that the direction requiring disclosure of the personal movable and immovable properties of the Director was wholly unwarranted and beyond the scope of the proceedings. He, thus, urged that the impugned orders dated 11.05.2022 and 28.06.2022 be quashed and the petitioner be afforded an opportunity to contest the suit on merits.

4. Per contra, learned counsel for the respondent opposed the submissions advanced on behalf of the petitioner and submitted that the petitioner was granted repeated and sufficient opportunities to file its written statement, but failed to avail the same within the prescribed period. It was further submitted that the impugned orders were passed in accordance with law and in the interest of expeditious disposal of the commercial dispute. It was, therefore, prayed that the writ petition, being devoid of merit, be dismissed.

CONSIDERATION BY THE COURT

5. Heard learned counsel appearing on behalf of the parties and perused the material available on record as well as gone through the orders passed by the Court below.



6. The controversy, in essence, revolves around the legality and propriety of the directions contained in the orders dated 11.05.2022 and 28.06.2022, whereby the petitioner-defendant was required to furnish an affidavit disclosing particulars of its movable and immovable properties and, upon failure to furnish such affidavit, its right to defend the suit was struck off.

6.1. It is not in dispute that the suit instituted by the respondent-plaintiff is a money suit for recovery of a sum of about Rs.49 lakhs. It is also borne out from the record that the petitioner-defendant had failed to file its written statement within the prescribed period and thereafter sought time for filing the same. The learned Trial Court, vide order dated 11.05.2022, permitted the written statement to be taken on record subject to costs. At the same time, placing reliance upon the judgment of the Hon'ble Supreme Court in **Rahul S. Shah v. Jinendra Kumar Gandhi & Ors.**, reported in (2021) 6 SCC 418, the learned Trial Court directed the defendant-establishment and its Director Shri Ganpat Lal Dhoot to furnish an affidavit disclosing particulars of all movable and immovable properties, with a stipulation that failure to comply with the said direction would entail the consequence of the defence being struck off.

SCOPE OF THE JUDGMENT IN RAHUL S. SHAH

7. The petitioner submits that the aforesaid direction travels beyond the scope of the judgment relied upon by the learned Trial Court. The submission deserves consideration. In *Rahul S. Shah* (supra), while dealing with the need to prevent delay and abuse of



the process of law, the Hon'ble Supreme Court observed that, in a suit involving a money claim, the Court may, on an application of the plaintiff or even on its own motion, in appropriate circumstances and in exercise of its inherent jurisdiction under Section 151 CPC, direct the defendant to provide security before further progress of the suit. The direction contemplated therein is, therefore, a direction relating to furnishing of security so as to safeguard the eventual fruits of the decree.

FURNISHING OF SECURITY AND DISCLOSURE OF ASSETS

7.1 The distinction between furnishing security and making a wholesale disclosure of assets cannot be lost sight of. A direction to furnish security is one thing; a direction requiring a defendant to disclose, on affidavit, each and every movable and immovable property owned by it is altogether different. The latter does not automatically flow from the former. The judgment of the Hon'ble Supreme Court cannot be read as conferring an unqualified power upon the Trial Court to compel disclosure of the entire asset position of a defendant in every money suit.

7.2 The power contemplated under Section 151 CPC is an inherent power and not an unrestricted power. It is to be exercised to secure the ends of justice or to prevent abuse of the process of the Court. Such power cannot be employed as a substitute for a statutory procedure where the Code itself provides the mechanism for protecting the subject matter or the eventual fruits of a decree.



DISCLOSURE OF THE DIRECTOR'S PERSONAL PROPERTIES

7.3 More importantly, the direction issued by the learned Trial Court is not confined to the assets of the defendant-establishment alone. The defendant in the suit is M/S Rajlaxmi Pipes Pvt.Ltd., whereas Shri Ganpat Lal Dhoot has been directed to disclose his personal movable and immovable properties as its Director.

7.4 A company, upon its incorporation, acquires a distinct legal personality of its own. It is a juristic person, separate and distinct from the natural persons who constitute or manage it. It can sue and be sued in its own name, can acquire and hold property, can incur liabilities and can enter into contracts and transactions independently of its shareholders or directors. The assets belonging to the company are, therefore, not the assets of its shareholders or directors merely by reason of their shareholding or office in the company. Likewise, the liabilities of the company cannot ordinarily be fastened upon the individual assets of its directors or shareholders merely because they happen to be in control or management of the company.

7.5 The distinction assumes significance in the present context. An individual may hold shares in more than one company and, at the same time, may possess properties and assets acquired by him from his own independent sources. Such individual properties do not, by that very fact, acquire the character of assets of the company in which he happens to be a shareholder or director. The corporate estate and the individual estate operate in two distinct legal spheres. What belongs to the company belongs to the



company; what belongs to the individual remains his individual property, unless, of course, the law otherwise provides upon the establishment of circumstances warranting such treatment.

Therefore, where the litigation is directed against the company as a defendant, any direction for disclosure of assets, if otherwise warranted in the proceedings, has necessarily to bear a rational nexus with the assets and properties of the defendant-company.

The mere circumstance that a particular individual is a director or shareholder of the defendant-company cannot, by itself, furnish a lawful basis for requiring disclosure of his personal assets as though those assets constituted the estate of the company.

7.6 The position may stand on a different footing at the stage of execution after the decree, depending upon the nature of the decree and the mode in which its enforcement is sought. This Court is not called upon, at this stage, to express any final opinion upon the rights of the decree-holder at the stage of execution or upon the circumstances in which the corporate veil may otherwise be lifted. The question presently under consideration is confined to the propriety of seeking disclosure of the personal assets of an individual in a proceeding in which the admitted defendant is the company.

7.7 There is yet another aspect which cannot be lost sight of. Where the purpose of directing disclosure or securing the property during the pendency of the suit is to ensure that the defendant does not defeat the eventual fruits of the litigation by alienating or dissipating its assets, the enquiry has to remain directed towards



the property of the defendant against whom the claim is pending. In the present case, admittedly, the defendant is the company and not its director in his individual capacity. The corporate entity cannot, for the purposes of such a direction, be casually substituted by the individual who happens to represent or manage it at the relevant point of time. The very nature of a company militates against such an approach. The constitution and management of a company are not immutable. Shares may change hands; shareholders may come and go; directors may be appointed, removed or replaced; yet the corporate personality continues unaffected. The identity of the company does not perish merely because the persons managing its affairs undergo a change.

7.8 The law recognises this distinction and provides its own mechanism for bringing on record the persons who, by virtue of subsequent events, acquire an interest in the subject-matter of the litigation. The principle embodied in Order XXII Rule 10 of the Code of Civil Procedure is illustrative of such recognition of devolution or change of interest during the pendency of proceedings. It would, therefore, be incongruous to proceed on the premise that the personal estate of the individual presently occupying the office of director forms part of the estate of the company. A director is an officer of the company; he does not, merely by occupying that office, become the owner of the assets of the company, nor do his personal assets become assets of the company.





7.9 The distinction between the juristic person and the natural person representing it is not a matter of mere technicality. It is a substantive principle forming the foundation of corporate personality and is recognised both by substantive law governing companies and by procedural law governing civil proceedings. A direction which disregards that distinction must, therefore, be supported by a specific legal foundation and cannot rest merely upon the circumstance that the individual happens to be a director of the defendant-company.

7.10 In the circumstances of the present case, where the defendant admittedly is the company, a direction requiring its present director, in his individual capacity, to disclose his personal assets for securing the claim against the company would, at this stage, amount to treating the individual estate and the corporate estate as one and the same. Such an approach cannot be sustained merely on the ground of the individual's present association with the company. In simple terms, people may come and people may go, but the company, as a juristic person, continues to exist and remains the same legal entity. It is that entity which is before the Court as the defendant and against which the claim is required to be considered. Consequently, so long as the proceedings are against the company and no legally sustainable basis is demonstrated for fastening the liability upon the individual in his personal capacity, the personal assets of its director cannot be directed to be disclosed as though they were the assets of the defendant-company.



7.11 Thus, a direction to the defendant to secure the claim may stand on a different footing; however, directing its Director to disclose his personal assets, without the plaintiff first laying the necessary foundation for such a course, would require a separate and independent justification. Such justification is conspicuously absent in the order under challenge.

REQUIREMENT OF FACTUAL FOUNDATION

7.12 It is equally significant that the exercise of such power cannot be founded merely upon the existence of a monetary claim. There must be some material before the Court to demonstrate the necessity for securing the eventual decree. The plaintiff seeking such protective relief must place before the Court the necessary facts and circumstances indicating that there exists a likelihood of the defendant disposing of or removing its property with an intent to obstruct or delay execution of the decree that may ultimately be passed.

7.13 A mere apprehension or the mere existence of a money claim, by itself, cannot justify compelling a defendant to place on record the complete particulars of all its movable and immovable properties. The underlying principle is that an extraordinary protective measure cannot be converted into a routine procedural requirement.

ANALOGY WITH ORDER XXXVIII RULE 5 CPC

7.14 The provisions contained in Order XXXVIII Rule 5 CPC furnish an instructive analogy in this regard. Where the plaintiff seeks attachment before judgment, the Court is not expected to



mechanically direct attachment merely because a monetary claim has been made. The plaintiff is required to place before the Court the necessary facts and circumstances indicating that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of the whole or any part of his property or is about to remove it from the local limits of the jurisdiction of the Court. The Court must thereafter apply its mind to the material placed before it and record the requisite satisfaction before directing the defendant to furnish security or taking consequential steps.

7.15 The same principle assumes significance while considering an order passed in exercise of inherent jurisdiction. The power of the Court to protect the eventual fruits of the decree is undoubtedly available in an appropriate case; however, the existence of such power does not dispense with the requirement of the circumstances warranting its exercise.

APPLICATION TO THE PRESENT CASE

7.16 In the present case, there is nothing on record to indicate that the respondent-plaintiff had pleaded or demonstrated any imminent danger of the defendant disposing of or removing its assets with an intent to defeat the execution of a decree that may ultimately be passed. Nor does the order dated 11.05.2022 record any satisfaction on the existence of such circumstances. The direction, therefore, appears to have proceeded primarily on the basis of the judgment in Rahul S. Shah (supra), without examining



whether the factual circumstances contemplated for exercise of such power actually existed in the present case.

7.17 The distinction assumes greater significance because even where the Court considers it necessary to protect the plaintiff's interest, the appropriate direction may be to furnish security commensurate with the claim or to furnish an appropriate guarantee, as the circumstances of the case may warrant. Such a course would stand on an entirely different footing from compelling the defendant, and more particularly its Director in his personal capacity, to furnish a complete inventory of his movable and immovable properties.

EFFECT OF THE CONSEQUENTIAL ORDER

7.18 A litigant cannot be deprived of his right to participate in the adjudication of a money suit merely because he has failed to comply with a direction which itself travels beyond the authority relied upon for its issuance. The right to defend a civil action, though subject to procedural discipline, cannot be curtailed by adopting a course which is not warranted by the governing provision or the judgment sought to be relied upon. The process of the Court ought to facilitate adjudication on merits and not become an additional source of prejudice to a party seeking to contest a monetary claim.

7.19 The consequence imposed by the subsequent order dated 28.06.2022 is consequently required to be examined in the light of the legality of the original direction. Once the direction to furnish such an omnibus disclosure of assets is found to be unwarranted,





the consequential order striking off the defence for non-compliance thereof cannot be permitted to survive.

CONCLUSION

8. This Court is, therefore, of the considered view that the direction contained in the order dated 11.05.2022 requiring disclosure of all movable and immovable properties of the defendant-establishment as well as the personal properties of its Director Shri Ganpat Lal Dhoot is not warranted in the facts and circumstances of the case and cannot be sustained merely by placing reliance upon the judgment passed by Hon'ble the Supreme Court in the case of Rahul S. Shah (supra). Had the learned Trial Court, upon recording the requisite satisfaction on the existence of circumstances warranting protection of the plaintiff's claim, directed the defendant to furnish appropriate security, the matter might have stood on a different footing. The direction actually issued, however, is of a materially different nature.

9. Consequently, the order dated 11.05.2022, to the aforesaid extent, as also the consequential order dated 28.06.2022, whereby the defence of the petitioner was struck off and the suit was directed to proceed without permitting the petitioner to participate in the proceedings, cannot be sustained and are liable to be set aside.

10. Accordingly, the writ petition is allowed. The impugned orders dated 11.05.2022 and 28.06.2022, to the extent challenged herein, are set aside. The petitioner-defendant shall be





permitted to contest the suit in accordance with law. The written statement filed on behalf of the petitioner-company shall be taken on record. The petitioner-company shall be permitted to lead its evidence and to contest and defend the suit in accordance with law. The learned Trial Court shall proceed further in the matter expeditiously, uninfluenced by any observation made herein on the merits of the substantive claim of either party.

11. It is, however, clarified that this order shall not preclude the learned Trial Court from passing an appropriate order in accordance with law, if the facts and circumstances so warrant, for safeguarding the eventual fruits of the decree.

12. Pending application(s),if any, are disposed of.

(FARJAND ALI),J

314/Mamta Tak