

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

APPEAL No. 716 OF 2014

IN
CHAMBER SUMMONS (L) No. 1850 OF 2014
IN
JUDGES ORDER No. 186 OF 2014
IN
CHAMBER SUMMONS (L) No. 1771 OF 2014
IN
EXECUTION APPLICATION No. 240 OF 2011
IN
FOREIGN AWARD DATED 17 JANUARY, 2011

Sharp Corp Ltd.

....Appellant
(Org. Applicant)

Vs.

Vitol S.A.

....Original Respondent/
Award Holder

And

Asian Natural Resources ((India)) Limited
(formerly Bhatia International Limited)

....Original Claimant/
Award Debtor

WITH

APPEAL (L) No. 2 OF 2015

IN
CHAMBER SUMMMONS (L) No. 1850 OF 2014
IN
JUDGES ORDER No. 186 OF 2014
IN
CHAMBER SUMMONS (L) No.1771 OF 2014
IN
EXECUTION APPLICATION No.240 OF 2011
IN
FOREIGN AWARD DATED 17TH JANUARY, 2011

Bhatia Industries & Infrastructure Limited

....Appellant

Vs.

Vitol S.A., and Ors.

....Respondents

WITH

APPEAL (L) No. 774 OF 2014

IN

CHAMBER SUMMONS (L) No. 1849 OF 2014

IN

EXECUTION APPLICATION No. 240 OF 2011

IN

FOREIGN AWARD DATED 17TH JANUARY, 2011

Asian Natural Resources (I) Ltd.
(Bhatia International Ltd.)

...Appellant/
(Org. Award Debtor)

Vs.

Vitol S.A. & Ors.

...Respondents

WITH

NOTICE OF MOTION (L) No. 33 OF 2015

IN

APPEAL No. 25 OF 2015

IN

CHAMBER SUMMONS (L) No. 1850 OF 2014

IN

JUGES ORDER No. 186 OF 2014

IN

CHAMBER SUMMONS (L) No.1771 OF 2014

IN

EXECUTION APPLICATION No. 240 OF 2011

IN

FOREIGN AWARD DATED 17.1.2011

Bhatia Global Trading Ltd.

...Applicant

In the matter between

Bhatia Global Trading Limited

...Appellant

Vs.

Vitol S.A. And Ors.

...Respondents

WITH

APPEAL No. 47 OF 2015

IN
CHAMBER SUMMONS (L) No. 1850 OF 2014
IN
JUDGES ORDER No. 186 OF 2014
IN
CHAMBER SUMMONS (L) No. 1771 OF 2014
IN
EXECUTION APPLICATION No. 240 OF 2011
IN
FOREIGN AWARD DATED 17th JANUARY, 2011

Asian Natural Resources (I) Ltd.
(Bhatia International Ltd.)

....Appellant
(Org. Award Debtor)

Vs
Vitol S.A. & Ors.

...Org. Respondent/
(Org. Award Holder)

And

Sharp Corp Ltd.

...Respondent
(Org. Applicant)

Mr. Mayur Khandeparkar a/w. Ms. Manisha Poladia i/b. Apex Law Partners for Appellant in Appeal (L) No.2 of 2015.

Mr. I.M. Chagla, Senior Counsel a/w. Mr. Prakash Shah a/w. Mr. Riyas Chagla a/w. Mr. Sanjay Agarwal a/w. Mr. H.K. Sudhakar i/b. Prompt Legal for Appellant in Appeal No. 716 of 2014.

Mr. Pradeep Sancheti, Senior Counsel a/w. Ms. Sneha Phene a/w. Mr. Hemant Telkar i/b. Haresh Mehta & Co. for Appellant in Appeal No. 25 of 2015.

Ms. Rupal Narielwala i/b. Gordhandas & Fozdar for Appellant in Appeal No. 42 of 2015 and Appeal No. 774 of 2015.

Mr. Darius Khambatta, Senior Counsel a/w. Mr. Zal Andhyarujina a/w. Mr. Aditya Krishnamurthy a/w. Ms. Ramya Dharmaraj i/b. Bose & Mira & Co. for Respondent No.1 in all Appeals.

Mr. Riyaz Chagla a/w. Mr. Sanjay Agarwal a/w. Mr. H.K. Sudhakar i/b. Prompt Legal for Respondent No.2 in Appeal No. 47 of 2015 and Appeal No. 25 of 2015

Ms. Meghna Kadeku i/b. M.V. Kini & Co. for Respondent No.3 Bommy

Trust in Appeal (L) No. 774 of 2014.

**CORAM : V. M. KANADE &
SMT. REVATI MOHITE DERE, JJ**

**Reserved on 10/02/2015
Pronounced on : 27/03/2015**

P.C. : (Per V.M. Kanade J.)

1. All these appeals can be disposed of by a common order since the Appellants/Sharp Corp Ltd are challenging the order passed by the learned Single Judge dismissing the Chamber Summons taken out by the Appellants/Sharp Corp Ltd and the other Appellants are challenging the said order either for the purpose of expunging the remarks made by the learned Single Judge against them or are challenging the said order on account of the observations made against them without giving them any opportunity of hearing and without directing Respondent/decreed holder to add them as party Respondents.

2. Brief facts which are relevant for the purpose of deciding these appeals are as under:-

3. Appellant/Sharp Corp Ltd. entered into Agreement on 17/09/2014 with foreign supplier for purchase of subject Indonesian steam coal consignment. It is the case of the Plaintiffs that the said Agreement with Bhatia Global Trading Limited ("BGTL") was subject to certain clauses and subject to payment of the amount by BGTL under the said contract. On 04/10/2014, Appellants/Sharp Corp Ltd.

entered into Charter Agreement with the Vessel owner. On 10/10/2014, Letter of Credit was issued by the State Bank of Mysore on behalf of the Appellants/Sharp Corp Ltd. for payment favouring foreign supplier under the said Agreement. On 13/10/2014, Insurance Policy was issued and on 15/10/2014 commercial invoice was issued by the foreign supplier. As per High Seas Sale Agreement dated 20/10/2014, rights and title of the goods would be transferred by the Appellants/Sharp Corp Ltd. to BGTL only after the full payment was made to them and Bills of Lading would then be endorsed in favour of BGTL. According to the Appellants/ Sharp Corp Ltd, BGTL also had executed a deed of pledge. Then, on 28/10/2014, extension to the Agreement dated 17/09/2014 with BGTL – cum – pledge deed was made. This showed that the Appellants/ Sharp Corp Ltd were the owners of the goods till realization of payment from BGTL. On 30/10/2014, freight was paid by the Appellants/ Sharp Corp Ltd. State Bank of Mysore, on behalf of the Appellants/ Sharp Corp Ltd remitted the entire amount of USD 1,719,965 to the foreign supplier. According to the Appellants/ Sharp Corp Ltd, in order to facilitate the discharge at port and custom related work, photocopies of all the Bills of Lading were endorsed in favour of the BGTL. According to the Appellants/ Sharp Corp Ltd, out total 22,900 MT, payment was received only in respect of 7000 MT and to that extent the Appellants/ Sharp Corp Ltd delivered original Bills of Lading and the balance 15900 MT was lying at the port and the original Bills of Lading are still in possession of the Appellants/ Sharp Corp Ltd.

4. On 10/11/2014, the impugned order was passed by the learned Single Judge, issuing a Judge's order 186/2014 issuing the precept under Section 46 of the Civil Procedure Code to District Judge at Morbi, Gujarat, on the basis of the Affidavit in support of the Chamber Summons 1771/2014 filed by the Award Holder. This precept was forwarded on 12/11/2014 and, thereafter, Chamber Summons for setting aside the order of precept and for other consequential reliefs was filed.

5. Mr. Iqbal Chagla, the learned Senior Counsel appearing on behalf of the Appellants/Sharp Corp Ltd. submitted that several documents which were produced by them clearly established that they were the owners of the said property and, therefore, the order issuing precept could not have been passed under Section 46 of the Civil Procedure Code by the learned Single Judge since the said property did not belong to the judgment-debtor. He submitted that the decree-holder obtained the said order only on the basis of entry in a private website. It is submitted that the Vessel was carrying 22900 MT of non coking coal and it was being received by Asian Natural Resources (Bhatia International).

6. The principal objection of the Appellants/ Sharp Corp Ltd is that, before passing the said order, the learned Single Judge ought to have satisfied herself that the said non coking coal belongs to the judgment-debtor – Bhatia International and not to anyone else.

7. The Appellants in other appeal, viz, Bhatia Global Limited

submitted that without making them party to the execution proceedings, the impugned order of precept under Section 46 of the Civil Procedure Code was passed and no opportunity was given to them to prove that they were separate entity, not connected with Bhatia International Limited which is now known as Asian Natural Resources (India) Limited. It is submitted that the learned Single Judge ought not to have pierced the veil and arrived at a conclusion that Bhatia Global and Bhatia International (Asian Natural Resources (India) Limited) was one and the same person. It is submitted that the observations made by the learned Single judge about Bhatia Global were unwarranted.

8. On the other hand Mr. Darius Khambatta, the learned Senior Counsel appearing on behalf of the Award Holder, submitted that the Appellants/Sharp Corp Ltd. had not come out with the case that they were owners of the goods. Secondly, he submitted that they had taken self-contradictory stand. He submitted that, at one stage, it was contended that the goods were pledged in their favour. He submitted that, thirdly it was argued that they had a lien over the goods and fourthly they contended that they were the owners of the said goods. He submitted that these pleas were self-contradictory pleas and the Appellants/Sharp Corp Ltd. were estopped from now raising these pleas. He then submitted that the ownership of the goods was not transferred in favour of Bhatia International (Asian Natural Resources (India) Limited). He submitted that there was no reason for the Appellants/Sharp Corp Ltd. to endorse the Bills of Lading in favour of Bhatia International. He submitted that this was

done only to defeat the claim of the Award Holder. Reliance has been placed on several judgments. Appellants and the Respondents made detailed submissions when the matter was argued at length.

9. In our view, it is not necessary to refer to all the judgments on which reliance is placed by the learned Counsels for the Appellants and Respondents. In the present case, the learned Single Judge has passed the impugned Judge's order and issued the precept under section 46 of the Civil Procedure Code. Section 46 of the Civil Procedure Code reads as under:-

“46. Precepts.- (1) Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree:

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.”

10. Perusal of the said provision clearly reveals that before issuing the precept under Section 46 of the Civil Procedure Code, Executing Court has to be fully satisfied that the goods in question are owned

by the judgment-debtor. However, if there is any manner of doubt about ownership of the said goods by the judgment-debtor, an order under Section 46 cannot be passed. In the present case, the learned Single Judge has proceeded to pass the impugned order without holding an inquiry about ownership of the said goods or without being fully satisfied that the goods were owned by the judgment debtor and not by anyone else and has arrived at a finding that Bhatia Global Limited and Bhatia International Limited (Asian Natural Resources (India) Limited) is one and the same party by allegedly piercing the veil. While doing so, admittedly, no notice has been issued to Bhatia Global Limited which is a Company incorporated under the provisions of the Companies Act. It is also quite well settled that exercise of piercing the veil has to be done only under certain circumstances as laid down by the Apex Court in series of judgments. Even assuming that the learned Single Judge was of the view that it was necessary to pierce the veil then notice ought to have been given to Bhatia Global Limited and only thereafter such a finding could have been given. The impugned order, therefore, is liable to be set aside on this ground alone.

11. Apart from that the Appellants/Sharp Corp Ltd have produced documentary evidence on record which prima facie establish their title on the goods which have been attached pursuant to the precept issued under Section 46 of the Civil Procedure Code issued by the learned Single Judge. The submission made by the learned Senior Counsel appearing on behalf of the Award Holder that the Appellants/Sharp Corp Ltd. has raised conflicting pleas and therefore

they are estopped from claiming that they are the owners of the said goods, is without any substance. It is well settled that the estoppel deals with questions of facts and not of rights. The Apex Court in *Chhaganlal Keshavlal Mehta vs. Patel Narandas Haribhai*¹ has held as under:-

“Estoppel deals with questions of facts and not of rights. A man is not estopped from asserting a right which he had said that he will not assert.”

Prima facie, in our view, Appellants/ Sharp Corp Ltd. have established that they are the owners of the said goods and not the judgment-debtor - Bhatia International Limited (Asian Natural Resources (India) Limited) or Bhatia Global. The learned Single Judge has committed a patent illegality and has committed an error of law which is apparent on the face of record. This Court is, therefore, entitled to interfere with the impugned order under Clause 15 of the Letters Patent.

12. The appeals are allowed and the impugned order dated 05/12/2014 passed by the learned Single Judge is set aside. Since the impugned order dated 05/12/2014 passed by the learned Single Judge is set aside, the question of expunging the observations made by the learned Single Judge does not arise.

13. All these appeals are accordingly disposed of in the aforesaid terms. Since the Appeals are disposed of, Chamber Summons and Notices of Motion taken out in these appeals are also disposed of.

[REVATI MOHITE DERE, J.]

[V. M. KANADE, J.]

1 AIR 1982 SC 121