

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

CHAMBER SUMMONS NO.282 OF 2013
IN
EXECUTION APPLICATION NO.157 OF 2014
IN
RECOVERY APPLICATION NO.ABHYUDAYA / 2312 OF 2002
ALONGWITH
CHAMBER SUMMONS NO.283 OF 2013
IN
EXECUTION APPLICATION NO.158 OF 2014
IN
RECOVERY APPLICATION NO.ABHYUDAYA / 2311 OF 2002

Abhyudaya Co- Op Bank Ltd. ... Applicant /
plaintiff.

Vs.

M/s. S S Ispat & Ors. ... Defendants

ALONGWITH
CHAMBER SUMMONS NO.284 OF 2013
IN
EXECUTION APPLICATION (L.) NO.660 OF 2011
IN
RECOVERY APPLICATION NO.ABHYUDAYA / 3042 OF 2002

Abhyudaya Co- Op Bank Ltd. ... Applicant /
plaintiff.

Vs.

M/s. Esskay Steel Traders & Ors. ... Defendants

Manoj Chatage, Adv. i/b. Nilesh Thakur, Adv. for applicant / plaintiff.
Mr. Sanjay Prabhu, Adv. for respondent No.3.
Mr. Rajendra Vora, Respondent No.3 present in Court.

CORAM : MRS. ROSHAN DALVI, J.

DATE : 9th July, 2015.

P.C. :

1. These Chamber Summonses are essentially for disclosure
of the assets and properties of the respondents / opponents /

judgment debtors. Respondent Nos.1, 1a, 1b and 2a to 2d who are the principal debtors have filed affidavits. They have disclosed office premises. Counsel on behalf of the applicant bank states that that premises is attached. Counsel on behalf of the applicant state that the disclosure made by the partners of respondent Nos.1 and 2 is complete. Hence there is no orders against respondent No.2.

2. Respondent No.3 is the guarantor. The proprietor of respondent No.3 Rajendra Vora is present in Court. Respondent No.3 has filed its affidavit of disclosure dated 9th June, 2015 and 15th June, 2015.

3. Respondent No.3 has a flat at 394 C, New Gupta Bldg.,1st Floor, Bhaudaji Cross Road, Matunga, Mumbai 400 019. It is stated to be a residential tenanted premises.

4. The proprietor of respondent No.3 had produced one rent receipt before the Court on the earlier date of hearing. He was directed to produce further rent receipts. He has produced several rent receipts issued in the name of his father to whom the premises was stated to have been initially tenanted. All the rent receipts are written in the same handwriting in the same ink from the year 2002 to 2005. The proprietor of respondent No.3 has also produced two rent receipts of October, 2010 to March, 2011 and October 2014 to March, 2015 in the name of his wife "& Anr.". The last two receipts are in a different ink in different handwriting. The premises which is shown to have been tenanted by the father of the proprietor of respondent No.3 is shown to be transferred after his death not to respondent No.3 to his son but to the wife of respondent No.3 "&

Anr". The name of respondent No.3 is obviously purposely not shown.

5. The proprietor of respondent No.3 has also produced electricity bills standing in the name of his father as also telephone bills standing in the name of his father and not his wife or another.

6. It would be for the applicant bank to consider any mode of execution available to the applicant bank in respect of the said property.

7. The address of respondent No.3 which is shown in the title of the proceedings including the above Chamber Summons is known to the applicant bank. The proprietor of respondent No.3 has stated in paragraph 2(e) of his affidavits that the business of respondent No.3 has been shut down because of non performing account. The proprietor of respondent No.3 states to Court that the business of respondent No.3 was fabrication and supply of iron and steel. Even if the business has been shut down the premises of the business would remain. That premises is known to the bank.

8. The applicant bank would do well to proceed in execution as it would be permitted in respect of that property.

9. Respondent No.3 has further disclosed that he is a broker in paragraph 2(d) of his affidavit getting income of Rs.20,000/- to Rs.23,000/- pm. Respondent No.3 has not disclosed the type and name of the business of brokerage. He has also not disclosed any bank account in which his income of Rs.20,000/- to Rs.23,000/- is

deposited. Upon the Court's query by orally examining the proprietor of respondent No.3 under the provisions of Order 21 Rule 41 of the CPC, respondent No.3 has shown four names of companies for whom he does brokerage business. He has written and signed the note showing those names which is taken on record.

10. It shall be for the applicant bank to consider the execution of the decree taking into account the four disclosed garnishees from whom the proprietor of respondent No.3 would receive his brokerage.

11. Respondent No.3 has shown one Savings Bank Account with Kotak Mahindra Bank in the name of proprietor of respondent No.3 where balance is stated to be Rs.12,000/-. The copy of the account in fact shows a balance of Rs.9,000/- in April, 2015. That account does not show the credits of the amounts of brokerage of the proprietor of respondent No.3 as a broker. In fact all the brokerage amounts are stated to be received in cash.

12. The affidavit of disclosure of proprietor of respondent No.3 and oral examination by the Court upon the Court's query to which proprietor of respondent No.3 gave certain answers it is seen that disclosure is neither full and complete, nor bonafide. However, upon the disclosure that is made as stated above the applicant bank shall be entitled to proceed in execution. The proprietor of respondent No.3 shall not deal with, dispose of, part with possession or create any third party rights in the aforesaid flat in 394 C, New Gupta Bldg., 1st Floor, Bhaudaji Cross Road, Matunga, Mumbai 400 019 or in the office premises shown in the title of the Chamber Summons.

13. The handwritten note of the proprietor of respondent No.3 signed by him stating his name, address and contact number before the Court is taken on record. The advocate of the bank shall be given a photocopy of the said note. The documents in respect of the rent receipts, electricity bills and telephone bills of the aforesaid flat produced by the respondent shall be kept in a sealed cover in the custody of the Prothonotary and Senior Master of this Court.

14. Chamber Summonses are disposed of accordingly.

(ROSHAN DALVI, J.)