

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

CHAMBER SUMMONS (L.) NO.400 OF 2015
IN
EXECUTION APPLICATION NO.240 OF 2011

Vitol S A	...	Applicant / Respondent / Award holder
In the matter between		
Asian Natural Resources (I) Ltd.	...	Original claimant / Award debtor
Vs.		
Vitol S A	...	Original Respondent / Award holder
AND		
Bhatia Coke & Energy Ltd. & Ors.	...	Respondent Nos. 2 and 3

Mr Zal Andhyarujina, Adv. a/w. Mr. Aditya Krishnamurthy, Adv. a/w. Ramya Dharamraj, Adv. i/b. Bose & Mitra & Co. for applicant / Vitol. Mr. Pradeep Sancheti, Sr. Adv., a/w. Mr. Rajesh Kanojia, Adv. i/b. Res Juris for Respondent No.2.
Mr. Satpal Singh, Adv. a/w. Ms. Rupal N. i/b. Gordhandas & Fozdar for award debtor.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 26th March, 2015.

P.C. :

1. The Award Holder (AH) has applied for leave to amend the execution application to add certain additional properties to the execution application and to add respondent Nos.2 and 3 as parties to the execution application.

2. The award which is sought to be enforced is a foreign award. It has been allowed to be enforced by this Court. The execution application has accordingly proceeded. The award holder had mentioned certain properties of the Award Debtor (AD) to the initial execution application. Thereafter certain further properties of the AD came to light. The AD has from time to time amended the execution application with leave of the Court. This is one such application.

3. It may be at once be pointed out that the execution application is filed in this Court's registry. That is the office of the Prothonotary and Senior Master of this Court. The execution application is the matter between the executing party and the executing Court. No leave to file the execution application is required. No leave to attach the properties which are attachable in execution is also required. A Decree Holder (DH) (Award Holder) has an inherent right to execute the decree / award obtained by it. Consequently, the DH / AH may also amend the execution application. That is usually done by addition of properties of the AD / Judgment Debtor (JD) which would come to the knowledge of the AH/DH. A Chamber Summons of this nature is not even required to be taken out.

4. Nevertheless since the application is taken out by way of Chamber Summons it has been served upon the parties to the Chamber Summons. The first respondent in the Chamber Summons is the AD against whom the AH seek to execute award. Respondent Nos.2 and 3 are stated to be certain sister concern companies to

whom the properties are stated to be fraudulently transferred pending the arbitration. These are the properties which are sought to be added to the execution application. These are the properties which are stated to belong to the AD though the notional ownership is shown to be of sister concerns, respondent Nos.2 and 3.

5. Counsel on behalf of the AD would claim that under Section 47 of the Registration Act, 1908 the transfer of the sale deed to the sister concerns of the AD by the AD would take effect from the date of the transfer agreement itself. That aspect does not come up for consideration whilst allowing the AD to amend the execution application.

6. Respondent Nos.2 and 3 are not parties to the award. They are not the persons upon whom the award would be binding. They are not required to be brought on record of the execution application. The schedule to the Chamber Summons which is made by way of amendment for adding respondent Nos.2 and 3 need not and cannot be granted. The schedule to the Chamber Summons as originally made shows the additional properties of the AD required to be brought on record of the execution application by way of amendment even without the leave of the Court. Leave of the Court can, therefore, be granted to carry out necessary amendments to bring the properties shown in the schedule in the execution application as the properties of the AD. The Chamber Summons has to be and is granted to that extent.

7. Respondent Nos.2 and 3 are seen to have been brought on

record only because certain ad interim order for protection of the properties essentially of the AD both shown to be belonging to respondent Nos.2 and 3 was sought. An interim order came to be passed in the Chamber Summons restraining the respondents (which would be all the respondents including respondent Nos.2 and 3) from disposing off, alienating, encumbering, parting with possession, transfer, creating third party rights in any of their properties and to remove their properties from their possession and custody until further orders.

8. The ad-interim order came to be passed to protect the properties stated to be of the AD from alienation by its sister concerns, pending the execution under the above execution application. Counsel on behalf of the respondent Nos.2 and 3 would contend that respondent Nos.2 and 3 are not parties to the award and consequently the award is not binding upon them and that this Court would not have jurisdiction to execute the award because neither respondent Nos.2 and 3, nor their properties lie within the territorial limits of this Court's jurisdiction.

9. Counsel on behalf of the AH has relied upon judgment in the case of *Mohit Bhargava Vs. Bharat Bhushan Bhargava & Ors., (2007) 4 Supreme Court Cases 795* to show how protective orders can be passed by the Court which has enforced the award and pursuant to which the award has become a decree of that Court – in this case of this Court. That judgment shows the jurisdiction of the Court in passing orders of restraint in execution even if the property or the person concerned is outside the jurisdiction of the Court. The

relevant observation of the Supreme Court runs thus :

These two orders are certainly within the jurisdiction of the court which passed the decree since they are only orders of restraint being issued to a person from handing over a property in his possession to the judgment debtor along with the concerned documents and keeping the documents in safe custody. They are in the nature of a "freezing order" or a "Mareva injunction" and an order akin to an Anton Piller order, orders that can be issued even if the property or the person concerned is outside the jurisdiction of the court.

10. The AH has applied for precepts to be issued under Section 46 of the CPC in respect of the properties shown in the schedule to the Chamber Summons which would be the properties added to the schedule to the execution application. The precepts have been issued under Judges Order (L.) Nos.78 of 2015, 79 of 2015, 80 of 2015 and 107 of 2015. The judges orders are for the precept upon the Courts in other jurisdictions where the properties in the schedule in the Chamber Summons which would be the schedule to the Execution Application are situate to execute and to attach those properties. The AH would be required to have the properties attached upon the application of the AH.

11. Ad-interim order passed on 9th March, 2015 is extended for one week.

12. Chamber Summons is disposed of accordingly.

(ROSHAN DALVI, J.)