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

CHAMBER SUMMONS NO.774 OF 2015
IN
EXECUTION APPLICATION NO.325 OF 2003
IN
SUMMARY SUIT NO.4190 OF 1998

Suresh Gyanchand Kumar … Plaintiff
Vs.
M/s. Nitul Textiles & Ors. … Defendants

Sanika Mehra, Adv. i/b. L J Law for plaintiff.
Rohini Amin, Adv. for defendants.
Mr. Harshad Sanghvi, Defendant No.2 and Mr. Kiri H Sanghvi, defendant No.3 present in court.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 8th July, 2015.

P.C. :

1. The plaintiff has taken out this Chamber Summons for disclosure of the assets and properties of the defendants / judgment debtors in the above suit. Defendant Nos.2 and 3 who are two of the three partners of defendant No.1 firm sought to file an affidavit in reply to the Chamber Summons. Both of them have filed separate affidavits which are verbatim the same. The affidavits run in 11 pages with various annexures and written submissions totaling to 110 pages each.

2. In such lengthy affidavits no assets, properties, means or receivables of either of the defendants is disclosed. Mere allegations with regard to other facts are made. The defendant Nos.2 and 3 / judgment debtor Nos.2 and 3 claim to be commission agent. No

commission earned by them is disclosed. No bank account is shown.

3. An order came to be passed on 16th April, 2015 for the judgment debtor Nos.2 and 3 to disclose their bank accounts and the commission received.

4. Defendant Nos.2 and 3 / judgment debtor Nos.2 and 3 claimed to be residing in a licensed premises. Hence they were directed to produce the registered agreement of leave and license.

5. They failed to produce on the next date of hearing. Hence on 28th April, 2015 the Chamber Summons came to be adjourned and time was granted for the last time to carry out directions for disclosure passed on 30th March, 2015. They have filed further affidavit in which they have shown a photocopy of the agreement of license. The original agreement is not produced. The correctness of the photocopy cannot be verified. The plaintiff / decree holder has not accepted the leave and license agreement. Even if that is accepted with regard to the premises in which the judgment debtor Nos.2 and 3 are now residing, the fact remains that the income from the commission agency which would be reflected in the bank accounts are not disclosed.

6. They claim that the bank account is freezed. If the bank account is freezed and they continue to be commission agents, they are expected to deposit the commission amounts received in another bank account which should have been disclosed to Court. It is not known when the bank account was freezed as the copy of the freezed bank account is also not produced. Counsel on behalf of the defendant

Nos.2 and 3 / judgment debtor Nos.2 and 3 state that an account number is disclosed. Such disclosure is not enough. The contents of the account cannot be seen. The decree holder cannot proceed to execute the decree against what may be the movable assets in terms of the amounts in the bank accounts also.

7. The provisions of Order 21 Rule 41(1) are, therefore, not complied. The defendant Nos.2 and 3 / judgment debtor Nos.2 and 3 would require to be dealt under Order 21 Rule 41(3) of the CPC for disobedience of the order of disclosure specifying specific properties to be disclosed. The Court would, therefore, require the defendant Nos.2 and 3 / judgment debtor Nos.2 and 3 to be detained in civil prison as per the provisions of the aforesaid order.

8. Hence the following order.

1. Defendant Nos.2 and 3 / judgment debtor Nos.2 and 3 Harshad H Sanghvi & Kirit H Sanghvi shall be detained in civil prison for a term extending 30 days.
2. Chamber Summons is disposed of accordingly.
3. This order is stayed for two weeks.
4. Defendant Nos.2 and 3 / judgment debtor Nos.2 and 3 shall remain present in Court for being taken in custody on 22nd July, 2015 unless the Appeal Court grants further stay of the above order.

(ROSHAN DALVI, J.)