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

APPEAL (L) No. 274 OF 2015
IN
CHAMBER SUMMONS (L) No. 400 OF 2015
IN
EXECUTION APPLICATION No. 240 OF 2011
WITH
NOTICE OF MOTION (L) No. 823 OF 2015
WITH
NOTICE OF MOTION (L) No. 824 OF 2015

Bhatia Coke and Energy Ltd. ... Appellants /
Applicants

Vs.

Vitol S. A. & Anr. ... Respondents

Mr. Pradeep Sancheti, Sr. Counsel a/w Rajesh Kanojia & Deepika
Motagi i/b Res Juris, for the Appellants / Applicants.

Mr. Darius Khambatta, Sr. Counsel, Zal Andhyarjuna a/w Aditya
Krishnamurthy, R. Dharmaraj, A. Das Mahapatra i/b Bose & Mitra &
Co., for Respondent No. 1.

Ms. Rupal Naridwala i/b Gordhandas & Fozdar, for Respondent No. 2

CORAM : V. M. KANADE, &
A. R. JOSHI, JJ.

DATE : MARCH 30, 2015

PC.

1. Appellants are aggrieved by an order dated 26th March,
2015 passed in Chamber Summons No. 400 of 2015 whereby the

learned Single Judge while disposing the chamber summons, has continued an ad-interim order for a period of one week. It is submitted that the chamber summons was taken out by the Award Holder and an application was made for leave to amend the execution application to add the Appellants as party Respondents and also to add certain additional properties belonging to said Respondent Nos. 2 and 3, who are appellants herein. It is submitted that though the chamber summons mentions name of Respondent Nos. 2 and 3 in the cause title, in the prayer clause, they sought leave to amend the execution application as per the schedule, which did not make reference of Respondent Nos. 2 and 3. It is submitted that though this fact was brought to the notice of the learned Single Judge, an *exparte* interim order was granted against the appellants, who are supposed to be added as Respondent Nos. 2 and 3, directing them not to dispose off, alienate, encumber, part with possession, transfer or create any third party rights in any of their properties mentioned in the schedule of the chamber summons. It is submitted that, admittedly, the Appellants are not the judgment debtors. It has not been established that the Appellants are the sister concern of the judgment debtor. It is

submitted that this fact has been recorded by the learned Single Judge in the order. It is submitted that in fact the chamber summons which was taken out by the Award Holder was disposed of.

2. It is submitted that in spite of this, ad-interim order which was passed *ex parte* on 9th March, 2015 was extended for a period of one week. It is submitted that admittedly the Appellants are not the judgment debtors, and are not parties to the award was passed in favour of the Award Holder. Secondly, there is no order passed by any Court, holding that Appellants are sister concern of the judgment debtors; therefore, without giving hearing to the Appellants and before coming to the conclusion that they are sister concern of the judgment debtors, an order of injunction should not have been passed, restraining them from disposing of the properties, mentioned in the schedule of the chamber summons.

3. In our view, there is much substance in the submission made by the learned counsel appearing on behalf of the Appellants. Though this submission is vehemently opposed by the judgment debtors, by pointing out that Respondent Nos. 2 and 3 chose not to appear in spite of service and that order came to be passed against the

third party to whom the judgment debtor had transferred properties during pendency of the Award. In our view, in the present case unless in the precept, which is filed under Section 46 of C. P. C., the Appellants who are not judgment debtors are heard and it is held that they are liable to pay the said amount and an order of injunction, should not have been passed, while disposing of the chamber summons. The Award Holder has filed precept under Section 46 of the C. P. C. and the said precept is pending. That being the position, there was no question of continuing the ad-interim order. We are informed by the learned senior counsel appearing for the Appellants that as a result of the said order of injunction, the entire factory of the Appellants has come to stand still, since the coal which is essential for running the said factory has been attached by virtue of the order of this Court. Hence, appeal is allowed and the impugned order to the extent it continues ad-interim order dated 9th March, 2015 is vacated. It is open for the Award Holder to approach the learned Single Judge, if so advised, for modification or clarification of the order. This however, shall be subject to the order passed by us in the appeal. Appeal is accordingly disposed of.

4. In view of disposal of this appeal, the notice of motions filed therein viz. Notice of Motion (L) No. 823 of 2014 and 824 of 2014 do not survive, and are accordingly disposed of.

[A. R. JOSHI, J.]

[V. M. KANADE, J.]

Vinayak Halemath