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

CHAMBER SUMMONS NO.2113 OF 2011
IN
EXECUTION APPLICATION (L.) NO.2004 OF 2011
IN
SUIT NO.2471 OF 1984

Jitendra Nanalal Trivedi ... Plaintiff
Vs.
Ramesh Nanalal Shah & Ors. ... Defendants

Mr. Dinyar Madon, Sr. Adv., aw. Dr B Saraf, Adv. a/w. Sanjay Jain, Adv. a/w. Nishant Shashidharan, Adv. i/b. Dushyant Purekar for applicant in CHS No.1227 of 2014 and defendant No.2 in Exe (L) No.370 of 2012.
Mr. C R Naidu, Adv. for defendant No.5.
Mr. Girish Vora, Adv. a./w. Mr. Samir B Pawar, Adv. for defendant No.6
Mr. Vinod Thaker, Adv. for plaintiff in CHS No.2113 of 2011.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 25th February, 2015.

P.C. :

1. This Chamber Summons is taken out by the plaintiff for appointment of Court Receiver as receiver of suit property and for executing the consent terms dated 24th December, 1999 as modified by the consent terms dated 22nd April, 2009 by directing the sale of suit property and for directions thereupon.

2. The initial consent terms dated 24th December, 1999 were between the parties to the suit.

Under clause 2 the firm stood dissolved.

Under Clause 3 the plaintiff's share has been ascertained at 16%.

Under clause 4 assets of the partnership are shown in annexure 1.

Annexure 1 to the consent terms shows several properties out of which only the property at Sr No.1 remains as the assets of the partnership firm.

Under clause 7 the Court Receiver was appointed to do various acts stated thereof.

Under clause 9 of the consent terms the advocate of the parties had to open bank account and deposit the funds received by the Court Receiver. He was then to be jointly discharged and pay liabilities.

The plaintiff contends that the liabilities are as set out in annexure 3 to the consent terms which includes the liabilities of the firm to the plaintiff under clauses 2, 3, 4 and 7 thereof.

3. The extent of the liability of the plaintiff has yet not been ascertained, crystallized and liquidated. It is disputed by the other parties to the suit. The plaintiff would be entitled to a money decree in respect of crystallized liability. It would be for the plaintiff to get it crystallized before the Commissioner for Taking Accounts.

4. It is also argued on behalf of the plaintiff that under clause 15 the Court Receiver has to ascertain the liabilities payable inter-alia to the plaintiff acting as the agent of the Court Receiver and carrying on business as the agent of the Court Receiver. It is for the plaintiff to get that liability also ascertained and crystallized from the Court Receiver. That would be of course, subject to the plaintiff paying agency amount to the Court Receiver, which is due and payable every month since the appointment of the plaintiff as such agent.

5. The Court Receiver has been already appointed after the consent decree was passed and is consequently appointed in

execution. The plaintiff has to have consent terms executed by the receiver upon making an application thereof. No further order is required. Consequently prayer 'a' is not required to be granted.

6. With regard to the sale of the suit property the plaintiff contends that the immovable property in annexure 1 to the consent terms is the only property. The plaintiff is required to be paid diverse amounts which are yet not ascertained and crystallized. The plaintiff claims that the property be sold under the clause 21 of the consent terms.

7. Under clause 21 of the consent terms the property was to be sold within a period of one year from the date of the consent terms being 24th December, 1999 to any suitable buyer with a right to the properties to the suit.

8. However, under clause 22 it was specifically agreed by the parties that if the property could not be sold for any reason within a period of one year from the date of the consent terms, then lay out of the property would have to be prepared by dividing the said property in sub-plots and the advocates of the parties was to allot the sub divided plots to the parties in proportion of their shares.

9. It is argued that upon the dissolution of the firm the liability of the firm would have to be first ascertained after which the assets of the partnership firm would be sold and distributed amongst the partners under Section 48 of the Partnership Act, 1932. However, when the parties agreed to discharge the liabilities of the partnership firm in a particular mode and then to sell the property of the

partnership upon certain conditions they would be bound by said mode and said conditions. It is stated that the liabilities to all other creditors of the firm have been discharged. It is not the plaintiff's case that no other creditor is required to be paid off. The plaintiff claims to be paid for the amounts mentioned in annexure 3 to the consent terms. Thus a money decree is claimed by the plaintiff. The money decree is executable under Order 21 Rule 30 of the CPC by attachment and sale of the properties of the judgment debtor.

10. The sale of the partnership property is quite another matter. It would be the sale of the property of the firm to be distributed amongst partners. That sale distribution is agreed to be made subject to the specific conditions. The conditions in clause 22 is the sale within period of one year of the consent terms.

11 It is, therefore, argued that since that period of time has expired, the property cannot be sold and must be distributed amongst the partners by the specific mode set out in clause 22 which is by sub dividing the suit land into plots. The plaintiff would be entitled to 16% share of the amount of the property under clause 22 of the consent terms.

12. Consequently the plaintiff cannot apply for sale of the property in execution of his money decree which he may execute by attachment and sale of the properties of the other partners who would be the judgment debtors once the property is sub divided and their shares are fixed.

13. The sale, if any, would, therefore, be only as per the

specific mode set out in consent terms dated 24th December, 1999. The plaintiff would also have the said relief of sale being granted to him as modified in the consent terms dated 22th April, 2009. The consent terms dated 22nd April, 2009 does not mention any mode of settlement by sale. Hence those consent terms are wholly irrelevant with regard to the sale of the property.

14. It is also argued by the plaintiff that the consent decree got modified by an MOU executed by the parties. The plaintiff's prayer is not with regard to the execution of the decree by sale of the suit property under the MOU. Nevertheless the MOU dated 14th September, 2004 may be seen in that regard. The MOU also does not set out the agreement with regard to the sale of plot except under clause 11 thereof. Clause 11 runs thus :

> *This memorandum will be in force till the completion of the sale of plot of land at Kandivali (W).*

15. The plot of land is item No.1 to annexure A of the consent terms. The MOU being executed 5 years after the execution of the consent terms, it is argued that it has allowed the extended period of the sale. The MOU relates to other terms relating to payment to the staff, workers, Modi Industries, the plaintiff's 16% share subject to the payment by the plaintiff himself of the amount of royalty (payable to the Court Receiver) other liabilities, appointment of common advocate and the agreement with regard to the completion of the terms and the conditions of the MOU by 31st December, 2004. It is in this regard that the parties have agreed in the last clause 11 of the consent terms that the MOU would remain in force until completion

of the sale. The sale, however, is not agreed to be made after the terms of the MOU are complied and the period of the sale has not been specifically extended to another given date though time limit for the purpose of the terms and conditions of the MOU is specified. Consequently upon reading the MOU it cannot be seen that the period of sale of one year is extended. It also cannot be seen by what period such period is extended.

16. Consequently, therefore, the parties would have to divide the suit property as agreed by them in the initial consent terms dated 24th December, 1999 which specific mode of distribution of the assets of the partnership has not been revoked.

17. Consequently sale of the suit property for execution of money decree of the plaintiff cannot be allowed. The plaintiff would, of course, be entitled to his 16% share in the property of the firm. The plaintiff would also be entitled to execute money decree upon ascertaining and crystallizing the liquidated amount payable to the plaintiff. Until that is done the money decree cannot be executed. The sale cannot be ordered. Hence no relief is required to be granted in the Chamber Summons aside from the directions that the Court Receiver shall continue since he has already been appointed in execution. There shall, therefore, no further order in the Chamber Summons.

18. Chamber Summons is disposed of accordingly.

(ROSHAN DALVI, J.)