

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 145 OF 2015
IN
SUIT NO. 734 FO 2014

Tata Capital Financial Services Ltd.	...Applicant
<i>In the matter between</i>	
Zephyr Peacock India & Anr.	...Plaintiffs
<i>Versus</i>	
Mr. Badl Bhupatrai Shah & Anr.	...Defendants
And Tata Capital Financial Services Ltd.	

Mr. Rohaan Cama, *a/w Ms. Tanvi Nandgaonkar, Ms. Nazneen
Kotwal a/w Ms. MDP & Partners for the Applicant-TCF.*
Mrs. Francisca Philip, *for the Plaintiffs.*
Mrs. Fatima Barodawala, *i/b M/s. Raval Shah & Co., for Defendant
Nos. 1 and 2.*

CORAM: G.S. PATEL, J
DATED: 9th February 2015

PC:-

1. Heard.

2. The suit is for recovery of an amount of Rs. 31.5 Crores, interest and damages. The property against which the Plaintiffs have sought to proceed is described in Exhibit “A” to the Notice of Motion No. 1567 of 2014 (Notice of Motion (L) No. 1603 of 2014) and a connected Notice of Motion No. 1568 of 2014 (Notice of Motion (L) No. 1604 of 2014). In these two Motions, the Plaintiffs obtained an order dated 16th July 2013. This was clarified on 25th July 2014 and continued on 7th August 2014. The order on those Notices of Motions, filed by the Plaintiffs, was in respect of the five properties listed in Exhibit “A” to the Plaintiffs’ two Notices of Motion. Item 2 of the list of Exhibit “A” is a property described as Gala No. 401 to 406, Sigma IT Park, Plot No. 203-204, TTC Industrial Estate, Thane-Belapur Road, Rabale, Navi Mumbai (**“the Sigma IT Park property”**).

3. The present Notice of Motion is for modification of the order of 16th July 2014 (as clarified and continued) only in respect of the property that I have described above, viz., the Sigma IT Park property. According to the Applicant this property is secured to the Applicant by Deed of Simple Mortgage dated 31st August 2012 against certain credit facilities extended by the Applicant to the Defendants amongst others. That Deed of Mortgage is registered. It is accompanied by a Deed of Guarantee and a Tripartite Agreement for Sub-Lease dated 31st August 2012, and which is also duly registered.

4. It appears that the Applicant independently took proceedings under the Arbitration and Conciliation Act, 1996 by means of Arbitration Petition No. 735 of 2014. In that Arbitration Petition,

two orders were obtained on 9th May 2014 and 30th May 2014 *inter alia* for sale of the Sigma IT Property. These orders were in force even before the present Suit was filed. The orders obtained by the Applicant have not been verified, recall, modified or set aside either by the Trial Court or by the Appeal Court.

5. Given that the claim of the present Plaintiff is as a unsecured creditor, I do not see how it is possible for the Plaintiff to obtain an injunction that defeats the Applicants' rights as a secured creditor. There is also the fact that the Applicants have obtained an order in their favour prior to the filing of the present Suit. The present application, therefore, for the exclusion of the Sigma IT Park property from the purview of the 16th July 2014 order in Notice of Motion (L) No. 1603 of 2014 and Notice of Motion (L) No. 1604 of 2014 (as modified and continued) in the present Suit must necessarily be allowed.

6. There is no question of the Applicant being impleaded in the present Suit. The present application is only for the exclusion for the present Suit of property over which the Applicant has superior or primary claim or right. The present Plaintiff cannot possibly have any objection to this. The Notice of Motion is made absolute in terms of prayer clause (a), with no order as to costs.

(G. S. PATEL, J.)