

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE-ADMIRALTY JURISDICTION
CHAMBER SUMMONS NO. 187 OF 2016
IN
ADMIRALTY SUIT NO. 26 OF 2015**

Joplin Overseas Investment

.. Applicant

In the matter between :

Bank of Sarjah PSC

.. Plaintiff

Vs.

m.v. Meem & Ors.

.. Defendants

Mr.Venkatesh Dhond, senior advocate a/w. Mr. Abhimanyu Singh for plaintiff.

Mr.S.R. Nargolkar i/b Gireesh U G Menon for applicant in CHS/187/2016.

Mr.Zaman Ali for Crew Members of defendant vessel.

Mr.V.K. Ramabhadran, senior advocate a/w. Mr.Vishal S. Jathar i/b India Law Alliance for defendant no.3.

CORAM : K.R.SHRIRAM, J.

DATE : 30TH NOVEMBER, 2016

P.C.

1 This chamber summons is taken out by a company by the name Joplin Overseas Investment Limited organized and existing under the laws of British Virgin Islands (Joplin) to be permitted to intervene in the Admiralty Suit and for consequential directions to the plaintiff to join the Applicant as defendant in the suit. Defendant no.1-Vessel has already been sold and the sale proceeds are lying with the Prothonotary and Senior Master, High Court, Bombay.

2 The Applicant has made this application on the basis that the Applicant has an interest in the defendant no.1-vessel and therefore, entitled to intervene in the present suit. The affidavit in support is silent as to how the Applicant is interested in the vessel. At the same time, in the affidavit in support, there is a reference to a suit filed by the Applicant in Gujarat High Court that later came to be transferred to this Court to be heard along with this suit. Shri Nargolkar, counsel appearing for the Applicant states that the said suit filed by the Applicant is on the basis that the Applicant was the owner of the defendant no.1-vessel having purchased the said vessel before she was arrested by an order passed by this Court. Shri Nargolkar submitted that if the application is not allowed, great prejudice will be caused to the Applicant.

3 Shri Dhond, counsel for the plaintiff, at the outset, submitted that there are orders passed by this Court in other proceedings as well as in this chamber summons against the Applicant observing that the Applicant has fabricated documents and filed an affidavit relying on those fabricated documents. He also submitted that there are various orders passed directing the Director/Constituted Attorney of the Applicant to remain present in Court which has not been complied with and in view thereof unless that is complied with, the Applicant should not be heard.

4 In this regard, Shri Dhond tendered a compilation of nine orders passed by this Court; two of which are in the present chamber summons.

By an order dated 18th December 2013, this Court in a connected Admiralty Suit had directed one Dr. Anil Sharma, who had affirmed an affidavit on behalf of the Applicant, to remain present in the Court on 20th December 2013 failing which the Court shall be constrained to pass necessary orders to ensure his presence.

On 20th December 2013, in paragraph 2 of the order the Court observed as under :

“2 After hearing the learned Senior Advocate for the Caveator and the Plaintiff in Admiralty Suit (L) No.1086 of 2013, I am satisfied that the Applicant has filed the present Application on the basis of fabricated documents and has approached the Court with unclean hands. In view thereof, Mr. Ashwin Shankar, Advocate is allowed to take discharge in the matter. The Chamber Summons (L) No.935 of 2013 and the Notice of Motion (L) No.1642 of 2013 stand dismissed.

(emphasis supplied)

The Applicant was Joplin who is also the Applicant in this chamber summons.

On 26th February 2014, on an application made by the Applicant-Joplin against the release of the 1st defendant vessel, the Court observed that any application for arrest of the 1st defendant vessel will be considered only if the representative of Joplin, Dr.Anil Sharma remains present in Court. The Applicant-Joplin was also directed to disclose on affidavit details of the

company not limited to ownership, shareholding, registration, capital-authorised and subscribed, assets etc. It was also noted that Dr.Sharma of Joplin, who had been directed to remain present in this Court by an order dated 18th December 2016, has failed and neglected to remain present in Court.

On 3rd March 2014, time for the Applicant-Joplin to comply with the pre-conditions was extended because a statement was made by the counsel for the Applicant-Joplin that Dr.Anil Sharma was a U.S.citizen and his Visa to travel to India expired on 27th February 2014 and he needs time to apply for fresh visa.

5 The Applicant-Joplin filed an Appeal No.411 of 2014 against the observations made by this Court on 20th December 2013 which has been quoted above. The Appellate Court in the order, dated 25th September 2014 observed as under :

“2 The appellant is interested only in having the remarks, especially in paragraph 2 of the impugned order, set aside. The learned Judge has observed that he was satisfied that the appellant had filed the application on the basis of fabricated documents and had approached the court with unclean hands. It may be necessary while considering the appellant's application for expunging the remarks to have the personal affidavits of those who had filed the application, except the advocate's employee. It may be that in their absence, it would be difficult to decide whether the finding of fabrication ought to be set aside or not.

(emphasis supplied)

6 On 21st November 2014, the Appeal Court again observed that without the presence of Dr. Anil Sharma, it will be difficult to decide the application for expunging the remarks. Paragraph 3 of the order reads as under :

3 It is clear that the application for expunging the remarks would require the presence of the persons mentioned in paragraph 2 of the order dated 25th September, 2014. Without their presence, it will be difficult to decide the application for expunging the remarks which is the only purpose of this appeal. The only thing is that the appellant will be entitled to three weeks notice before appearing.

(emphasis supplied)

On 15th June 2015, when the present chamber summons was taken up for hearing, this Court (S.J. Kathawalla, J.) has ordered as under :

“Stand over to 19th February 2015. Dr. Anil Sharma of Joplin Overseas Investment Limited shall remain present on that day.”

(emphasis supplied)

7 The Applicant-Joplin preferred an Appeal against this order and that Appeal was dismissed by an order dated 18th June 2015.

On 25th June 2015, this Court in the present chamber summons has passed the following order :

1 The learned Advocate for the Intervenor Joplin Overseas Investment Ltd., states that though he has conveyed the order passed by this Court dated 15.06.2015 to Dr. Anil Sharma. Dr. Anil Sharma has failed to remain present in Court. He has further stated that the Intervenor Joplin Overseas Investment Limited has no control over Dr. Anil Sharma. It is pertinent to note that though M/s. Joplin Overseas Investment Limited filed an Appeal impugning the order passed by this Court directing Dr. Sharma to remain present in Court, it is not stated in the said Appeal that Joplin Overseas Investment Limited has no control over Dr. Sharma. No such statement was made even when the orders dated 18.12.2013 and 20.12.2013 and 21.11.2014 were passed. Needless

to add that Dr. Sharma who has filed an Affidavit before this Court on behalf of Joplin Overseas Investment Limited, which as recorded in the order passed by this Court dated 20.12.2013 is based on fabricated documents, has till date avoided to remain present before this Court despite the specific directions passed by me as well as the other Judges who have heard the above matter as well as the connected matters. However, the learned Advocate for Joplin Overseas Limited, on instructions undertakes that Joplin Overseas Investment Limited shall comply with the order passed by this Court (Coram : K.R.Shriram, J.) dated 26.02.2014 and disclose on Affidavit the details of Joplin Overseas Investment Limited not limited to ownership, shareholding, registration, capital authorized and subscribed, assets etc., on or before 6th July, 2015. Stand over to 6th July, 2015.

8 Shri Dhond, therefore, submitted that unless Joplin complied with the directions passed by this Court and Dr.Anil Sharma remains present in this Court, the Court should not entertain this chamber summons and the chamber summons should be dismissed. Shri Dhond further submitted that here is an Applicant whose stand is the Court may pass any order directing the Director/Athorised Signatory of Joplin to remain present in Court but Joplin will not obey the orders of the Court and at the same time expects the Court should entertain its applications.

9 Shri Nargolkar for the Applicant, submitted, relying on **Thomson Press (India) Ltd. Vs. Nanak Builders & Investors P.Ltd. & Ors.**¹ that even in a situation where the Court comes to a conclusion that a party had entered into a clandestine transaction and got the property transferred in their favour

1 (2013) 5 SCC 397

despite being aware of an injunction order, the said party should be heard. Shri Nargolkar submitted that, therefore, even in the present case, even if the Court has come to a *prima-facie* observation that Dr. Anil Sharma has filed an affidavit using fabricated documents and had disobeyed the directions passed by this Court by not remaining present in the Court, still that should not come in the way of entertaining the present application.

Shri Nargolkar also relied upon ***Public Service Commission, Uttaranchal Vs. Mamta Bisht & Ors.***² to submit that the Supreme Court even in a Writ Petition has permitted the parties to be added where they were necessary and proper parties. Shri Nargolkar also relied on ***Mukhtiyar Mohammad Vs. Panna Lal & Ors.***³ to submit that the Court cannot go into the case on merits while considering an application to be joined as a party to the suit. The counsel also relied upon ***Khetrabasi Biswal Vs. Ajaya Kumar Baral & Ors.***⁴ to submit that the procedural law as well as the substantive law mandates that in the absence of the necessary party, the orders passed is a nullity and does not have a binding effect.

10 The facts in the Thomson Press (supra) is totally at variance with the facts in the present case. In Thomson Press (supra), there was no order against the appellant that they should remain present in Court; there was no

2 (2010) 12 SCC 204

3 AIR 1985) Madhya Pradesh 122

4 (2004)1 SCC 317

observation that the Applicant had fabricated the documents and relying on fabricated documents filed an affidavit. As regards the submissions made with regard to the other three judgments, Public Service Commission (Supra), Mukhtiyar Mohammad (Supra) and Khetrabasi Biswal (Supra), those are settled propositions. But the facts and circumstances of those cases are not similar to the facts and circumstances in the present case. Here is a case, where in this chamber summons itself, the Court has observed that Dr. Anil Shrama of Joplin had filed an affidavit based on fabricated documents and till date avoided to remain present in the Court despite repeated directions/orders passed by this Court-Single Judge and Division Bench.

11 To a query posed by the Court, Shri Nargolkar also mentioned that the documents relied upon by Joplin in the suit filed by Joplin before High Court of Gujarat at Ahmedabad and transferred to this Court, are the same documents which Justice S.J. Kathawalla has, in his order dated 20th December 2013, observed to be fabricated documents. I am not, at this point of time, going into the merits of this case or the suit filed by the Applicant-Joplin, who is an Applicant herein; but the Applicant-Joplin has blatantly flouted the orders passed by this Court and disobeyed the orders passed by this Court. Such a person/party, in my view, cannot be given an audience by

this Court. I am not inclined to entertain this application filed by a person/party, who has blatantly flouted and disobeyed the orders of this Court.

12 The chamber summons, therefore, is dismissed.

13 At the same time, since even the issues are yet to be framed in this suit, I would still give a chance to Joplin-Applicant to renew this application provided Dr.Anil Sharma remains present in Court and they file an affidavit in strict compliance with the order passed by this Court on 26th February 2014.

14 Shri Dhond, at this stage, states that nobody has entered appearance for the defendants or has filed written statement on behalf of the defendant-vessel/sale proceeds of the defendant-vessel.

15 Shri Ramabhadran, senior advocate appearing for the owners of the 1st defendant-vessel states that they do not dispute the claim made by the plaintiff.

Therefore, the suit be placed for directions on 18th January 2017.

16 Before the next date, if Dr.Anil Sharma remains present in Court and if the Applicant-Joplin also files an affidavit as directed in the order dated 26th February 2014, the Court may, if requested by Applicant-Joplin, consider an application for leave to take out fresh application for intervention. It is also made clear that no further time will be granted to Joplin on any ground whatsoever and the Court will proceed with the suit.

17 Stand over to 18th January 2017 for directions.

(K.R. SHRIRAM, J.)