

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

APPEAL NO.99 OF 2016
IN
CHAMBER SUMMONS NO.796 OF 2010
IN
EXECUTION APPLICATION NO.264 OF 2010
IN
SUMMARY SUIT NO.4307 OF 2001

Rajendra Jagannath Jhavar ...Appellant
Versus
Basa Silk Mills Private Limited and Ors. ...Respondents

Mr.Subhash Jha i/b Ms.Mandakini D. Singh, for the Appellant.

Ms.Mamta Sodh a/w R.A.Kesuri i/b Banatwala & Co., for Respondent No.1.

Mr.Bharat Vaishnava a/w Mr.S.R.Yadav i/b Bharat Vaishnawa & Co., for Respondent No.3.

**CORAM : V. M. KANADE &
REVATI MOHITE DERE, JJ.**

DATE : 16th FEBRUARY, 2016

P.C. :

1. The appellant is aggrieved by the order passed by the learned Single Judge dated 4th March, 2015 attaching 50% of the tenanted premises

of Room No.30.

2. A preliminary objection is raised by the learned counsel appearing on behalf of respondent no.1. It is submitted that the counsel appearing on behalf of the appellant had conceded that the tenancy rights to the extent of 50% in Room No.30 which is attached may be sold. It is submitted that it is not now open for the appellant to resile from the said concession which was made by his counsel before the Court.

3. On the other hand, Mr.Jha, learned counsel appearing on behalf of the appellant submitted that the property of a Director was not liable to be attached for the dues payable by the Company. He has relied on four Judgments in the case of ***V.K.Uppal vs M/s.Akshay International Private Limited¹*** ; ***Ravindra Finance vs Yaanai Tobacco Co.²*** ; ***Kuriakose vs P.K.V.Group Industries and Another³*** and ***Hrushikesh Panda vs Indramani Swain⁴***. Secondly, it is submitted that a concession which is made in law is not binding on a party. It is submitted that a concession so made by the counsel appearing on behalf of the appellant before the learned

1 2010 SCC Online Del 538

2 CDJ 1978 MHC 182

3 CDJ 2002 Ker HC 212

4 CDJ 1986 Orissa HC 160

Single Judge therefore being a concession from law is not binding and the appeal therefore is maintainable.

4. The learned counsel appearing on behalf of the respondent no.3 invited our attention to the impugned order. He submitted that Chamber Summons No.796 of 2010 is not shown in the cause title of the order and in spite of that the order has been passed in the said Chamber Summons. A similar submission was made by the learned counsel as made by the Mr.Jha, learned counsel appearing on behalf of the appellant that the property of the Director should not be attached or sold for payment of the dues of the Company.

5. In our view it is a settled legal position that any concession made by a party or his counsel on fact is binding. The Apex Court in the case of *State of Maharashtra v/s Ramdas Shrinivas Nayak and Another*⁵ has observed in paragraph 4 as under :-

“4. When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A. K. Sen, who appeared for the State of Maharashtra before the High

5 1982(2) SCC 463

Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation". (Per Lord Atkinson in *Somasundaram Chetty v. Subramanian Chetty*, AIR 1926 PC 136 : 99 IC 742). We are bound to accept the statement of the judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent, upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made

the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. (Per Lord Buckmaster in *Madhu Sudan Chowdhri v. Chandrabati Chowdhrai*, AIR 1917 PC 30 : 42 IC 527). That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment”.

6. It is therefore well settled that when a concession is made by the counsel and the same is recorded by the Court, it is not open for a party to either resile from the said concession or challenge the correctness of the concession made by the Court.

7. In the present case, 4 tenanted premises of Room Nos.27, 28, 29 and 30 in House No.1, 1A, Old Hanuman Lane, 1st Cross Lane, Kalbadevi, Mumbai – 400 002 were attached. A grievance was made by filing a Chamber Summons that these parties are not judgment debtors but

they are relations of the judgment debtors. It was contended that the tenancy rights do not belong to the judgment debtor which is a limited company. Thereafter, a concession was made by Mr.Warunjikar, the learned counsel appearing on behalf of the Director that tenancy rights to the extent of 50% in Room No.30 is sold. The said concession was therefore a concession on the facts of the case and it was not a legal concession.

8. Therefore, in our view, it is not open for the appellant to resile from the said concession which was made across the bar.

9. It is noted that in view of the statement made by the learned counsel appearing on behalf of the appellant, only 50% tenancy rights in Room No.30 were attached and the attachment of premises Nos.27, 28 and 29 was raised. The appellant therefore on the basis of the said concession obtained an order from the Court for raising the attachment in respect of the 3 other premises and only 50% tenancy rights of Room No.30 was attached. It is not now open for the appellant to argue that even the 50% attachment should be raised.

10. So far as the submission made by the learned counsel appearing on behalf of the respondent no.3 is concerned, it is obvious that there is a typographical error in the said order and Chamber Summons No.796 of 2010 is inadvertently not typed in the cause title of the order. No application was made for speaking to the minutes of the order for getting the order corrected or modification of the order.

11. Under these circumstances, it is not possible to accept the said submission. The Appeal is, therefore, dismissed.

REVATI MOHITE DERE, J.

V.M. KANADE, J.