IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.735 OF 2013

IN

SUMMARY SUIT NO.475 OF 2010

CIPLA Limited ….Applicants

IN THE MATTER BETWEEN :

CIPLA Limited ….Plaintiffs

V/s.

Mr.Krishna Dushyant Rana ....Defendant

Mr.Mahesh Londhe a/w Mr.Akshay Udeshi and Ms.Radha Ved i/by M/s.Sanjay Udeshi & Co. for plaintiff/applicant.

Mr.Induprakash K.Tripathi i/by C.K.Tripathi for defendant/respondent.

Mr.Umesh Shetty-Amicus Curiae.

Mr.Krishna D.Rana-defendant-respondent present in court.

CORAM : K.R.SHRIRAM,J
DATE : 25.8.2016 & 31.8.2016

P.C.:-

1 This is one of those matters where the court is anguished with the conduct of the defendant who despite being given repeated opportunity has repeatedly abused the liberty granted by the court. It is rather unfortunate that the defendant, who is probably in his 30's at least from the appearance, if let off to continue with his behaviour, it will erode the faith that the public have on judiciary. The rule of law is premised upon the faith reposed by the people in the justice delivery system. To prevent erosion of that faith contemptuous behaviour in the face of the court needs a strict treatment.

2 The plaintiffs, who are the applicants, filed a summary suit

against the defendant for recovery of an amount of Rs.3,25,25,687/- together with interest @ 18% p.a. on the principal sum of Rs.2,84,04,480/-. The plaintiffs also took out a summons for judgment.

3 The defendant Krishna Dushyant Rana is the sole proprietor of a concern to whom the plaintiffs sold, supplied and delivered goods of a total value of Rs.3,00,18,040/- under 20 invoices between 3.10.2008 and 1.11.2008. In purported discharge of the liability the defendant issued 20 cheques between 3.12.2008 and 10.1.2009. The cheques were dishonoured on presentation. The invoices were acknowledged by the defendant in token or receipt of the goods. The defendant also admitted his liability vide letter dated 30.1.2009 but sought an indulgence from the plaintiffs to indicate repayment schedule. Despite several notices, the amount due was not paid and the plaintiffs also instituted proceeding under Section 138 of the Negotiable Instruments Act 1881, which is still pending. As could be seen from the order dated 18.3.2011, the hearing of the summons for judgment was adjourned on 16.8.2010 to 16.9.2010 and further adjournment was granted on 14.1.2011. Though an advocate had entered appearance for the defendant, no reply was filed to the summons for judgment. The court by its order dated 18.3.2011 made summons for judgment absolute under Order XXXVII Rule 6 of the Code of Civil Procedure 1908. The suit was also decreed accordingly. This has not been challenged by the defendant at all and the decree has attained finality. The plaintiffs thereafter applied for drawn up decree and the decree was drawn up on 31.10.2012. As no payment was coming forth from the defendant, the plaintiffs took out the present Chamber Summons on 6.9.2013 and served a copy thereof upon the defendant. The counsel for the applicants states that it was served upon the defendant in September-2013 itself which

has not been disputed. The reliefs sought in this chamber summons are as under :-

> *"(a) That this Hon'ble Court be pleased to direct the Defendant/Judgment Debtor herein to file affidavit stating the particulars of all his assets (movable and immovable) as provided in Order XXI Rule 41 Sub-rule (2) of the Code of civil Procedure ;*
> *In case of disobedience of order by Defendant/Judgment Debtor :*
> *(b) This Hon'ble Court be pleased to pass necessary orders as provided in Order XXI Rule 41 Sub-rule 3 of the Code of Civil Procedure inter alia detaining the Defendant/Judgment Debtor in the civil prison ;*
> *(c) Any other relief as this Hon'ble Court may deem fit and necessary in the matter ;*
> *(d) For cost of this Chamber Summons."*

4 On 4.12.2014 the defendant sought time to file a reply. Despite that, no reply was filed. On 9.6.2015, the defendant was given last chance to file affidavit of reply.

5 The defendant filed an affidavit affirmed on 15.6.2015 (hereinafter referred to as the first affidavit) in which the defendant stated that the chamber summons was not maintainable since all questions arising between the parties to the suit in which the decree has been passed, have to be dealt with only by the executing court and this court was not an executing court. At the same time without prejudice to the contentions as stated above, the defendant disclosed in paragraph-5 the assets which he had. Paragraph-5 reads as under :-

> *" (a) Honda Amaze Car ;*
> *(b) amount of Rs.1,02,48,246/- is my capital in the proprietary concern of D.B.Rana & Co. ;*
> *(c) amount of Rs.24,000/- is invested in mutual fund ;*
> *(d) amount of Rs.42,425/- is invested in shares ;*
> *(e) amount of Rs.11,380 is to be received from Mahavir*

Developers ;

(f) I have bank accounts in (i) State Bank of India (ii) Indian Overseas Bank and (iii) Oriental Bank of Commerce. As on today, amount of Rs.14,60,021/- is balance in State Bank of India, amount of Rs.1276 is balance in Indian Overseas Bank and amount of Rs.1037 is balance in Oriental Bank of Commerce. I have issued two cheques drawn on my account in State Bank of India bearing No.278243 dtd.12.06.2015 for Rs.8,00,000/- and bearing No.378244 dtd.12.06.2015 for Rs.6,00,000/- to Mr.Dilip Coulagi towards payment of security deposit and rent of my residential premises ;

(g) an amount of Rs.24,182/- is cash in hand and

(h) amount of Rs.5,67,130 and Rs.3,82,602 is to be received from DBR Chemicals Private Limited and Platinum Chemicals Private Limited respectively."

6 In paragraph-9 the defendant confirmed that "............. I have disclosed my assets to this Hon'ble court in the form of the present affidavit". This means that the defendant has on oath stated that he has no other assets other than those which have been disclosed in the affidavit.

7. When the matter was listed on 18.6.2015, this Court after hearing the counsels and considering the law, held that a Chamber summons of this nature can be entertained and there is no necessity of filing execution proceeding under Order XXI Rule 11(2) before filing of an application under Order XXI Rule 50 of the Code of Civil Procedure 1908 or under Order XXI Rule 41 of the Code of Civil Procedure 1908. The defendant has not challenged this order and this has attained finality. In the said order this court also observed as under :-

" At the outset, counsel for the defendant/judgment debtor submitted that this chamber summons is not maintainable and this has to be dismissed because according to counsel, an application under Order XXI Rule 41 of the Code of Civil Procedure, 1908 cannot be filed unless a formal decree was drawn up and remains unsatisfied for

a period of 30 days thereafter and without first filing an execution petition under Order XXI Rule 11(2) of the Code of Civil Procedure, 1908. This issue has been considered by this Court in the matter of United Phosphorous Limited v. A.K.Kanoria reported in AIR 2003 Bombay 97 (1) and this Court has held that such a chamber summons can be entertained and there is no necessity of filing an execution petition under Order XXI Rule 11(2) before filing of an application under Order XXI Rule 50 of the Code of Civil Procedure, 1908 or under Order XXI Rule 41 of the Code of Civil Procedure, 1908. The defendant has filed affidavit-in-reply in which the defendant no.5 has disclosed certain assets. Disclosure is totally incomplete and does not contain any particulars. For example, defendant states that he has Honda Amaze car. Defendant has not disclosed what is the registration number of the car and whether the car is hypothecated or not. Defendant has also stated that an amount of Rs.24,000/- is invested in mutual fund and an amount of Rs.42,425/- is invested in shares. Defendant has not disclosed in which mutual fund and in which shares he has invested the said amounts. The defendant has also disclosed that an amount of Rs.11,380/- is to be received from Mahavir Developers. No details are provided as to who is Mahavir Developers and on what count amount is to be received from it. Defendant has also mentioned that he has certain bank accounts without disclosing with which branches and account numbers. Therefore, it is quite obvious that an attempt is made to prolong the proceedings and the defendant is also trying to give impression that he has complied with the orders of this Court but at the same time not giving full and complete particulars.

2 This application has been taken out by the plaintiff in aid of execution or as a step towards the execution. Unless the defendant discloses complete details and full particulars, plaintiff will not be able to decide in which Court he should get the decree transferred. Therefore, as and by way of last chance, defendant is directed to disclose in detail and give full particulars of all assets supporting documents and also make a statement that he has made full disclosure of his assets and he has not suppressed any particulars from the Court. Defendant is also directed to furnish copies of his annual returns that have been filed in the last five years.

3 In the circumstances, defendant is called upon by

way of last chance to disclose all his assets. *A copy of this affidavit to be provided to advocate for the plaintiff on or before 24.6.2015.*
S.O. To 25.6.2015." (emphasis supplied)

8 Following this order, the defendant filed a further affidavit affirmed on 23.6.2015 (hereinafter referred to as the second affidavit) explaining the assets and accounts mentioned in the first affidavit. The defendant also filed copies of his balance-sheet and profit & loss account. When the matter was listed on 8.7.2015 it came to light from the balance-sheet and P&L account that there were other assets which the defendant had not disclosed in either his first affidavit or the second affidavit, for e.g. 2 Skoda cars, 2 motor cycles etc. On 8.7.2015 the counsel appearing for the defendant also confessed that even he was not given full instructions from the defendant though he had advised the defendant to give full details. In view of the conduct of the defendant, this Court exercised its inherent powers and directed the defendant not to create any 3rd party rights of whatsoever nature in any of the assets mentioned in the balance-sheet of D.B. Rana and Co. of which defendant was the sole proprietor. It was also made clear that any breach would be viewed very seriously and considered as deliberate disobedience of the orders of the Court. In paragraph-2 of the said order, this Court has also recorded as under :-

> *"Learned Counsel for the defendant states that he was not given full details by his client (defendant), even though he had advised him to give full details. The learned Counsel further states that when he went through the balance sheet of the proprietary firm, D.B.Rana and Company, of the defendant, he found that there are more assets mentioned therein which were not disclosed to him by his client. Therefore, it is quite obvious that this defendant is not only being dishonest with the court but is also trying to give incorrect instructions to his Advocate."*

9 The defendant, thereafter, on 23.7.2015 sought time to change his Advocate. Even on that date, the advocate for the plaintiffs brought to the notice of the Court that even the 2nd affidavit does not contain all the details of the assets and he has written letters to the defendant's advocate pointing out the deficiencies. It was stated by the defendant that he will collect copies of all the letters where the plaintiffs have pointed out the deficiencies and meet the same with a fresh affidavit.

It should be noted that even in the 2nd affidavit, the defendant has stated "I undertake to this Hon'ble court that I have disclosed all my immovable and movable assets to this Hon'ble court.......... In view of what is here inabove, I have given the details of my assets to this Hon'ble Court. In view thereof, the summons be disposed of". The defendant, therefore, once again made a categorical statement that he has disclosed all his immovable and movable assets to this Court and has not concealed anything from this Court. This is the second instance of the defendant making a false statement knowing it to be false, to mislead the court.

10. Following this, the defendant filed a further affidavit dated 13.7.2015 (hereinafter referred to as third affidavit) in which for the first time, the defendant mentioned that he also owned 2 skoda laura cars, a hundai i-20, plus, 2 Pulsar motor cycles in addition to Honda amaze car, which was the only car that he had disclosed in the first and second affidavits.

11. The defendant thereafter received a letter dated 21.7.2015 from the advocates for the plaintiffs listing out the deficiencies in his affidavits. Therefore, the defendant filed a further affidavit dated 8.9.2015 (hereinafter referred to as the fourth affidavit) in which it is

stated that it was being filed in compliance with the earlier orders of this court and in response to the letter dated 21.7.2015. I am giving these details to show the conduct of the defendant. The fact that the defendant had to file 4 affidavits only shows that at every stage, the attempt was to suppress information from the Court, file false affidavit and make false statement that he has disclosed all his assets in the affidavit. This was aggravated in court. I say this because in the third affidavit, it is stated that the vehicles mentioned therein were bought on loan and the defendant has paid all monthly installments in respect of those vehicles upto the date of that affidavit. When I asked the counsel for the defendant how these loans were repaid, on instructions from the defendant who was present in court, the counsel first stated that loans were repaid in cash. When I asked the defendant to produce the receipt for payment in cash and how banks accepted such large EMIs in cash, the defendant informed the advocate who informed the Court that for one skoda car it was paid in cash and for the other skoda car, it was paid by cheque. Later the defendant corrected and stated both the installments were paid by cheque. When he was asked from which account were the cheques issued, the defendant stated from Cosmos Bank account. It has to be noted that there is no mention of Cosmos bank account in any of the affidavits filed by the defendant or in the annual returns filed. This shows the defendant was still suppressing his assets and has been filing false affidavits.

This is the conduct of the defendant who at every stage has been filing false affidavits and the attitude is - you may pass whatever order and whatever directions but I am not bound to comply with the same. The defendant has been filing false affidavits with impunity under a mistaken belief that nothing will happen to him. Reading all the four affidavits and the statement of his advocate as recorded in the order dated 8.7.2015 and now as later mentioned, it is rather obvious that the defendant has understood what was required under Order 21 Rule 41 of the code of civil procedure, what was the purport of each of the orders passed and how he should comply with the orders. Paragraph-1 of the fourth affidavit reads as under :-

> *"I say that this Hon'ble Court by its order dt: 18.06.2015 was pleased to direct the defendant judgment debtor to file an affidavit disclosing the assets belonging to the defendants. I say that in pursuance to the said order the defendant has already filed an affidavit dt: 13.07.2015 thereby disclosing the assets belonging to the defendants firm. I say that this Hon'ble Court by its further order dt: 08.07.2015 was pleased to direct the defendant to file further affidavit containing all the truthful details in respect of the assets belonging to the defendant firm as in the previous affidavit according to the plaintiff, the disclosures were not in detail. I say that thus the defendant prepared further affidavit dt: 13.07.2015 and annexed to it all the particulars of the assets of the defendant firm. The defendant also described in detailed in the affidavit the position and status regarding the fixrure, furniture, vehicles, car, computers, recurring deposits, gold coin, shares of the defendants lying with the banks, security fixed deposit along with the details of the bank where the same are lying along with the details of the account of the defendant firm, with apprehension of statement of account related thereto."*

12 In this fourth affidavit, the defendant has also mentioned in paragraph-9 that the flats being flat nos.801, 802, 8th floor, `C' Wing, Saraswati Tower CHS Limited, Parsi Panchayat Road, Mogra Village, Andheri (East), Mumbai-400 069, which were in his name and his mother Geeta Rana's name, were sold and from the amount received the bank cleared its outstanding. Not a shred of evidence or detail is annexed to the affidavit to justify these averments. The counsel for the defendant on instructions stated that the flat was sold in April-2015. Even in the said affidavit it is stated in para 11 that he has fully disclosed all the particulars of all the assets and properties. During

the hearing I directed the defendant to call for copies of all the papers relating to these flats, including share certificates, bank mortgage papers, sale deed, details of the sale proceeds received, how much was paid to the bank, bank's release deed etc., but that was not produced. This once again shows the defendant was trying to pull wool over the court's eyes.

13 It should be noted that in every successive affidavit defendant stated that he has disclosed every asset, whereas the fact that he has been filing successive affidavits to disclose more and more assets and give particulars thereof shows the defendant was making false statement in each of the affidavits.

One more instance of defendant's false statements can be seen from the fourth affidavit. To the fourth affidavit, the defendant has annexed a provisional balance sheet and profit & loss account for the period 1.4.2015 to 31.7.2015. In the balance-sheet the sundry creditors is shown as Rs.1,57,42,646.20/- for the period ending 31.7.2015. In the balance-sheet annexed for the period 1.4.2014 to 31.3.2015, the sundry creditors is shown as Rs.7,63,02,228.51/-. Therefore, between 1.4.2015 and 31.7.2015, i.e., in 4 months, there is a reduction of sundry creditors in the sum of Rs.6.10 crores approximately. None of the accounts, which has been provided by the defendant show how the defendant has paid these sundry creditors. Further, in the profit and loss account which the defendant has annexed for the period 1.4.2014 to 30.3.2015, it is mentioned "interest received on R.D. Account Rs.1,28,900/-. The defendant has stated that he had only 2 R.D (recurring deposit) accounts and a copy of the passbooks has been annexed to his third affidavit in which only 2 entries are shown of Rs.50,000/- each. R.D account shows that the deposits were to be of Rs.50,000/- each for 12 months and the amount repayable was Rs.6,29,841/- (Rs.6,00,000 deposited plus interest of Rs. 29,841/-). What has been annexed is an incomplete passbook showing only the first installment of Rs.50,000/- as made and no explanation has been given whether he paid further installment or he did not pay further installment. Even if we take that he had paid all the installments in both the accounts, still the interest in each account would have been only Rs.29,841/- which would mean the interest was Rs.59,682/-. It does not come upto Rs.1,28,900/- that is shown in the profit and loss account for the year ended 30.3.2015. I must also mention that amount of Rs.59,682/- interest will be paid provided the recurring deposits have been made on time upto 11.10.2015 when the account was to come to an end, whereas for the year ending 30.3.2015, the defendant has mentioned he has received interest on recurring deposit account of Rs.1.28,900/-. Therefore, defendant has other recurring deposit accounts which again have been suppressed from the Court.

14 During the hearing no explanation was forthcoming. In fact Shri Tripathi appearing for the defendant conceded that the defendant has not disclosed everything which he should have disclosed.

15. The defendant has made false and incorrect statements and has given undertaking to this Court that he has disclosed every asset that he has, knowing the same to be false and incorrect. I am satisfied that the defendant is guilty of having committed grave and serious act of contempt of this Court. This court gave a very long rope to the defendant to come out clean, to come out honest, to come out truthful and be transparent to the court but every opportunity given has been abused by the defendant. Repeatedly false statements have been made. The attempt is to drag on the matter so that the defendant can get away. The conduct of the defendant has scandalized and lowered the dignity of the court in the eyes of the

public. The action of the defendant has been deliberate, unlawful and purposely done with a view to mislead the court, by making deliberate, false, misleading and incorrect statements. In [1]***Advocate General, High Court of Karnataka vs Chidambara and Anr.,*** the Karnataka High Court has also held that any person who makes a false statement on oath would be interferring with the administration of justice.

16 The Hon'ble Supreme Court of India in the case of [2]***Re :Bineet Kumar Sing Vs. Unknown*** has in clear terms held that a false or misleading or wrong statement deliberately and willfully made by a party to the proceedings would undoubtedly tantamount to interference with the due course of judicial proceeding.

17 In the present case the conduct of the defendant clearly brings to light the fact that the defendant has no respect for this Court. It clearly shows that the defendant feels that making false statements including undertaking to the courts and thereafter breaching them or not complying with the directions given by the Court would have no consequences. The conduct of the defendant is willful, deliberate and contumacious. The Supreme Court in [3]***Leela David Vs. State of Maharashtra & Ors.,*** in clear terms that the court is not precluded from taking recourse to summary proceeding when a deliberate contempt takes place and the punishment is given forthwith by the court on holding the contumacious guilt of contempt and sending them to prison.

In [4]***Jennison Vs. Baker*** it is stated the law should not be seen to sit by limply, while those who defy it go free, and those who seek

1 2004 Cr.L.J 493
2 AIR 2001 SC 2018
3 AIR 2010 SC 682
4 (1972) 1 All ER 997

its protection lose hope. It is also settled that a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice needs a strict treatment.

18 The defendant has made a mockery of the judicial process. A decree has been passed against the defendant way back in 2011. The chamber summons was taken out for the reliefs as mentioned above. Even though the chamber summons was served upon the defendant in September-2013, the defendant did not file any reply until June-2015. Even in the affidavit in reply, i.e., first affidavit, he does not disclose the entire truth about all the assets in his name. Still he states in the end of the affidavit that he has disclosed everything. When he was given another chance to explain, he files second affidavit in which, again, he does not disclose all the assets but still makes a statement that he has disclosed all movable and immovable assets to the court. But when the annual returns which were annexed to the second affidavit was considered, it came to light that he had other assets in his name which have not been disclosed in his affidavit. 3rd opportunity and 4th opportunity was given to the defendant and he filed third affidavit dated 13.7.2015 and fourth affidavit dated 8.9.2015 but still chose to be economical with truth. When the court asked him as to how he paid the loan taken for the two skoda cars, the defendant's counsel on instructions from the defendant stated first it was paid by cash and then it was changed to one car in cash and other in cheque and again it was changed to everything by cheque from Cosmos bank, but there is no mention of Cosmos bank in any of the documents. At every stage whenever affidavits were filed, the defendant was made aware that he should be truthful in his affidavit. The defendant was also aware that he had to

disclose all the assets and that is why in the affidavits he has been signing off by saying 'I disclosed my all movable and immovable assets'. He had stated that right in the first affidavit. If that was true, there would not have been a need to file the second affidavit in which also he has stated he has disclosed all assets. But still he had to file third and fourth affidavit. Therefore, the defendant knew all the time that he was making false statement before the court in the form of affidavits and in effect was making a mockery of the judicial process. The opportunity given to file further affidavit was misused and abused. The conduct of the defendant was contumacious because he could not care. His demeanor has been that he could make false statements, give undertakings to the court and breach them and it would have no consequences. The action of the defendant has been deliberate, willful and purposely done with a view to completely mislead this court. By making false statement on oath, knowing it to be false statement, the defendant has interfered with the administration of justice. In my view, if this conduct of the defendant is not dealt with firmly, that may result in scandalizing the institution and lowering its dignity in the eyes of the public.

19 I must acknowledge the immense assistance rendered by the amicus curiae Shri Shetty. Shri Shetty also submitted that this kind of disobedience has become the norm than an exception and unless the courts start exercising its powers under Order XXI Rule 41(3) of the Code of civil Procedure, this menace and contumacious behaviour will result in erosion of faith reposed by people on judiciary. I agree with Shri Shetty.

20 The counsels representing the defendant on 8.7.2015 and now conceded that the defendant has not been truthful. Not even once did the defendant show any remorse or even tender an apology.

In my view, even if the defendant had apologized, that cannot take his case any further as there can be no explanation to making deliberate false statements on oath to the court and disobeying the orders made under Order XXI Rule 41(2) of the Code of Civil Procedure.

21 In view of the above, I hold the defendant has disobeyed the orders made under Order XXI Rule 41 (2) of the code of civil procedure.

<u>On 31.8.2016</u>

22 Shri Tripathi appearing for the defendant states that some consideration be shown to the defendant because the defendant will be making arrangement to pay some amount to the plaintiffs. That cannot be a reason for showing any consideration on the sentence.

23 In view of the deliberate willful contumacious conduct of the defendant and thereby obstructing the administration of justice, the defendant deserves to be detained in civil prison for three months, the maximum period provided.

Chamber summons disposed accordingly.

24 Shri Tripathi seeks stay of this order. Stay refused in view of what is stated above.

(K.R.SHRIRAM,J)