

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**CHAMBER SUMMONS NO.1572 OF 2015
IN
EXECUTION APPLICATION NO.68 OF 2014**

Computility India Pvt. Ltd. ...Applicant

IN THE MATTER BETWEEN:

Religare Finvest Limited ...Claimant

V/s.

Computility India Pvt. Ltd.& Ors. ...Respondents.

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Mr. Sanjiv Sawant with Mr. Murli Kale and Mr. Balvendra Singh i/by M/s. Om Gujar Law Chambers, Advocates for the Claimant.

Mr. Ajay Panicker i/by M/s. Ajay Law Associates, Advocate for the Respondents.

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CORAM : A. K. MENON, J.

DATE : 22ND JANUARY, 2016.

PC.:

This Chamber Summons is taken out in an Execution Application to execute award dated 7.8.2013 passed in Arbitration proceedings. The Award directed the Applicant to pay a sum of Rs.6,19,77,090.70 plus interest on the said amount at the rate of 15% p.a. from 9.12.2011 and the cost of Rs.25,000/- Thereafter, the Execution Application having been filed, the properties described in the award were

attached.

2. The Applicant by way of Chamber Summons seeks (a) stay of an order dated 26.11.2015 passed by the Commissioner for taking accounts in Execution Application No.68 of 2014 directing the issuance of proclamation against the Office No.171-172-173 and 174 situated on the 17th floor of the building known as 'Atlanta' at Nariman Point, Mumbai-400 021; (b) a direction to the claimant to furnish a revised statement of account; (c) for a declaration that the award dated 7.8.2013 is unenforceable and for an interim stay of the execution proceedings.

3. The Application is opposed by the Claimant/Decree Holder by filing Affidavit of Mr. Prashant Ohal dated 21.12.2015. No rejoinder that has been filed and the contents of the affidavit in reply are not controverted. Mr. Panicker proceeds on denials. I have heard learned counsel appearing for the respective parties. Mr. Panicker, Advocate for the Respondents, in course of submissions stated that the order dated 26.11.2015 is an ex-parte order since the Respondents were not aware that the hearing took place at the office of the Commissioner for taking accounts which had been shifted to the G.T. Hospital premises of the High Court. The Affidavit-in-support of Dr. Satyaprakash Jaiswar states that he, Dr.Jaiswar was present in the High Court premises to attend the matter on 26-11-

2015 but when he made enquiries about where the matter is to be taken up, he was informed that the office of Commissioner had been shifted to G.T. Hospital premises and by the time, he could reach there, the impugned order had already been passed.

4. This is the only ground on the basis of which the impugned order is sought to be set aside. As far as the award itself is concerned, there is no challenge to the award. No Petition under Section 34 of the Arbitration and Conciliation Act, 1996 has been filed and as such, award is now final and executable. Since no petition to challenge the award has been filed at any point of time, it narrows the conspectus of the matter.

5. We have now only to examine whether the contention that the order was ex-parte order can be established. When I refer to the affidavit-in-reply filed on behalf of the Claimant/Decree Holder, I find that the meetings before the Commissioner for taking accounts had been held from as far back from April, 2015. On 28.4.2015, both parties were represented. The appearances show the presence of the Advocate for the Applicant. However, thereafter in the subsequent meetings of 3.8.2015, 8.9.2015 and 19.11.2015, the Applicant and its Advocate both remained absent. Had they attended the earlier meetings, they would have known that the office of the Commissioner has since been shifted. The registry

has meanwhile confirmed that the office of the Commissioner shifted in May 2015. In the circumstances, the contention that the Applicant was unaware of the office having been shifted has no basis.

6. According to Mr. Sawant the learned counsel appearing on behalf of the Claimant, the Applicant should have been aware that the office had been shifted and there is no reason for the Applicant not to appear especially since on the previous occasion from August onwards, the Applicant and its Advocates were absent. In the circumstances, I do not find any reason given in the Affidavit convincing enough to hold that the order was an ex-parte order. In any event, the order records that as far as back in December, 2014, the Applicant had objected to the issuance of proclamation of sale on the basis that the Claimant had re-scheduled the repayment of the outstanding amount. The Applicant has also admitted that the award has been passed but only questioned the rate of interest. The Applicant has also admitted that the premises attached belongs to the Applicant and it expressed their willingness to pay the entire amount within a period of six months. This was in December, 2014. Till date, the decretal amount has not been paid although Mr. Panicker submitted that certain part payments have been made.

7. On the last three occasions, the matter was adjourned in order to enable the parties to work out differences in interest computation and

work out the final amount payable. Thus, on 15th January, 2016, this Court recorded an agreement between the parties that the total sum now payable after giving credit to all part payments and interest adjustments is a sum of Rs.4,73,63,325.06 and that further interest is to be computed on the principal sum of Rs.2,64,113/- @ 15% from 16.1.2016. However, the amount was incorrectly recorded in the order dated 15.1.2016 and it is now agreed by Mr. Sawant and Mr. Panicker that the balance of the principal amount is Rs.2,24,60,113.70. The order dated 15.1.2016 shall, accordingly, stand corrected and the corrected order shall be uploaded on the server.

8. It is now evident that the aforesaid sum has still not been paid and the parties had sought some time to agree upon mutually agreed schedule for payment. However, today both the parties state that they have not been able to arrive at an acceptable mode of payment. The award is now executable to the extent of Rs.4,73,63,325.06 in addition the cost of Rs.25,000/- making it a sum of Rs.4,73,88,325.06 with further interest on Rs.2,24,60,113.70 @ 15% p.a. from 16.1.2016 till payment or realization.

9. The reasons given in the affidavit-in-reply in support of Chamber Summons are of no assistance. Mr. Panicker submitted that even in law, the provisions of Order XXI Rule 64 and Rule 83 of the Code of Civil

Procedure, 1908, the Court can consider recording the final amount. Mr. Panicker relied upon the judgment of **Sai Enterprises v. Bhimreddy Laxmaiah and Another**¹ and relied upon paragraph 9 to state that the only property to the extent necessary to satisfy decree can be sold. There cannot be any quarrel with the said legal position. Mr. Panicker states that sale of Unit No.171 alone will be sufficient to pay over the entire decretal amount. However, on a query from the Court, it is stated that Unit Nos.171 to 174 now have been combined. In that view of the matter, it is not possible for the Commissioner to sell one unit at a time. In any event, it is now stated across the bar by Mr. Panicker on instructions of the Applicant that all these premises are in possession of third party from whom the Applicant is receiving licence fees. He states that he is able to pay all the decretal amount or the balance as arrived as above within a period of six months after selling some other property, which is not the subject matter of the attachment. These are merely vague offers which the Claimant has already declined to accept. In the circumstances, there is no manner in which the Applicant can seek any leeway under Order XXI Rule 83 of the Code of Civil Procedure, 1908. I see is no reason why this Court needs to interfere with the impugned order. Accordingly, I pass the following Order;

1 (2007) 13 Supreme Court Cases 576

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(i) the Chamber Summons is dismissed.

(ii) There will be no order as to costs.

At this point of time, Mr. Panicker seeks a stay of this order. The request is declined.

(A. K. MENON, J.)