FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 218 OF 2014
IN
EXECUTION APPLICATION NO. 726 OF 2013
IN
ARBITRATION AWARD DATED 3RD JULY 2010

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Prothonotary's orders	Court's or Judge's orders

Mr. Niranjan Vaghela I/by M/s. Pandya & Co. for Applicant.
Mr. Shashipal Shankar for Claimant.

CORAM : K. K. TATED, J.
DATE : NOVEMBER 29, 2017

P.C.:

. Heard learned Counsel for parties.

2. This Chamber Summons is preferred by the third party for setting aside the attachment order dated 26th September, 2013 in respect of the property being Flat Nos. 201 and 202, 2nd Floor Meru Heights, Plot No. 268, Deodhar Road, Behind Poddar College, Kings Circle, Matunga (E), Mumbai 400019.

3. The learned Counsel for Applicant submits that Bailiff from the Sheriff's office executed the attachment order dated 26th

September 2013 on 18th February, 2014 and at that time they have learnt that the Claimant had filed the present Execution Application for executing the Award dated 3rd July, 2010. Hence, they have preferred the present Chamber Summons immediately for raising the attachment.

4. The learned Counsel Mr. Vaghela for Applicant submits that in the present proceedings there was a dispute between the Claimant and Respondent. Hence, the Claimant proceeded before the Arbitrator. He submits that Arbitrator had passed an Award dated 3rd July, 2010. He submits that as per the said Award Claimant has to recover the sum of Rs. 7,11,32,000/- by way of principal amount and interest thereon at the rate of 9% per annum. He submits that Claimant had filed the Execution Application before this Court on 29th June, 2012.

5. The learned Counsel for Applicant submits that without any intimation or knowledge of the order passed by the Arbitrator, the Applicant had purchased the suit property i.e. Flat Nos. 201 and 202 as a bonafide purchaser by registered Agreement of Sale of Apartment dated 27th April, 2011. He submits that before purchasing the said property, the Applicant had issued public notice in free press Journal dated 31st March, 2011 calling objection from the public at large in respect of the

purchase of the said Flats. He submits that Applicant has not received any objection from public.

6. The learned Counsel for Applicant submits that the said property was mortgaged by the original owner with the Oriental Bank of Commerce. He submits that Applicant had paid the dues of Oriental Bank of Commerce. Thereafter the said Bank issued no due certificate dated 27th May, 2011. He submits that, being a bonafide purchaser of the suit property, attachment may be raised and the attachment order dated 26th September, 2013 in respect of the suit property be set aside. He submits that if the present Chamber Summons is not allowed, irreparable loss will be caused to the Applicant.

7. On the other hand, the learned Counsel Mr. Shankar appearing on behalf of Claimant had vehemently opposed the present Chamber Summons. He submits that in the present proceedings, they have preferred Application under Section 17 of the Arbitration Act before the Arbitrator. He submits that Arbitrator had passed the order dated 12th May, 2009 restraining the Respondent from creating any third party rights, title and interest in respect of the property F3, APMC Phase-I, Masala Market, Sector 19, Navi Mumbai and with respect to the another property

of Respondent i.e. Flat Nos. 201 and 202, 2nd Floor, Meru Heights, Plot No. 268, Devdar Road, Behing Poddar College, King Circle, Matunga (E), Central Mumbai.

8. The learned Counsel for Claimant submits that the said order was not challenged by the Respondent. He submits that the said order was continued till hearing and final disposal of the Arbitration proceedings before the learned Arbitrator. He submits that the learned Arbitrator had passed the Award dated 3rd July, 2010 holding that Claimants are entitled to recover the sum of Rs. 7,11,32,000/- with interest from the Respondent. He submits that Respondent with malafide intention to avoid the execution of the Award dated 3rd July, 2010 created third party rights, title and interest in respect of these two Flats in fvour of the Applicant. Therefore, there is no question of granting any relief in favour of the Applicant.

9. The learned Counsel for Claimant submits that as on today, they have to recover more than Rs. 7.00 Crores from the Respondent. Hence, there is no substance in the present Chamber Summons. Same may be dismissed with costs.

10. At this stage, learned Counsel Mr. Vaghela for Applicant submits that Arbitration

proceedings were conducted under the old Act. He submits that in view of the judgment of Apex Court in the matter of ***Firm Ashok Traders and Another V/s Gurumukh Das Saluja and others, reported in (2004)3 Supreme Court Cases 155*** if any ad-interim relief is granted during the pendency of the arbitration proceedings, same comes to the end as soon as the final award in Arbitration proceeding is passed. In support of this contention, he relies on paragraph 18 of this authority which read thus :

"18. Under the A&C Act, 1996, unlike the predecessor Act of 1940, the Arbitral Tribunal is empowered by Section 17 of the Act to make orders amounting to interim measures. The need for Section 9, in spite of Section 17 having been enacted, is that Section 17 would operate only during the existence of the Arbitral Tribunal and its being functional. During that period, the power conferred on the Arbitral Tribunal under Section 17 and the power conferred on the court under Section 9 may overlap to some extent but so far as the period pre- and post-the arbitral proceedings is concerned, the party requiring an interim measure of protection shall have to approach only the court. The party having succeeded in securing an interim measure of protection before arbitral proceedings cannot afford to sit and sleep over the relief, conveniently forgetting the 'proximately contemplated" or "manifestly

intended" arbitral proceedings itself. If arbitral proceedings are not commenced within a reasonable time of an order under Section 9, the relationship between the order under Section 9 and the arbitral proceedings would stand snapped and the relief allowed to the party shall cease to be an order made "before" i.e. in contemplation of arbitral proceedings. The court, approached by a party with an application under Section 9, is justified in asking the party and being told how and when the party approaching the court proposes to commence the arbitral proceedings. Rather, the scheme in which Section 9 is placed obligates the court to do so. The court may also while passing an order under Section 9 put the party on terms and may recall the order if the party commits breach of the terms."

11. The learned Counsel for Applicant submits that in view of the Apex Court's order, there is no question of considering the interim relief granted by the Arbitrator on 12th May, 2009 at the time of deciding the present Chamber Summons.

12. I have heard both the sides at length.

13. It is to be noted that in the present proceedings though the Award was passed on 3rd July, 2010 Claimant had filed the Execution Application on 29th June, 2012. Even the order of interim relief dated 12th May, 2009 was not served

on the Society or the Builder of the said Flats. Not only that, during the pendency of the said Arbitration proceedings, Respondent had created the mortgage in favour of the Oriental Bank of Commerce. Even the Claimant had failed and neglected to intimate the Oriental Bank of Commerce about the Award dated 3rd July, 2010 passed in their favour.

14. Before purchasing the suit property, the Applicant had given the public notice in Newspaper on 31st March, 2011 calling objection from the public at large. In spite of the said public notice, Claimant failed and neglected to lodge claim. Applicant had purchased the suit property by registered document dated 27th April, 2011. Not only that, even he had cleared the dues of Oriental Bank of Commerce. Hence, the said Oriental Bank of Commerce had issued no due certificate dated 27th May, 2011.

15. Considering these facts, it is clear that Applicant is bonafide purchaser of the suit property and, therefore, there is no question of attaching the same for recovery of the dues as per Award dated 3rd July, 2010. Hence, the following order.

ORDER

(A) Chamber Summons is made absolute in terms of prayer clause (a) and (b) which read thus :

"a) That the Warrant of Attachment dated 26.09.2013, corresponding to Exhibit - "A" hereto, in respect of the Property being Flat Nos. 201 and 202, 2nd Floor, Meru Heights, Plot No. 268, Deodhar Road, Behind Poddar College, Kings Circle, Matunga (E), Mumbai 400019, be cancelled."

"b) That the attachment of the Property being Flat Nos.201 and 202, 2nd Floor, Meru Heights, Plot No. 268, Deodhar Road, Behind Poddar College, Kings Circle, Matunga (E), Mumbai 400019 be raised."

(B) Office of the Deputy Sheriff is directed to lift the attachment immediately and issue certificate to that effect to the Applicant.

(C) All dues of the office of Dy. Sheriff to be bear by the Claimant.

(D) Chamber Summons stands disposed of accordingly.

(E) No order as to costs.

(K.K.TATED, J.)