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

CHAMBER SUMMONS NO. 820 OF 2016
IN
EXECUTION APPLICATION NO. 561 OF 2014
IN
ARBITRATION REFERENCE NO. 44 OF 2013

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

Mr. Gaurav Mehta a/w M. Punjabi I/by. Dhaval Vussonji & Associates for Applicant/Plaintiff.
Ms. Pragya Chandra I/by. Satish J. Agarwal for Respondent No.1.

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

P.C.:

. Heard learned Counsel for parties.

2. By this Chamber Summons the Applicant/Plaintiff is seeking an order directing ICICI Bank Limited i.e. Respondent No.2 to sell and dispose of the shares of Respondent No.1 lying with them and deposit the entire sale proceeding in the Registry of this Court.

3. The learned Counsel Mr. Mehta for Applicant submits that in the present proceedings as per the Arbitration Award dated 28th August, 2013 as rectified by rectification Award dated 25th September 2013, they have filed the Execution

Application. He submits that as per the Award they have to recover Rs. 48,49,115.41/- with interest at the rate of 10% per annum.

4. The learned Counsel for Applicant submits that initially they have preferred the Chamber Summons No. 1052 of 2014 for an order of ad-interim injunction restraining the Defendant from creating any third party rights, title and interest in respect of their properties including the shares lying with the Respondent No.2. He submits that ad-interim relief was granted by this Court by order dated 26th September 2014. He submits that thereafter the said Chamber Summons No. 1052 of 2014 was allowed by this Court by order dated 24th December, 2014 in terms of prayer clause (a) and (b).

5. The learned Counsel for Applicant submits that pursuant to the order dated 24th December, 2014 passed by this Court, the Respondent No.1 had filed his Affidavit disclosing his properties as per Order XXI Rule 41 of the Code of Civil Procedure, 1908. He submits that they have made an enquiry with Respondent No 2 – ICICI Bank and learnt that some shares are lying with them belonging to the Respondent No.1. He submits that Respondent No 2- Bank had issued statement of holding of Respondent No.1 as on 9th September 2015 (Exhibit 'F', Page 35).

6. The learned Counsel for Applicant submits that during the pendency of the present Chamber Summons in spite of injunction order the Respondents have transferred some shares. For that purpose, Claimant has already filed Contempt Petition and the same is pending for hearing on its own merits.

7. The learned Counsel for Applicant submits that they have apprehension that Respondents may create third party rights, title and interest in respect of the shares lying with Respondent No. 2 - ICICI Bank having Applicant's I.D. 10612888. He submits that in the interest of justice either this Hon'ble Court be allowed this Applicant to sell those shares or direct the Respondent No. 2- ICICI Bank to sell those shares as per prevailing market rate and deposit the entire consideration in the Registry of this Court. He submits that unless and until some coercive action is taken against the Respondent No.1, it is very difficult for them to recover the sum of more than Rs. 48.00 Lacs. Hence in the interest of justice, this Hon'ble Court be pleased to allow the present Chamber Summons.

8. On the other hand, learned Counsel Ms. Chandra appearing on behalf of Respondent No.1 vehemently opposed the present Chamber Summons. She had filed Affidavit in reply dated 8th

November, 2017. Same is taken on record.

9. The learned Counsel for Respondent No.1 submits that Claimant has not disclosed how they can claim sum of more than Rs. 48.00 Lacs from the Respondents. She further submits that the shares disclosed by the Applicant in Exhibit 'F' to the Chamber Summons on Page 35 are only the source of income of the Respondent No.1. She submits that if those shares are disposed of, it will be very difficult for the Respondent No.1 to survive. She further submits that some of the shares are already mortgaged to the Bank. Therefore, there is no question of allowing either to the Applicant or to the Respondent No. 2 – ICICI Bank to sell those shares in the open market.

10. I have heard both the sides at length.

11. It is to be noted that in the present proceedings as per Arbitration Award dated 25th September, 2013 as rectified by the rectification Award dated 25th September 2013, Claimants have to recover more than Rs. 48,49,115.41/- with interest at the rate of 10% per annum from the Respondents. Though the Award was passed in 2013, till today the Respondents failed and neglected to clear the liabilities.

12. It is to be noted that though this Court had passed ad-interim order restraining the Respondents from creating any third party rights,

title and interest in respect of the shares, they have disposed of some of the shares as per the contention raised by the learned Counsel for Applicant in their Affidavit in support of Chamber Summons. This itself shows that if the present Chamber Summons is not allowed, the Respondent No.1 may dispose of the entire shares which are lying with Respondent No.2 – ICICI Bank. I feel that in the interest of justice, in stead of allowing the Applicant to sell those shares, Respondent No. 2 – ICICI Bank Limited be directed to sell those shares in open market and deposit the entire consideration in Registry along with the contract notes and/or vouchers in support thereof.

13. In view of these facts, following order is passed.

ORDER

(A) Respondent No.2 – ICICI Bank Ltd. is directed to sell the Respondent No.1's shares at market price as stated in Exhibit 'F' Page 35 of Chamber Summons i.e. statement of holding of Respondent No.1 as on 9th September, 2015 having Applicant I.D.10612888 as early as possible, but in any case within 8 weeks from the service of copy of this order.

(B) If amount is deposited within stipulated time as stated herein above, liberty is granted to the Claimant to make application for withdrawal of the sum and that will be decided on its own merits.

(C) Liberty is granted to the Claimant to make appropriate proceedings for remaining prayers of this Chamber Summons by filing another Chamber Summons and that will be decided on its own merits.

(D) Parties to act on the authenticated copy of this order.

(E) Chamber Summons stands disposed of accordingly.

(F) No order as to costs.

(K.K.TATED, J.)