

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

CHAMBER SUMMONS NO.749/2017
IN
EXECUTION APPLICATION NO.253/2014

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. S. C. Naidu a/w. Mr. Aniketh Poojari i/b. C. R. Naidu & Co. for the applicant
Mr. Vijaykumar Kanoria, for Judgment Debtor
Nos.1 to 4.

CORAM : K. K. TATED, J.
DATE : DECEMBER 6, 2017

P.C.:

1. Heard. By this Chamber Summons, the claimant seeks to modify the order dated 04.12.2014 passed by this court (Coram : Roshan Dalvi, J.) in Chamber Summons No.553/2014 to the extent that the applicant / claimant may be permitted to proceed with the Execution Application to sell the respondent's property situated at Ashok Vihar, F Wing, Flat No.301, Military Road, Andheri (E), Mumba – 400072 as incorporated at Serial J Schedule (i) Item (h) of the Execution Application. He submits that though there is delay on the part of the applicant to make the Chamber Summons, in the interest of justice,

this Hon'ble Court be pleased to condone the same. He submits that they have to recover more than Rs.19 crores from the respondent. He submits that as per order dated 04.12.2014 passed in Chamber Summons No.553/2014 the matter was transferred to the District Court at New Delhi for execution. Thereafter they noticed that the defendant's one of the properties is situated within the jurisdiction of this court. Therefore, this Hon'ble Court be pleased to allow the present Chamber Summons. He submits that if the Chamber Summons is not allowed, irreparable loss will be caused to the applicant.

2. On the other hand, the learned counsel for the respondent submits that they have already filed their reply in the present proceedings. He submits that the respondents are vehemently opposing the Chamber Summons for modification/recalling the order dated 04.12.2014. He submits that the property situated at Ashok Vihar is already mortgaged with Capri Global Capital Ltd. He submits that as the property is already mortgaged with other Bank, there is no question of claimant to proceed with the Execution Application by selling the said property to recover their dues.

3. It is to be noted that earlier the claimant has filed Execution Application before this court for recovery of their dues. During the course of hearing, the defendant has filed their affidavit disclosing their properties which are situated outside the jurisdiction of this court. Hence, this court by order dated 04.12.2014 disposed of the Chamber Summons No.553/2014 and transferred the Execution Application for execution to the concerned court at Delhi. Later on, the claimant noticed that one of the properties as described in clause (j) of the Execution Application is situated within the jurisdiction of this court. They have to take appropriate steps for sale of the same through this court only. Hence, they filed the Chamber Summons.

4. Considering these facts, I am of the opinion that the claimant has made out a case for allowing the Chamber Summons. Hence, the Chamber Summons is allowed in terms of prayer clause (a) which reads thus:

(a) That this Hon'ble Court be pleased to recall the order dated 04.12.2014 to the extent it disposes off the Execution Application No.253/2014 in order to enable the Applicant to seek assistance of this Hon'ble Court to sell of immovable property situated at Ashok Vihar, F-Wing, Flat NO.301, Military Road, Andheri (E), Mumbai – 400 072 as

incorporated at Sr. J., Schedule (I), Item – (h).

5. The Chamber Summons stands disposed of accordingly.

JUDGE