

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

**CHAMBER SUMMONS NO.913 OF 2017
IN
EXECUTION APPLICATION NO.46 OF 2015**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Prothonotary's orders	Court's or Judge's orders
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Mr.Y.P.Singh for the applicant / org.defendant no.2

Ms.Nikita Pawar i/b M/s.S.I.Joshi and Co. for the plaintiff

CORAM : K. K. TATED, J.

DATE : OCTOBER 10, 2017

P.C.:

1. Heard the learned counsel for the parties.
2. This Chamber Summons is preferred by defendant no.2 in Execution Application No.46 of 2015 for directing plaintiff Claimant to provide them all the papers and proceedings of Arbitration No.331 of 2013 and other documents.
3. The learned counsel for the applicant original defendant no.2 submits that defendant no.2 was not aware of any proceedings taken by the plaintiff against the borrower. He further submits that neither copy of claim petition nor

copy of award was served on him. In support of this contention, the learned counsel for the applicant relies on paragraph 6, 7 and 8 of the affidavit in support of Chamber Summons. He further submits that defendant no.2 through his advocate by letter dated 19.7.2017 requested advocate for claimant to provide the papers and proceedings of Arbitration No.331 of 2013. Same was not complied by the advocate for the plaintiff. Hence, they preferred the present Chamber Summons. He submits that to take appropriate steps in the present matter, it is necessary for the defendant to have all the papers. He submits that if present Chamber Summons is not allowed in terms of prayer clause (a), (b) and (c), irreparable loss will be caused to the applicant. He further submits that defendant no.2 is ready and willing to bear the cost of photocopies for providing those documents.

4. On the other hand, the learned counsel for the plaintiff vehemently opposed the present Chamber Summons. She submits that Chamber Summons as it is filed by the defendant no.2 is not maintainable. She submits that by way of Chamber Summons, defendant no.2 wants to challenge the award passed by the Arbitrator, in Arbitration No.331 of 2013. She further submits that for all these reliefs, defendant no.2 have to take appropriate steps as per section 34 of the

Arbitration and Conciliation Act, 1996. Hence, there is no question of allowing the present Chamber Summons in terms of prayer clause (a), (b) and (c).

5. I have heard both the sides at length. It is to be noted that in the present proceedings, defendant no.2 specifically made a statement in affidavit in support of Chamber Summons that neither copy of arbitration proceeding nor was any notice served on him. They have learnt for the first time about the award passed by the Arbitrator when they received notice from this court. He further submits that initially defendant no.2 by his letter dated 19.7.2017 requested the advocate for claimant plaintiff to provide, at his expenses, copy of arbitration proceedings and other papers. Same was not provided. Hence, he preferred the present Chamber Summons. It is to be noted that to protect his own interest, defendant requires all these papers. In any case, plaintiff is a carrier of the proceedings.

6. Considering these facts, I am of the opinion that defendant no.2 made out a case for allowing Chamber Summons in terms of prayer clause (a), (b) and (c). Liberty granted to the applicant defendant no.2 that, if he so desires, he can take appropriate proceeding for remaining prayers. Hence, following order is passed:

A) Chamber Summons is allowed in terms of prayer clause (a), (b) and (c) which reads thus:

*“(a) Provide copy of the claim of the Plaintiff filed before the Ld.Sole Arbitrator in ARBITRATION No.331 of 2013, whose order is under execution before this Hon'ble Court;
(b) Provide copy of entire proceeding of ARBITRATION NO.331 of 2013 including proof of delivery of notices, summons etc.;
(c) Provide copy of notice to this Defendant invoking Arbitration clause of Loan-cum-hypothecation Agreement dated 28 March 2012.”*

B) Plaintiff claimant is directed to comply the prayer clause (a), (b) and (c) on or before 31.10.2017 at the cost of applicant defendant no.2.

C) No order as to costs.

D) Chamber Summons stands disposed of accordingly.

(K.K.TATED, J.)