Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
CHAMBER SUMMONS NO. 245 OF 2017
IN
COMM EXECUTION NO. 38 OF 2017
IN
SUMMARYSUIT NO. 281 OF 2015

Kieon Developers Pvt Ltd ...Applicant
In the matter between
Ashok Kumar Damani ...Plaintiff
Versus
Kieon Developers Pvt Ltd ...Defendant

Dr Abhinav Chandrachud, *a/w Manish Doshi, Ashwin Poojari, i/b Vimadalal & Co, for the Plaintiff.*
Mr PM Shah, *for the Defendant/Applicant.*

CORAM: G.S. PATEL, J
DATED: 13th December 2017

PC:-

1. The Chamber Summons is by the judgment debtor seeking that a warrant of attachment levied by the Plaintiff on immovable property at Khar be declared illegal, bad in law and not binding and raised and vacated forthwith. The second prayer, apparently for some sort of restraint, is one the frame or ambit of which is incomprehensible, but which seems to seek an omnibus injunction against any execution in any form. That prayer more or less rejects itself.

2. There are previous orders of 12th October 2017 and 22nd November 2017 by which this Court at the request of judgment debtor extended time to furnish additional security. There is also an order of 11th April 2016 (Shriram J) decreeing the suit.

3. The submission on behalf of the judgment debtor by Mr Shah is that decree cannot be satisfied unless the property is sold; and that in seven different arbitrations, the applicants have given undertakings in respect of this very property. Therefore, the submission goes, the attachment should be raised. Therefore — that is to say, since the decree cannot be satisfied without sale of the attached property and since there are these undertakings — the attachment is 'illegal, bad in law and not binding'.

4. The submission is untenable.

5. None of this is a reason to avoid effective execution. The fact that the judgment debtor is overwhelmed by debt is no reason to force a judgment creditor to forgo his claim any more than it is a reason to compel a decree holder to further delay enforcement of his claim.

6. Mr Shah invites me to consider paragraph 9 of the Affidavit in Support. It would have been better had he not. For, all that the judgment debtor says here is that in some distant and unknown and uncertain future, when (which should be read, in my view, as *if*) the judgment debtor receives funds under a development proposal for a property in Chembur, the Plaintiff will then be paid. This is no commitment at all.

7. Worse yet, all this sanctimony about *bona fides* and undertakings is to be read in the context of the statement in paragraph 4. Here, the judgment debtor says it is "ready and willing" to settle the decretal claim by paying *the principal amount* of Rs.86,00,000/-. In other words, the judgment debtor now expects the judgment creditor to forgo around Rs.30-40 lakhs, since the decree itself was for Rs.1,07,000/- and to wholly forgo all further interest decreed. The judgment debtor cannot expect the judgment creditor to forgo Rs. 30 or Rs. 40 lakhs, asking him to do so merely on a promise to make payment of an amount lower than decreed at some unknown time in future contingent on an unpredictable and uncertain event.

8. There is absolutely no merit in the Chamber Summons. It is disposed of with costs quantified at Rs.1,00,000/-, which Mr Shah agrees will be paid within one week from today.

(G. S. PATEL, J.)