

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.322 OF 2017
IN
EXECUTION APPLICATION NO.1783 OF 2015
AWARD DATED DECEMBER 31, 2013**

Sezal Glass Limited (Previously known as
Sejal Architecture Glass Limited) & Ors.

...Applicants/
Org.Respondents
(Judgment Debtors)

In the matter between
S.E. Investments Limited

...Applicant (Decree
Holder)

Versus

Sejal Glass Limited (Previously known as
Sejal Architecture Glass Limited) & Ors.

...Respondents
(Judgment Debtors)

Mr.Ramesh Jain, Advocate for Applicant.

Mr.Uday Warunjikar with Mr.Pankaj D.Purway, Advocate for
Applicants/Org. Respondents.

**CORAM : K. K. TATED, J.
DATE : SEPTEMBER 21, 2017**

P.C.:

1. Heard learned Counsel for the parties.
2. This Chamber Summons is preferred by the judgment debtors in Execution Application No.1783 of 2015 for determining additional amount, if any, in addition to settled amount between the parties payable by them and also for permission to deposit the sum of Rs.75 Lakhs in Registry of this Court and an additional amount of Rs.53,65,524/-, so that they can file review petition to review the

order dated 13th January 2016 passed by this Court in Chamber Summons No.104 of 2016 (Chamber Summons Lodging No.2000 of 2015).

3. Brief facts of the matter are as under:-

Because of dispute between both the parties, matter was referred to the Arbitrator. The Arbitrator, after hearing both the sides, passed the award dated 31st December 2013 holding that decree holder (i.e. S.E. Investments Ltd.) is entitled to sum of Rs.2,65,72,369/-. Paragraph 38 of the said Award reads thus:-

“38. Conclusion:

The claim of claimant is allowed for a sum of Rs.2,65,72,369 (Rupees Two Crore Sixty Five Lacs Seventy Two Thousand Three Hundred Sixty Nine only) from respondents jointly and severally. However, the respondents are entitled for concession of Rs.35,16,181/- and they will have to pay Rs.2,30,56,188/- (Rupees Two Crore Thirty Lacs Fifty Six Thousand one hundred eighty eight only) as detailed in paras 27 to 33 of this Award, if they pay the said amount of Rs.2,30,56,188/- within 3 months from the date of declaration of this Award. The claimants are also entitled for intervening and pendent-lite interest of 18% per annum from 20.08.2012 till the date of payment from the respondents jointly and severally. If the respondent pays the amount of Rs.2,30,56,188/- to the claimants within 3 months from the date of declaration of this Award, then they will have to pay interest of 18% per annum on the said amount w.e.f. 20.08.2012. However, if the respondents fails to pay the Awarded amount within 3 months from the date of declaration of this Award, the respondents will have to pay Awarded amount of Rs.2,65,72,369/- alongwith interest @ 18% per

annum w.e.f. 20.08.2012 till the date of payment. After all payments are received by the claimants from respondents, the claimant is directed to return 189 unsold pledged shares to respondents.”

4. As the judgment debtors failed and neglected to comply the Award dated 31st December 2013 passed by the sole Arbitrator, the decree holder filed Execution Application No.1783 of 2015 claiming the sum of Rs.4,33,75,974/- i.e. Rs.2,65,72,369/- as per the Award dated 31st December 2013 + Rs.1,68,03,605/- towards interest at the rate of 18% p.a. on principal amount of Rs.2,65,72,369/- from 20th August 2012 till 14th May 2015.

5. In Execution Application, judgment debtors preferred Chamber Summons No.104 of 2016 for various reliefs including to direct the judgment creditor to accept the sum of Rs.75 Lakhs together with compound interest @ 2% p.m. calculated with effect from order dated 22nd March 2014 and in alternative, restrain the judgment debtor from executing the Execution Application No.1783 of 2015 to the extent of Rs.2,65,72,369/-. In that Chamber Summons, the judgment debtors made following prayers:-

“a) the Hon'ble Court be pleased to pass an order, allowing the present Chamber Summons in the Execution Application No.1783 of 2015, by scaling down the claim amount from Rs.4,33,75,992/- (Rupees four crores thirty three lakhs, seventy five thousand nine hundred ninety two only) to Rs.75,00,000/- (Rupees seventy five lakhs only) together with a compound interest of two percent (2%) p.m. calculated with effect from order dated March 22, 2014 for delay in payment of the aforesaid claim amount, which figure has specifically been

arrived by virtue of settlement of disputes between the Applicant No.1 and the Respondent before the Hon'ble Metropolitan Magistrate Court, Dwarka, New Delhi in Case No.823/14/12, Case No.824/114 and Case No.817/14, as more particularly recorded in the common order dated March 22, 2014 passed by Hon'ble Metropolitan Magistrate Court, Dwarka, New Delhi;

b) in the alternative, this Hon'ble Court be pleased to pass an order, allowing the present Chamber Summons in the Execution Application No.1783 of 2015 only to an extent of Rs.2,65,72,369/- (Rupees two crores sixty five lakhs seventy two thousand three hundred sixty nine only), since the Respondent has illegally claimed Rs.4,33,75,992/- (Rupees four crores thirty three lakhs, seventy five thousand nine hundred ninety two only) by levying interest on the penalty amount, which is against the public policy;

c) that pending the hearing and final disposal of the present Chamber Summons, the Hon'ble Court be pleased to pass an order modifying the list of properties to be attached, such that retain the property mentioned in Schedule-I hereunder and delete the properties mentioned in Schedule-II hereunder:

Schedule-I

Entire Sixth Floor of the building known as Sejal Encasa, admeasuring 4,000 sq. ft. (Carpet area), situated at S.V. Road, Kandivali (West), Mumbai 400067, which is owned by the Applicant No.1.

Schedule-II

Sr. No.	PROPERTY DETAILS	SOLD/MORTGAGED	DATE OF TRANSACTION
A.	Building known as SEJAL ENCASA, situated at S.V.Road, Kandivali (West), Mumbai – 400067 (Building comprises of Basement, Ground floor plus seven (7) upper floors)		
1.	Basement plus Ground Floor	Sold to Kenorita Realty LLP	May 14, 2012
2.	First Floor	Sold to Kenorita Realty LLP	May 3, 2012
3.	Second Floor	Sold to Kenorita Realty LLP	April 19, 2012
4.	Third Floor	Mortgaged to Punjab National Bank	June 22, 2012
5.	Forth Floor	Sold to Kenorita Realty LLP	May 30, 2014
6.	Fifth Floor	Sold to Kenorita Realty LLP	June 22, 2013
7.	Seventh Floor	Mortgaged to Bank of Maharashtra	July 27, 2012
B.	ABHILASHA PROPERTY		
8.	Unit 201, 2 nd Floor, building known as Abhilasha, situated at S.V. Road, Kandivali (West), Mumbai 400067. The Unit was owned by Applicant No.1.	Sold to Shaubhi Investments Private Limited	April 20, 2015
9.	Unit 202, 2 nd Floor, building known as Abhilasha, situated at S.V. Road, Kandivali (West), Mumbai 400067. The Unit was owned by Applicant No.1.	Sold to Mr.Nagji Rita	March 30, 2014

Sr. No.	PROPERTY DETAILS	SOLD/MORTGAGED	DATE OF TRANSACTION
C.	<i>PERSONAL PROPERTIES OF GUARANTORS</i>		
10.	Flat No.1504, 15 th Floor, E Wing, building known as Agarwal Residency, situated at Shankar Lane, Kandivali (West), Mumbai 400067. The Flat is owned by Mr. Amrut S. Gada.	Mortgaged to Capital First Limited	March 26, 2012
11.	Flat No.501, 5 th Floor, building known as Mamta Apartment, situated at Lokmanya Road, Goregaon (West), Mumbai 400062. The Flat is owned by Mrs. Preeti Mitesh Gada and Mr. Mitesh K. Gada.	Mortgaged to City Bank	March 16, 2007
12.	Flat No.1505, 15 th Floor, E Wing, building known as Agarwal Residency, situated at Shankar Lane, Kandivali (West), Mumbai 400067. The Flat is owned by Mr. Dhiraj S. Gada.	Mortgaged to Capital First Limited	January 31, 2012
13.	Factory Properties at Silvassa	Mortgaged to State Bank of Patiala	December 2011

d) that pending the hearing and final disposal of the present Chamber Summons, the Hon'ble Court be pleased to stay the execution proceedings, including the warrant of attachment

under Order XXI Rule 46 of the Code of Civil Procedure, 1908 in the above Execution Application by restraining the Respondent through the Bailiff, its agents, servants, representatives from taking any further steps towards the execution proceedings, including the warrant of attachment;

e) for ad-interim reliefs in terms of prayers c) and d) above;

f) for such other and further relief as the nature and circumstances of the case that the Hon'ble Court may deem fit and proper; and

g) for costs of the present Chamber Summons.”

6. The judgment debtors in affidavit in support of Chamber Summons dated 29th October 2015 specifically stated in paragraph 23.10 that the judgment creditor's claim cannot be more than Rs.2,65,72,369/-. The said paragraph 23.10 of affidavit in support of Chamber Summons No.104 of 2016 reads thus:-

“23.10. I say and submit that in the alternative, in the event this Hon'ble Court deems fit to allow the Execution Application, then this Hon'ble Court may be pleased to allow the Respondent's claim only to an extent of Rs.2,65,72,369/- (Rupees two crore sixty five lakhs seventy two thousand three hundred sixty nine only), since the amount claimed by the Respondent for Rs.4,33,75,992/- (Rupees four crores thirty three lakhs, seventy five thousand nine hundred ninety two only) includes an interest of Rs.1,68,03,623 (Rupees one crore sixty eight lakhs three thousand six hundred twenty three only) on the penalty amount of Rs.2,65,72,369/- (Rupees two crore sixty five lakhs seventy two thousand three hundred sixty nine only), since a penal interest in the form of late fees cannot be capitalized and the same will be opposed to public policy.”

7. The said Chamber Summons No.104 of 2016 was decided by this Court (Coram: A.K. Menon, J.) by order dated 13th January 2016. The said Chamber Summons was dismissed by this Court with following observations:-

“4. In my view, there is no merit in the application inasmuch as it is the applicants' own case in the alternative that if prayer (a) is not granted the decree can be executed only to the extent of Rs.2,65,72,369/-. This alternative submission itself runs contrary to the applicants' contention that there was overall settlement which supercedes the arbitral award. If that were so, the applicants making any alternative submission of paying Rs.2,65,72,369/- which is far in excess of alleged agreement to pay Rs.75,00,000/- would not arise. In this view of the matter there is no merit in the application. The chamber summons is liable to be dismissed. Hence I pass the following order:

- (i) Chamber summons is dismissed.
- (ii) Ad-interim order dated 5th November, 2015 stands vacated.
- (iii) The execution shall proceed.
- (iv) There will be no order as to the costs.”

8. Being aggrieved by the order of the learned Single Judge, the judgment debtors preferred Appeal (Lodging) No.64 of 2016 before the Division Bench of this Court. Division Bench of this Court (Coram: A.S. Oka and A.A. Sayed, JJ.) by order dated 20th June 2016, dismissed the appeal.

9. Being aggrieved by the order dated 20th June 2016 of Division Bench of this Court, judgment debtors preferred Special Leave

Petition No.30717 of 2016 before the Apex Court. In the said petition, the Apex Court passed the following order:-

“We are not inclined to entertain this petition in view of the statement made by Shri Kapil Sibal, learned senior counsel that the petitioner will pay the entire amount agreed on the settlement and an additional amount as may be determined by the High Court and then apply for review.”

Pursuant to the said liberty granted by the Apex Court, the judgment debtors have preferred the present Chamber Summons for various reliefs as stated hereinabove.

10. The learned Counsel Mr.Warunjikar appearing on behalf of judgment debtors submits that in the present proceedings, there was settlement between the parties. As per settlement deed dated 21st March 2014, the judgment debtors agreed to pay a sum of Rs.75 Lakhs lumpsum towards the total dues payable to the decree holder by installments. As per settlement deed dated 21st March 2014, a sum of Rs.18,75,000/- per month was due and payable by the judgment debtors to the judgment creditor i.e. Rs.18,75,000/- on 10th April 2014, Rs.18,75,000/- on 30th May 2014, Rs.18,75,000/- on 30th June 2014, Rs.13,75,000/- on or before 30th July 2014 and remaining amount of Rs.5,00,000/- on 20th August 2014. He submits that there was delay on the part of the judgment debtors to make payment as per the settlement. Hence, the judgment debtors called upon the judgment creditor to accept the sum of Rs.75 lakhs with agreed interest, so that they can file their review petition. He submits that today also the judgment debtors are ready and willing to pay to the judgment creditor a sum of Rs.75 Lakhs with interest at the rate of 2% p.m. as per the settlement deed dated 21st March 2014. He

submits that as the judgment creditor refused to accept the said amount, it constrained them to prefer the present Chamber Summons. He submits that the Apex Court by order dated 11th November 2016 directed the applicants to pay the entire amount agreed on the settlement and additional amount as may be determined by the High Court and then apply for review. He submits that as per settlement agreement between the parties dated 21st March 2014, judgment debtors are liable to pay only Rs.75 Lakhs to the judgment creditor with interest at the rate of 2% p.m. if there is default on their part. He submits that in the present proceeding, because of financial difficulties, it remained on their part to comply the schedule as per settlement dated 21st March 2014. He submits that as the judgment creditor and its Advocate failed to accept the said amount, judgment debtors are seeking permission from this Court to deposit the sum of Rs.75 Lakhs with interest at the rate of 2% p.m. in this Hon'ble Court, so that they can prefer appropriate review petition as per the liberty granted by the Apex Court.

11. Learned Counsel Mr.Warunjikar for the judgment debtors submits that the judgment creditor filed their reply in the present proceeding. He submits that the judgment creditor is claiming decretal amount of Rs.4,33,75,992/-. He submits that at the time of calculating the amount, the judgment creditor failed and neglected to give effect to the amount which is paid by them. He submits that in any case, how much amount is due and payable by the judgment debtors to the judgment creditor is required to be decided finally in review petition, if any filed by them, by complying the order passed by the Apex Court on 11th November 2016. He submits that the judgment creditor is intentionally refusing to accept the amount from the judgment debtors for the reason best known to them. He submits

that this Hon'ble Court be pleased to allow the judgment debtors to comply the order passed by the Apex Court so that they can file appropriate review petition before this Court.

12. On the other hand, learned Counsel Mr.Jain on behalf of judgment creditor vehemently opposed the present Chamber Summons. He filed affidavit in reply dated 27th February 2017. He submits that at the outset, the present Chamber Summons is not maintainable in law. He submits that for similar relief, judgment debtors had preferred Chamber Summons No.104 of 2016. He submits that, that Chamber Summons was rejected by this Court by order dated 13th January 2016. Against the said order, the applicants preferred the appeal. The appeal also stands dismissed by the order dated 20th June 2016 and thereafter the applicants preferred the Special Leave Petition before the Apex Court and in view of the order passed by the Apex Court, the applicants again preferred similar Chamber Summons for similar reliefs.

13. The learned Counsel Mr.Jain for the judgment creditor submits that as the applicants failed and neglected to comply the terms and conditions of the settlement deed dated 21st March 2014, the judgment creditor is entitled to execute the Award passed by the Sole Arbitrator in respect of the entire amount/claim. He submits that as per their calculation as on the date of filing of their reply in the present proceeding, the judgment debtors are liable to pay a sum of Rs.4,33,75,992/- to the decree holder.

14. Learned Counsel Mr.Jain for the judgment creditor submits that in any case, in the present proceeding, the applicants preferred earlier Chamber Summons No.104 of 2016. In that Chamber Summons,

prayer clause (b) was very clear. He submits that in that prayer clause (b), the judgment debtors had admitted their liability to the extent of Rs.2,65,72,369/-. He submits that in any case, minimum sum of Rs.2,65,72,369/- is due and payable by them. Therefore, there is no question of entertaining the present Chamber Summons unless and until the entire amount is deposited and/or paid to the judgment creditor. Hence, there is no substance in the present Chamber Summons and the same is required to be rejected.

15. I have heard both the sides at length. The short issue involved in the present Chamber Summons is how much additional amount is required to be paid to the judgment creditor. In the present proceeding, the award was passed by the Sole Arbitrator. As the judgment debtors failed and neglected to pay the dues as per the Award, the judgment creditor filed Execution Application before this Court. In that Execution Application, the judgment debtors preferred Chamber Summons No.104 of 2016. In that Chamber Summons, judgment debtors admitted their liability to the extent of Rs.2,65,72,369/-. That Chamber Summons was preferred before this Court on 29th October 2015. Considering the fact that the judgment debtors failed and neglected to comply the settlement deed dated 21st March 2014 and as per the Award the judgment creditor is entitled to recover more than Rs.4 Crores, there is no question of directing decree holder to accept only Rs.75 Lakhs with interest from the judgment debtors. Admittedly, as per the judgment debtors' statement in earlier Chamber Summons, they are liable to pay more than Rs.2,65,72,369/- to the judgment creditor. Considering the facts that the earlier chamber summons was filed by the applicants on 29th October 2015, in compliance of the Apex Court's order, they have to deposit the sum of Rs.2,65,72,369/- with interest at the rate of 2%

p.m. from 29th October 2015 till the date of deposit.

16. Considering these facts and the submission made by learned Counsel Mr.Jain for the decree holder, I am of the opinion that the judgment debtors have made out a case for partly allowing the Chamber Summons. Hence, the issue as discussed above is answered partly in favour of the applicants. Hence, the following order:-

ORDER

(A) Judgment debtors are directed to deposit a sum of Rs.2,65,72,369/- with interest at the rate of 24% p.a. from the date of filing of Chamber Summons No.104 of 2016 i.e. 29th October 2015 till the date of deposit;

(B) Amount to be deposited in the Registry of this Court within four weeks from today, failing which Chamber Summons shall stand dismissed without referring back to the Court;

(C) If amount is deposited within stipulated time as stated above, liberty is granted to the original claimant (S.E. Investments Limited) to withdraw the said amount by giving personal bond that as and when this Court will call upon them, they will bring entire amount with interest, if any;

(D) If applicants failed to deposit the amount as stated above within stipulated time, the judgment creditor is entitled to execute the Award according to law;

(E) No order as to costs.

(K.K.TATED, J.)