

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 267 OF 2017
IN
EXECUTION APPLICATION NO. 198 OF 2009
IN
AWARD DATED 26TH MARCH 2008**

Jitendra Gopaldas S/o Gopaldas Bhatia & Anr	...Applicants
<i>Versus</i>	
Shiv Kumar Jatia S/o Subhkaran Jatia & Ors	...Respondents

Mr Ashish Agrawal, *I/b Sandeep S Jinsiwale, for the Applicants.*
Ms Minakshi Nimbalkar, *i/b Satyam S Israni, for Respondent No. 1.*
Mr Vishal Kanade, *i/b Cyril Amarchand Mangaldas, for Respondent No. 3.*

CORAM: G.S. PATEL, J
DATED: 1st March 2018

PC:-

1. Mr Agrawal has struggled long and hard, and most valiantly, but alas without any success to persuade me that I should, in exercise of powers under Section 152 of the Code of Civil Procedure 1908, or, failing all else, in exercise of powers under Section 151 virtually rewrite — although that is not his submission — an elaborate and detailed order dated 18th September 2009 of Dr DY Chandrachud J (as he then was) in Chamber Summons No. 1051 of

2009 filed by the 3rd Respondent. In that Chamber Summons, the 3rd Respondent sought this relief: *that execution proceedings initiated under Execution Application No. 198 of 2009 be set aside*. Those are the exact words of the prayer.

2. The Applicant sought to execute a decree arising from a consent award. I am not concerned with the merits of that application. I cannot even enter into that controversy. Nor does Mr Agrawal, in fairness, ask me to do so.

3. On this application and for this relief, after a detailed discussion running into 26 pages, Dr Chandrachud J said this:

"For the aforesaid reasons, the relief that has been sought in the Chamber Summons would have to be granted. **The Chamber Summons is made absolute in terms of prayer clause (a).**"

4. Mr Agrawal submits that this is an inadvertent clerical (it cannot be arithmetical) mistake in this Judgment and Order and it arises from an accidental slip or omission. In my view, this does very great disservice to the learned Judge. There is nothing accidental in this order. There is no slip or omission. It is most emphatically not a clerical error. Dr Justice Chandrachud was clearly of the view that the Chamber Summons, in the form in which it was presented, needed to be allowed. He allowed it not with any modification but in terms of the prayer cast.

5. What Mr Agrawal suggests now is that despite the wording of paragraph 15 of that order and prayer clause (a) of the Chamber

Summons what was disposed of “merely the Chamber Summons” but not the Execution Application.

6. I regret that I am unable to appreciate this argument or to understand what it is supposed to mean. The Chamber Summons could not have been ‘disposed of’ in the air. It had to be disposed of either in some stated terms if those were not the exact wordings of the prayers sought, or, alternatively, had to be disposed of in accordance with the prayers. There is no third possibility. As I have noted, the principal prayer in the Chamber Summons was that *the execution be set aside*. This was prayer (a). This was granted, and it was granted in so many words. Therefore, it follows logically that if the Chamber Summons was made absolute, then the Execution was set aside. It cannot be that the Chamber Summons was *simpliciter* disposed of but the Execution Application — the dismissal of which was the very subject matter of the Chamber Summons in the first place — continued.

7. In any case, this is not application that lies under Section 152 of the CPC. It also does not lend itself, in my considered view, to the exercise of discretion under Section 151 either. What Mr Agrawal seeks is not an order that is necessary for the ends of justice or to prevent abuse of the process of the Court so much as a wholesale rewriting, perhaps in the form of a review, of an order that is long settled. It is not accidental that the Claimant or Decree Holder filed an Appeal from Dr Justice Chandrachud’s order and then unconditionally withdrew it on 2nd April 2012. That is also not without consequence.

8. Lastly, the order itself is of 2009. This Chamber Summons No.267 of 2017, is, if I might be permitted some latitude, a bit of latter-day cleverness, one that came only about eight years later from the Decree Holder. The clarification, if one can call it that, which Mr Agrawal seeks is one that should have been sought from Dr Justice Chandrachud either at the time of the Judgment or as soon thereafter as practicable; or in a review before him when he was still a Judge of this Court, which he continued to be for many years thereafter; or even in the appeal that the Decree Holder filed. It most certainly cannot be done today, and not in this fashion.

9. There is another order of 2015, this time of Mrs Justice Dalvi. This was one of those common orders that deal with matters in bulk granting an omnibus direction of one kind or the other and failing compliance directs dismissal. The present Execution Application it seems was clubbed with several others. This does not mean that Dr Justice Chandrachud's order is wrong or did not dispose of the Execution Application. At best there is ministerial error in Mrs Justice Dalvi's order of 29th April 2015 and that is attributable not to her but to the Registry.

10. The Chamber Summons is misconceived. It is dismissed with costs.

(G. S. PATEL, J)