

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
CHAMBER SUMMONS NO. 645 OF 2018
IN
COMM EXECUTION APPLICATION NO. 37 OF 2018
IN
COMMERCIAL SUIT NO. 133 OF 2016**

Piramal Finance Ltd	...Plaintiff
<i>Versus</i>	
Saraswat Education Society & Ors	...Defendants

**Dr Birendra Saraf, with Gaurav Mehta, Snehali and Maithili Vagal
& Shalakha Mehta, i/b Dhaval Vussonji & Associates, for the
Plaintiff.**

Mr Induprakash, i/b CK Tripathi, for Defendant No. 2.

**CORAM: G.S. PATEL, J
DATED: 13th August 2018**

PC:-

1. Heard.

2. By Consent Terms dated 19th February 2017 and 20th February 2017, the Defendants submitted jointly and severally to a decree on admission in terms of prayer clauses (a) to (h) of this

Commercial Suit. Annexure “H” to the Consent Terms required payment in instalments to be made by the Defendants. The Consent Terms also provided for an event of default. The Defendants having defaulted, Clause 10 of the Consent Terms came into operation. An amount of Rs. 62,38,82,191/- then fell due with interest. Dr Saraf for the Decree Holder states that as of 10th August 2018 the decretal amount is Rs. 96,73,14,103/-.

3. Over the past several hearings, and following certain orders of disclosure and Affidavits filed, it appears that there are several flats and properties in and around Mumbai that could be put to sale in execution through the Sheriff, and the sale proceeds applied towards part satisfaction of the decretal claim.

4. This does not mean that any sale proceeds so applied must necessarily be appropriated towards the principal. That appropriation will be in the usual course as mandated by law, that is say, first towards outstanding interest claim and the balance, if any, towards the principal.

5. A list of seven assets in Mumbai, Panvel, Manpada and Dombivali is tendered. This is taken on record and marked “X” for identification with today’s date.

6. The Sheriff can proceed directly for sale of the properties in Mumbai. The properties at serial Nos. 6 and 7 are, respectively, at Navi Mumbai and in Dombivli. These will have to be sold by the Respondent in execution under Section 51(d) of the Code of Civil

Procedure 1908. I have already appointed a Receiver in execution of all these properties. That, however, even as regards the properties in Mumbai, is not to be construed as a limitation on the powers of the Sheriff to put the Mumbai properties to sale.

7. As the last marked “X” shows, these properties are charged to (i) Ratnakar Bank Ltd; (ii) UCO Bank; (iii) Karvy Financial Services Ltd; and (iv) Bank of Baroda. It goes without saying that the sale of any assets that are previously charged to a financial institution will necessarily be subject to satisfaction of the claim of the secured creditors on priority. This means that while Mumbai assets will be put to sale by the Sheriff, the sale proceeds are not to be handed over to the Decree Holder without an order of the Court. The Judgment Debtors will be required to place before the Sheriff the exact information as regards the secured creditors so that the Sheriff can issue notice to the secured creditors as well. Any sale by the Sheriff will necessarily be by public auction. Any secured creditor will be entitled to bid at such an auction and will be entitled to set off its claim against the bid, if found successful. It goes without saying that every one of these assets will have to be got valued prior to conduct of the sale proceeds and the Deputy Sheriff will obtain separate directions in chambers for fixing a reserve price. Each property in Mumbai will be sold as a separate and distinct lot.

8. The Court Receiver will proceed to sell the two properties at serial Nos. 6 and 7 in a similar fashion and the Decree Holder is directed to place before the Court Receiver details of the secured creditors for those two properties. The Court Receiver will also follow the same protocol while putting those properties to sale.

9. This order in terms of the list marked “X” is limited to the seven properties listed in that annexure. However, the Court Receiver has so far taken symbolic possession of certain other assets, both movable and immovable. The Court Receiver will proceed now to put those properties to sale as well and will obtain separate directions for each property in regard to the valuation and the fixing of a reserve price.

10. The Decree Holder will also be entitled to bid at every one of these auction sales.

11. Finally it is clarified that the Court Receiver is not to effect any sale by a private treaty without a specific order of the Court. The Deputy Sheriff will attempt to make the sales only by public auction and not by private treaty. On any sale being successfully conducted by the Sheriff, the Sheriff will obtain directions from the Court for the Receiver to deliver possession to the successful bidder. It is once again clarified that so far as the properties that are encumbered are concerned, no payment is to be made to the Judgment Creditor without an order of the Court. The intention is to ensure that the claim of the secured creditors is first met since they have a prior claim.

12. The Chamber Summons is disposed of in these terms. No costs.

13. All previous orders including the order dated 29th August 2018 and the directions in paragraph 31 of that order are confirmed as final orders in Chamber Summons.

14. Liberty to the parties to apply.

15. In regard to the unpaid salaries of teaching and non-teaching staff, liberty to the Judgment Debtors to apply to the Court for appropriate orders.

(G. S. PATEL, J)