

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 245 OF 2018
IN
CHAMBER SUMMONS NO. 942 OF 2011
WITH
NOTICE OF MOTION (L) NO. 290 OF 2018

Deepak Sampat ... Appellant.

V/s.

Rajendra Danthi and ors. ... Respondents.

Mr. I.K. Tripathi a/w. Ms Bhagyashree Gawas I/b Mr. C.K. Tripathi for the Appellant.

Mr. Rajiv Narula a/w. Mr. Ramesh Jain for Respondent No.7.

CORAM : A.S. OKA AND M.S. SONAK, JJ.

DATE : 8th OCTOBER 2018.

P.C.:

1] Heard the learned counsel appearing for the appellant.

2] The appellant is the original plaintiff who has taken an exception to the order dated 27th February 2018 passed by the learned Single Judge on Chamber Summons taken out by the 7th respondent. The 7th respondent is the wife of the 1st respondent- 1st defendant. The Chamber Summons was filed in execution application arising out of Suit No. 2998 of 2009 in which a consent decree was passed on 22nd March 2010. In fact, the execution application was filed for executing the consent decree.

3] The Chamber Summons was taken out by the 7th respondent by taking recourse to the Rule 58 of Order XXI of the Code of Civil Procedure

(for short “the said Code”) raising an objection to the attachment of her immovable property and praying for setting aside the attachment. By the impugned order, the learned Single Judge has held that as against the 1st, 2nd and 4th defendants, the consent decree sought to be executed was ordered to be marked as fully satisfied in terms of the order dated 5th May 2011 passed in Chamber Summons No. 768 of 2011 and therefore, the attachment of the property of the 7th respondent cannot be sustained.

4] The submission of the learned counsel appearing for the appellant is that what is recorded by the Prothonotary and Senior Master by certificate dated 11th July 2011 is only a partial satisfaction to the extent of Rs.17,50,000/-, but the consent decree was for much higher amount. He submitted that in Chamber Summons No. 768 of 2011, the prayer clause (a) made by the 1st, 2nd and 4th defendants was for a direction to pay a sum of Rs.17,50,000/- to the plaintiff or to deposit the said amount in terms of the consent decree in the Court, but the said prayer was not granted. He submitted that as the decree has not been marked as completely satisfied, there was no reason to revoke the attachment levied on the property of the 7th respondent. We have also heard the learned counsel appearing for the 7th respondent.

5] We have perused the impugned order. The learned Single Judge has made the Chamber Summons taken out by the 7th respondent absolute on more than one ground. The first ground is that as per the order dated 5th May 2011, the decree sought to be executed was ordered to be marked as fully satisfied as against the 1st, 2nd and 4th defendants. The second reason

given is that the 7th respondent was not the judgment debtor, but she is the wife of the 1st defendant.

6] We have perused the prayers made in Chamber Summons No. 768 of 2011 and in particular prayer (b). The prayer clause (b) reads thus:

“(b) Prothonotary and Senior Master to records the Decree marked fully satisfied against Defendants Nos.1,2 and 4 in the above Suit.”

7] The learned Single Judge by order dated 5th May 2011 disposed of the said Chamber Summons by recording that the learned Advocate appearing for the 1st, 2nd and 4th defendants has handed over a pay order in the sum of Rs.17,15,000/- being the principal amount and a cheque in the sum of Rs.2,07,123/- towards interest at the rate of 15% per annum on the delayed installments aggregating to sum of Rs.17,15,000/- to the learned advocate for the plaintiff (present appellant). It is further recorded in the order that the learned counsel for the plaintiff tenders original documents to the advocate for the 1st, 2nd and 4th defendants. The Chamber Summons has been made absolute in terms of prayer clauses (b) and (c) and therefore, a direction was issued to the learned Prothonotary and Senior Master to record the decree under execution as marked fully satisfied as against the 1st, 2nd and 4th defendants. While doing so, the learned Single Judge specifically held that the appellant can take out proceedings for implementation of clauses (5) and (6) of the consent decree. However, none of those clauses relate to the 1st, 2nd and 4th defendants.

8] It is true that the certificate issued by the learned Prothonotary and Senior Master in terms of the order dated 11th July 2011 is not happily worded and it may indicate that only a partial satisfaction of the consent decree was recorded. However, the order of the Court dated 5th May 2011 clearly directs the Prothonotary and Senior Master to mark the decree as fully satisfied as against the 1st, 2nd and 4th defendants. The 7th respondent is the wife of the 1st defendant. She is not a judgment-debtor. Therefore, we cannot find any fault with the view taken by the learned Single Judge in the impugned order. Hence, there is no merit in the Appeal and the same is dismissed.

9] Notice of Motion does not survive and the same is disposed of.

(M. S. SONAK, J.)

(A.S.OKA, J.)