

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL APPEAL (L.) NO.175 OF 2018
IN
CHAMBER SUMMONS (L.) NO.495 OF 2018
IN
COMMERCIAL EXECUTION APPLICATION (L.) NO.673 OF 2018
IN
SUIT NO.345 OF 2015
WITH
NOTICE OF MOTION (STAMP) NO.343 OF 2018**

Pujit Aggarwal & Anr.	...Appellants
Vs.	
Vardhaman Developers Limited	...Respondent

Mr.A.V. Anturkar, Senior Advocate, with Mr.Kevin Pereira i/b. Susmit Phatale for Appellants.

Mr.Dinyar Madon, Senior Advocate, with Mr.Karl Tamboly and Ms.Kausar Banatwala i/b. Tushar A. Goradia for Respondent.

**CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.**

DATE : 3rd APRIL 2018

P.C.:

This appeal arises against the impugned ad-interim order dated 27th March 2018 passed by the learned Single Judge in Chamber Summons (Lodging) No.495 of 2015 whereby the learned Single Judge in execution of a consent decree passed in Suit No.345 of 2015 has inter-alia directed appointment of Court Receiver in respect of the immovable properties of the judgment debtors with a further direction to take physical possession of some of the properties.

2. The learned Senior Counsel appearing for the appellants submits that on 27th March 2018 chamber summons was tendered in the Court and on 27th March 2018, the impugned order came to be passed without serving the copy of the chamber summons on the appellants. The appellants did not have any opportunity to file reply and canvass their submissions before the learned Single Judge. The learned Single Judge ought to have given sufficient opportunity to the appellants to put up their case before passing the impugned order. The learned Counsel for the appellants submits that the appointment of the Court Receiver is contrary to the provisions of Code of Civil Procedure in view of the facts of the case on record.

3. The learned Senior Counsel for the respondent, on instructions, submits that a copy of the chamber summons was served on the appellants on 26th March 2018 and on that day, the Counsel appeared for the appellants before the learned Single Judge asked for a day's time. Accordingly, the matter was posted on 27th March 2018. The learned Single Judge considered the material placed on record and in view of the series of instances, the order came to be passed appointing Court Receiver which is perfectly in tune with the provisions of Section 51 of the Code of Civil Procedure. It is submitted that the steps were taken

during proceeding more precisely on 1st March 2018 when order was passed in Contempt Petition No.66 of 2016 in Suit No.345 of 2015. No leniency is required to be shown to the appellants/judgment debtors. The respondents are making efforts to execute the decree. The judgment debtors are adopting all the possible methods to delay the execution.

4. We have perused the record placed before us. During the course of argument, both the Counsel entered into a controversy as to whether the chamber summons was served on the appellants on 26th March, 2018 or on 27th March 2018. We are not entering into this history of litigation between the parties. The suit is decreed, execution proceedings are pending and orders have been passed from time to time by the learned Single Judge. The only issue as to whether the appellants deserve to be granted an opportunity to file reply or make submissions on the chamber summons which are made returnable tomorrow i.e. 4th April 2018. The impugned order reflects that the Court Receiver is to take physical possession of the property at Khandala, within the jurisdiction of the Lonavala Municipality as also of the property at Gamdevi.

5. It is not in dispute that the appellants are yet to file a reply

affidavit to the chamber summons which they intend to file opposing the reliefs as prayed in the chamber summons. The impugned order is not a final order on the chamber summons and the learned Single Judge while passing the impugned ad-interim order, has adjourned the hearing of the chamber summons for tomorrow (4th April 2018) for further hearing. In these circumstances, it would be in the interest of justice that the appellants are permitted to file a reply affidavit to the chamber summons on the adjourned date of hearing before the learned Single Judge, so that the learned Single Judge can consider the rival contentions, to be urged by the parties and pass appropriate orders on the chamber summons.

6. Having considered the directions as contained in the impugned order and the submissions as made on behalf of the parties, we direct that the Court Receiver at this stage shall take only a formal possession of the properties mentioned in paragraph 4 and 8 of the impugned order, on condition that the appellants would submit their reply tomorrow before the learned Single Judge. The learned Single Judge would deal with the contentions of the contesting parties on its own merits and would pass appropriate orders on the chamber summons on the material which may be placed before the learned Single Judge. We are not expressing any opinion on the merits of the argument advanced

before us by the learned Counsel appearing for both the parties. Needless to observe that all contentions of the parties on merits of the matter would be subject matter of consideration by the learned Single Judge. Learned Single Judge shall decide the chamber summons without being influenced by the impugned order.

7. The impugned order stands modified to the above extent.

8. Appeal stands disposed of accordingly.

9. In view of disposal of the appeal, nothing survives in Notice of Motion (Stamp) No.343 of 2018. It is disposed of accordingly.

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]