Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 571 OF 2018

IN

EXECUTION APPLICATION NO. 2286 OF 2015

L & T Finance Ltd …Plaintiff

Versus

Deccan Chronicle Holdings Ltd & Anr …Defendants

Dr Birendra Saraf, *with Ms SI Joshi with Ms Nikita Pawar, I/b SI Joshi & Co, for the Plaintiff.*
Mr Ashish Pyasi, *with Pragya Khaitan, I/b Dhir & Dhir, for Applicant/Respondent No. 1.*

CORAM: G.S. PATEL, J
DATED: 18th June 2018

PC:-

1. These are the reliefs sought in this Chamber Summons:

(a) Be pleased to vacate/modify the orders dated 26.10.2016 and 25.11.2016 passed by this Hon'ble Court in the captioned matter;

(b) Be pleased to discharge the court receiver and hand over the possession of the suit properties of Respondent No. 1, more particularly mentioned in Schedule A, Ms Mamta Binani, the Resolution Professional for Deccan Chronicle Holdings Limited;

2. The orders in question are by SJ Kathawalla J. These are of 26th October 2016, continuing a previous order, and of 25th November 2016 (at pages 10 and 11 of the Chamber Summons). Paragraph 1 of the latter order dated 25th November 2016 reads thus:

> "1. The Defendant/Respondent No. 1- M/s Deccan Chronicle Holdings Limited has in its Affidavit in Reply stated that its properties have been encumbered to various banks. In view thereof, Defendants/ Respondents are directed to forthwith file their further Affidavit setting out the amounts due to the banks as on date for which the said securities are given/ provided by the Defendants / Respondents to the said banks. The Defendants /Respondents shall also annex to their Affidavit, the documents under which such securities have been created. The Defendants/ Respondents shall also file their income tax returns of the last five years along with all the annexures thereto."

3. It is now stated that a Resolution Professional has been appointed by the Hyderabad Bench of the National Company Law Tribunal under the Insolvency and Bankruptcy Code 2016 by an order dated 5th July 2017 and that there is a moratorium by an order of 19th July 2017. Clause c(1) of order dated 19th July 2017 said that this moratorium would not apply to Suits or proceedings pending before the High Court or the Supreme Court against the Corporate Debtor. It appears that the Applicant, Canara Bank, went in Appeal and obtained a clarification to the effect that the moratorium would apply to all pending Suits and proceedings but not to any suit or case pending before the Supreme Court under Article 32 of the

Constitution of India, nor to any matter covered by Article 226 of the Constitution of India.

4. It is in this background that the present application comes to be made. The Applicant, Canara Bank, is thus seeking a peremptory order to gain an advantage over the Decree Holder, L & T Finance Limited, which has moved in execution of an arbitral award it obtained, and in which execution it had the Receiver appointed of properties mentioned in Schedule "A". This property includes land and structures known as the Mathuradas Mill Compound at Lower Parel in Mumbai City.

5. I am not inclined to grant this relief on this representation that is being made. At the very least, it seems to me that the application is entirely premature in the absence of an approved resolution plan. There is admittedly no resolution plan in place. There is no order of liquidation. The submission that if there is no resolution plan, the automatic result is that the company is in liquidation also seems to me to be complete speculation at this stage.

6. At this stage, the learned Advocate for the Applicant seeks leave to withdraw the Chamber Summons with liberty to renew the application at an appropriate time. Leave granted with liberty as prayed; the Chamber Summons is dismissed as withdrawn, subject to the liberty reserved to file an appropriate application at an appropriate stage. No costs.

(G. S. PATEL, J)