

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
JUDGE'S ORDER NO. 144 OF 2017
IN
EXECUTION APPLICATION NO. 658 OF 2017
IN
ARBITRATION AWARD DATED 19TH DECEMBER 2016
WITH
CHAMBER SUMMONS NO. 829 OF 2017

Nathalal Shivilal	...Plaintiff
<i>Versus</i>	
Habib Textiles Pvt. Ltd	...Defendant

Ms Aparna Devkar, *for the Applicant in JO/Chs-the*
Petitioner/Decree Holder,
Mr S Murthy, *i/b Abhishek Patil, for the Respondent/Judgment*
Debtor.

CORAM: G.S. PATEL, J
DATED: 12th January 2018

PC:-

1. The Petitioner/Decree Holder obtained an Arbitral Award on 19th December 2016 against the sole Defendant/Judgment Debtor. It appears that the Defendant, though given notice of the arbitral

proceedings, did not appear before the Arbitral Tribunal. The Defendant filed no challenge to the Arbitral Award. The Award attained finality. It was in the amount of Rs. 63,67,656/- with further interest at the rate of 18% per annum. The Award has resulted in a money decree that has now been sealed and been put in execution. The Judge's Order seeks the issuance of a precept under Section 46 of the Code of Civil Procedure 1908 to the District and Sessions Court Thane and to the District and Sessions Court Surat to execute the Award by attachment of the properties, movable and immovable, belonging to and in the possession of the Defendant within the jurisdiction of those Courts.

2. Mr Murthy for the Defendant has filed an Affidavit in Reply. He says that the properties sought to be attached do not belong to the Judgment Debtor. This is not a reason to stay the issuance of a precept; that is a question that will be determined by the executing court.

3. He also submits that the Arbitral Award itself is *void ab initio* and is a nullity since there was an inherent lack of jurisdiction. He has filed Chamber Summons for this relief. Mr Murthy submits that he is entitled to be heard on this Chamber Summons as it goes to the root of the matter but there can be no pre-requisite or condition placed on the Defendants to secure the decretal claim sought to be recovered. This is, in my view, submission that is born and weaned in complete and unacceptable inequity. Mr. Murthy's clients are Judgment Debtors. If they wish to canvass any such thing, even assuming that, in execution, I can in this indirect fashion, go behind the decree, they must at the very least be put to terms and must

secure the entire decretal claim due until date. With the fairness and candour for which he is justly renowned, Mr Murthy says that his clients are unable to pay anything at all. If that be so, then they are not entitled to be heard on their plea; the matter is as simple as that.

4. Chamber Summons No. 829 of 2017 filed by the Defendant is dismissed.

5. The Judge's Order is separately signed.

6. As regards the title to the property, all contentions are left specifically open to be canvassed before the Court to which the precept is issued.

(G. S. PATEL, J)