Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 975 OF 2017
IN
EXECUTION APPLICATION NO. 2590 OF 2015
IN
ARBITRATION NO. 1073 OF 2013
WITH
CHAMBER SUMMONS (L) NO. 1271 OF 2017

L&T Finance Ltd …Applicant
Versus
Gopalji Heavy Lifters & Ors …Respondents
And
The Mahanagar Coop Bank Ltd ...Applicant

Ms SI Joshi, *with Nikita Pawar, i/b SI Joshi & Co., for the Applicant.*
Mr Zal Andhyarjuna, *with Maithili Parikh, I/b SM Gaikwad, for the Applicant in CHS/975/2017.*
Mr Sahil Saiyed, *with Nikhil Apte, i/b Wadia Ghandy & Co., for the Applicant in CHSL/1271/2017*

CORAM: G.S. PATEL, J
DATED: 28th February 2018

PC:-

1. This is an impleadment action on behalf of the Mahanagar Cooperative Bank Limited. It is filed in Execution Application No.

2590 of 2015 moved by L&T Finance. The Respondents are Judgment Debtors under an arbitral award. The Mahanagar Cooperative Bank seeks impleadment because it has obtained and got registered through the Tahasildar a charge in its own name in respect of the four properties listed at Serial Nos. (i) to (iv) of paragraph 2 at pages 2 and 3 of the Affidavit in Support. All these lands are at Panvel.

2. After very many hearings and Affidavits, it emerges that the Mahanagar Cooperate Bank gave as many as nine different loans to the Respondent No. 1 and associated companies. Six of these nine loans were cleared and closed. Three loans remained outstanding. Loan Account No. EMIHYP/30 of 11th August 2011 is in respect of Respondent No. 1 and the balance amount was Rs. 1,73,41,689/- as on 31st December 2017. Loan Account No. EMIHYP/34 of 21st October 2011 was in the name of Gopalji Infrastructure Solutions and balance was Rs. 4,39,12,247.21 as of that date. The last unpaid loan was also in Gopal Infrastructure Solution's name, with Loan Account No. EMIHYP/31 of 30th May 2012, and the outstanding amount was Rs. 4,99,93,727.12. Respondents Nos. 2, 4 and 5 are all partners of Gopalji Infrastructure Solution.

3. The Mahanagar Cooperative Bank obtained recovery certificates and then proceeded against the Panvel properties. It learnt that the Court Receiver of this Court took possession of this very land pursuant to an order of 25th April 2017 in the present Execution Application.

4. I cannot proceed with the matter and discuss the question of prioritization of the rival claims without the Mahanagar Cooperative Bank Ltd first being joined as a party. The fact also remains that the Mahanagar Cooperative Bank Ltd has got its charge registered over these lands on 2nd June 2016 apparently in accordance with law, though Ms Joshi disputes this, and I will leave the question open. The Court Receiver was appointed at L&T Finance's instance in execution only a year later on 25th May 2017. If, therefore, L&T Finance, which has no registered charge of its own, wishes to dislodge the Mahanagar Cooperative Bank's charge, it must file a substantive application making out a case for that purpose. I will leave all contentions open in that regard. But the one thing I cannot do is to refuse to implead the Mahanagar Cooperative Bank and thus, in a roundabout manner, render today, without any application from L&T Finance, an order that would result in the lifting or cancellation of that charge. After all this is a civil proceeding in execution. It is not a Writ Petition.

5. The present Chamber Summons is made absolute in terms of prayer clauses (a), (b), (c) and (e).

6. The Court Receiver is not to proceed in execution without further orders of the Court.

7. Liberty to the L&T Finance to file an appropriate proceeding in regard to the charge registered by the Mahanagar Cooperative Bank. Now that the Mahanagar Cooperative Bank is a party in execution, that proceeding can, if permissible in law, be brought in this Execution Application itself.

8. Liberty to Ms Joshi to mention the matter after the application is filed. All contentions are specifically kept open.

9. It is clarified that I have not addressed myself to the merits of the correctness of the Mahanagar Cooperative Bank's charge and all contentions in that behalf including as to the validity of the Mahanagar Cooperative Bank's claim and the Bank's obtaining charge on the land are left open.

(G. S. PATEL, J)