Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
CHAMBER SUMMONS NO. 210 OF 2017
IN
EXECUTION APPLICATION NO. 78 OF 2016

Sterling & Wilson Pvt Ltd ...Applicant
In the matter between
Reva Industries Ltd ...Decree Holder
Versus
Pratibha Industries Ltd & Anr ...Judgment Debtor

Mr Sanjay Joshi, *for the Decree Holder-Reva Industries.*
Ms Priyanka Shetty, *i/b Advaya Legal, for the Applicant/third party.*
Mr Vishal Phal, *i/b Sunita D Sonawane, for Judgment Debtor.*

CORAM: G.S. PATEL, J
DATED: 22nd January 2018

PC:-

1. The Chamber Summons is by a third party seeking to raise an attachment levied in respect of the 13th and 14th floor of immovable property being building known as Universal Majestic at PL Lokhande Marg, Village Taluka South Salsette, District Mumbai. The two properties are the entire 14th floor, Commercial Unit No. 1401 to 1412 of about 2325 sq metres. The second portion is on the 13th floor and has two parts, viz., Commercial Unit Nos. 1301 to

1306 about 1163 sq. meters carpet area and Commercial Units 1307 to 1312 admeasuring 1162 area. Together with these are 105 car parking spaces.

2. Ms Shetty for the Applicants argues that her clients are *bona fide* transferees for value without notice and that these properties could not have been the subject matter of the attachment in execution at the time when the Applicant purchased them.

3. The factual matrix is thus. The arbitral proceedings were between the Decree Holder Reva Industries Limited (**"Reva Industries"**) and one Pratibha Industries Limited (**"Pratibha Industries"**). At the relevant time, Pratibha Industries Limited did own the subject office premises on the 13th and 14th floors of Universal Majestic.

4. The Claimant is a registered small enterprise under Micro, Small and Medium Enterprises Development Act 2006 (**"MSMED ACT"**). It entered into contracts with Pratibha Industries for the sale and purchase of two cranes. On default, disputes arose and Reva Industries filed an application for recovery with the Haryana Micro and Small Enterprise Facilitation Council. This resulted in the matter being referred to the arbitration of a retired District and Sessions Judge. This ultimately resulted in an award dated 5th January 2015. Pratibha Industries challenged the award in a Petition filed on 5th December 2014 under Section 34 before the Additional District Judge Faridabad. The Petition having failed, execution proceedings were initiated on 6th January 2016 and these included an application for attachment and sale of the subject premises. In the meantime, Pratibha Industries filed an appeal under Section 37 to the Punjab and Haryana High Court. On 3rd March 2016, the Punjab and Haryana High Court allowed the appeal and set aside the award in its entirety. By this time, however, on 12th February 2016, a warrant of attachment had been issued. The properties in questions stood attached on that date.

5. By its order of 3rd March 2016 the Punjab and Haryana High Court granted Pratibha Industries liberty to appoint an arbitrator in accordance with law. Reva Industries challenged the Punjab and Haryana High Court's order in the Supreme Court in what finally became in Civil Appeal No.5220 of 2016. The Special Leave Petition was filed on 10th May 2016. On 29th June 2016m notice was issued and directions followed for filing a reply and a rejoinder.

6. That Civil Appeal was allowed on 13th April 2017. Pratibha Industries was directed to make necessary deposit within a week. The trial Court in Faridabad then noticed on 1st May 2017 that no deposit had been made.

7. In the interregnum, Pratibha Industries Limited obtained loan facilities from the Bank of Baroda, Bandra East Branch and mortgaged the properties under an indenture dated 14th March 2016. This was clearly in the hiatus between the Punjab & Haryana High Court's order and the filing of Reva Industries' SLP. The Bank of Baroda is the lead institution in a consortium of lenders to Pratibha Industries. As Pratibha Industries was unable to repay the loan, the subject premises were sold to the Bank of Baroda under a registered Sale Deed dated 26th October 2016. The Bank of Baroda then put the subject property to sale by public auction on 6th February 2017. It is at this stage that the present Applicant, Sterling and Wilson Private Limited, entered the picture. It submitted a bid. It was the highest bidder and the sale was knocked down in its favour for Rs. 105,05,00,000/-only (Rupees One Hundred and Five Crores and Five Lakhs Only). A Sale Deed dated 31st March 2017 came to be executed and this is registered.

8. Before I proceed further I need only note at this stage that this Sale Deed is the prior to the order of the Supreme Court of 13th April 2017. Neither before the Punjab & Haryana High Court nor before the Supreme Court at the time of issuance of notice did Reva Industries seek a continuance of the attachment.

9. The argument on behalf of the decree holder the Reva Industries is that Pratibha Industries knew of the filing of the SLP. It had filed a Caveat. It did not at any stage inform either the Supreme Court or Reva Industries of any mortgage with the Bank of Baroda or any subsequent transactions. As far as Sterling and Wilson, the Applicants, are concerned, this actually makes very little difference. What I am hearing today is not an application by Pratibha Industries. Had that been the case, a very different result might have followed. The application is by a third party purchaser because Sterling and Wilson had at no time any transactions directly with Pratibha Industries at all. It responded to a public auction sale issued by the Bank of Baroda with whom Pratibha Industries had lending transactions. It acquired title from Bank of Baroda, not from

Pratibha Industries. There was already a sale completed in favour of the Bank of Baroda, and that was on 26th October 2016.

10. The argument by Mr Joshi on behalf of Reva Industries that the attachment continued notwithstanding the Punjab & Haryana High Court having set aside the award is not one that commends itself. That order resulted in a setting aside of the award itself, in full. The award is the foundation of the decree. It is thus the foundation of the execution. Without there being a subsisting award, there was no decree, and nothing to put into or continue in execution. To say that on restoration of the award the attachment would clamp once again, though generally correct, does not account for the fact that even in such a case just exceptions would have to be made for any intervening transactions that are without notice and where third party interest have been created. Those obviously cannot be subjected to any such continuance of execution. What Reva Industries in substance suggests is that even if the award itself no longer exists and is set aside, the attachment and execution can continue unmoored from the award and the decree. This is more or less like saying that even if the four walls and foundation of a house are removed, the roof will continue to remain intact aloft. At the very least what was required was an order of Court for some sort of stay.

11. It is also urged that it was for Pratibha Industries to obtain an order vacating or raising the attachment. That is an application that is being made today by Sterling and Wilson, the third party purchaser. Pratibha Industries did not need to do anything of the kind since it succeeded in having the award itself set aside, and, with the award went the decree and its execution. Once a decree is set aside, I do not see how it can continue in execution.

12. The consequence is that the title validly passed to Wilson and Sterling Pvt Ltd, the Applicants. Reva Industries is unable to show how that title remains clogged. Reva Industries has filed no proceeding to impeach the title acquired by Sterling and Wilson Private Limited. By opposing this application by Sterling and Wilson to raise the attachment, Reva Industries seeks to set aside the registered mortgage deed in favour of Bank of Baroda, the sale in favour of Bank of Baroda, the auction sale conducted by the Bank of Baroda and the registered sale deed in favour Sterling and Wilson Private Limited. It expects that all this be done although it is clear that in the intervening time in between Reva Industries had no protective order at all, and even though Reva Industries has filed no proceeding at all to challenge these transactions on any ground.

13. Reva Industries may be correct to the limited extent that as regards the decree against Pratibha Industries, following the order of the Supreme Court it must be allowed to proceed in execution against other assets. Those rights are kept open and untouched and Reva Industries may file such proceedings as it thinks appropriate this or in any other appropriate court for execution of its award against the Pratibha Industries Limited. What must be excluded from such execution, however, is the subject property to which Sterling and Wilson has, in the meantime, acquired full and valid title.

14. The result is that the Chamber Summons succeeds. No question of intervention arises. The Chamber Summons is made absolute in terms prayer clause (b) which reads as follows:

> "(b) That this Hon'ble Court may be pleased to set aside the warrant of attachment of the premises belonging to the Applicant, i.e., the office premises located at the 13th and 14th Floor of Universal Magestic, Mumbai, more particularly described in **Exhibit "A"**"

15. An oral application is made on behalf of Reva Industries that much time will be lost if it is now required to file a fresh Chamber Summons in execution and obtain an order of disclosure. Mr Joshi submits that an order of disclosure be made against Pratibha Industries to place on affidavit its unencumbered immovable and movable properties. I believe that in equity at least such an order deserves to be made. Reva Industries is a small scale industry and it should not put to further hardship. Pratibha Industries, the Judgment Debtor, is directed to file in this Court within a period of three weeks from today an affidavit in this Chamber Summons disclosing all its movable and immovable properties that are encumbered including financial assets. The affidavit will also include a statement of assets of all the directors of the Pratibha Industries Limited. In the meantime, Reva Industries Limited must, within two weeks from today, file a substantive Chamber Summons for reliefs in execution. In that it may also seek a further order of disclosure apart from other reliefs. This disclosure affidavit filed in this Chamber Summons will be read as an affidavit in the Chamber Summons to be filed by Reva Industries.

16. There will be no order as to costs.

17. I would be most remiss if I did not express my appreciation of the precision and calm restraint with which Ms Shetty has conducted her case.

(G. S. PATEL, J)