

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMMERCIAL APPEAL (L) NO.361 OF 2018
IN
CHAMBER SUMMONS (L) NO.495 OF 2018
IN
COMMERCIAL EXECUTION APPLICATION (L) NO.673 OF 2018
IN
COMMERCIAL SUIT NO.345 OF 2015
ALONGWITH
COMMERCIAL NOTICE OF MOTION (L) NO.804 OF 2018**

Pujit Ravikiran Aggarwal

And Others

... Appellants

Versus

Vardhman Developers Ltd

And Others

... Respondents

.....

Mr. Chirag Balsara a/w Mr. Chinmaya Acharya & Mr. Sumit Phatale for Appellants.

Mr. D. D. Madan, Senior Advocate a/w Mr. Karl Tamboly, Ms. Kausar Banatwala & Ms. Gauri Sakhardande i/b Tushar Garodia for Respondent No.1.

Mrs. Kavita Amberkar, 1st Assistant Court Receiver, present.

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**CORAM : SHANTANU KEMKAR &
SARANG V. KOTWAL, JJ.**

RESERVED ON : SEPTEMBER 10, 2018

PRONOUNCED ON : SEPTEMBER 25, 2018

JUDGMENT : (Per SARANG V. KOTWAL, J.)

. This is an appeal filed by the Appellants against the order dated 8th August 2018 passed by a learned Single Judge of this Court, in Commercial

Chamber Summons (L) No.495 of 2018 in Commercial Execution Application (L) No.673 of 2018 in Suit No.345 of 2015. The Appellants are related to each other. Appellant No.1 Pujit Ravikiran Aggarwal (Pujit) and No.3 Gunjan Pujit Aggarwal (Gunjan) are husband and wife. Appellant No.2 Ravikiran Surajbhan Aggarwal (Ravikiran) is the father of Pujit. Respondent No.3 Dinesh Kiran Aggarwal (Dinesh) and Gunjan were equal shareholders in a private limited company, by the name, Orbit Dwelling Private Limited (Orbit Dwelling). Respondent No.1 Vardhaman Developers Limited (VDL) was the Plaintiff-company in Suit No.345 of 2015. Respondent No.2 Orbit Corporation Limited (Orbit Corp) was the Defendant in the said Suit.

2. The facts leading to filing of this appeal are as follows :-

2.1 VDL had entered into a conveyance deed dated 10 September 2007 with Orbit Corp in respect of the property situated on C.S. No.460, 461, 462, 1/462 and 2/462 of Lower Parel Division, admeasuring 4719.41 sq meters or thereabout at Tulsipipe Road, Mumbai. Under the conveyance deed, it was agreed that VDL as Vendors would retain the specified areas in the commercial building and other specified areas in the residential building which were to be built by Orbit Corp. The other part of the building was meant for free sale which was to be put up by Orbit Corp. Pursuant to the said conveyance deed, the Orbit Corp constructed only one residential building instead of one commercial building, one residential building and other buildings to accommodate the tenants of the existing structures. Orbit Corp was unable to comply with the various terms and conditions mentioned in the said conveyance deed. Therefore, VDL filed

Suit No.345 of 2015 on the Original Side of this Court for the specific performance of the said conveyance deed. Whilst the suit was pending, the Plaintiff-VDL and the Defendant reached settlement and filed Consent Terms dated 11 May 2015 in this court. The consent terms provided that Orbit Corp was to allot VDL the areas mentioned in the consent terms. Orbit Corp had undertaken to get the plan sanctioned, and to obtain commencement certificate as well as all other necessary permissions for the entire area allotted to VDL; which was to be constructed by Orbit Corp within period of six months from the date of the consent terms, the time being the essence of contract. On failure on the part of Orbit Corp. to fulfill its obligations towards VDL, it was agreed that Orbit Corp was entitled for further extension of six months, subject to VDL charging interest at the rate of 18 per cent from the seventh month onwards on the sum of Rs.1,18,00,00,000/- as and by way of liquidated damages. Orbit Corp had undertaken to pay a total consideration of Rs.1,18,00,00,000/-, in case, they failed to obtain approvals and sanctions within a period of twelve months. The consent terms were accepted by the court and the decree was passed.

2.2 VDL thereafter initiated execution proceedings in respect of the consent decree passed in Suit No.345 of 2015. In the execution proceedings, additional consent terms dated 23 September 2015 were executed between VDL as Plaintiff/decreed-holder, Orbit Corp as Defendant/judgment-debtor, Pujit as Respondent No.1, Ravikiran as Respondent No.2 and Orbit Dwelling. It was mentioned in these additional consent terms that Orbit Dwelling was an associate company of Orbit Group of Companies and that Gunjan and Dinesh had 50 per cent share

each in Orbit Dwelling. It was further mentioned that Orbit Dwelling was the absolute owner/assignee of and was also sufficiently entitled to 44.375 per cent undivided right, title and interest in the property known as Baug-E-Sara at Napeansea Road, Mumbai and its adjacent land. Some important clauses of these additional terms are necessary to be reproduced herein below as under :

“1

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4 The shareholders and Directors of the said Orbit

Dwelling have passed a Resolution dated 19 September 2016 *inter alia* agreeing and confirming to become a party to these additional consent terms to abide by the decree passed in the above matter to the extent of the net sale proceeds of the property described hereinafter thereby undertaking to discharge a part of the liability of the Defendant in the Decree passed in the above matter by the Hon'ble Court;

5 The Respondent Nos.1 and 2 agree and undertake to submit to the Decree passed in terms of the Consent Terms in the above Suit and also agree and undertake to comply with the terms and conditions more particularly set out in these Consent Terms. The Decree will thus be binding upon Respondent Nos.1 and 2 in their individual and personal capacity. The Defendant hereby undertake that the undertaking contained in this paragraph shall be filed by Respondent Nos.1 and 2 within a period of four weeks from the date thereof;

6 ...

7 Orbit Dwelling has passed a Resolution dated 19 September 2016 *inter alia* resolving that the said Orbit Dwelling shall hereby create a first charge of its 44.375 per cent share in the said property in favour of the Plaintiff and/or its nominees;

.....

8(viii) that Orbit Dwelling shall upon the sale of the said property simultaneously pay the net sale proceeds received by it to the Plaintiff towards the part satisfaction of the Plaintiff's claim;

9 The Decree passed in terms of Consent Terms is binding upon the Defendant and Respondent Nos.1 and 2. The decree passed in terms of these additional consent terms only shall be binding upon Orbit Dwelling and its Directors. The Directors of Orbit Dwelling are also personally liable to ensure the compliance of these additional consent terms only. Respondent Nos.1 and 2 and the Directors of Orbit Dwelling (to the extent of their obligation under the Additional Consent Terms) undertake to execute Personal Guarantees and other necessary documents for the same within a period of four weeks from the date thereof;

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11 The Defendant and Respondent Nos.1 and 2 through the Defendant agree and undertake to comply with the above terms and conditions and endeavor to sell the said property within a period of 60 days. In the event the Defendant and Orbit Dwelling are unable to sell the said property within the stipulated period as mentioned hereinabove the Plaintiff and/or its Nominee shall endeavour to sell the said property within the next 60 days and the

price so sold at shall be accepted by the Defendant, Respondent Nos.1 and 2 and Orbit Dwelling and its Directors without any demur provided that the said price shall be communicated to the Defendant and if the Defendant is in a position to obtain a Buyer offering a highest price then the price communicated to the Defendant within a period of 10 days from the date of such communication then the Plaintiff may sell the said property to such a buyer. The parties however hereby agree that the said property shall be sold to the Buyer offering the highest price in respect thereof. Subject to what is stated hereinabove, the Plaintiff accordingly be and is hereby irrevocable authorized to sell the said property at such price and on such terms as they deem fit and proper and to appropriate the net sale proceeds towards the part satisfaction of decretal debt due to the Plaintiff;

12 The Defendant, Respondent Nos.1 and 2, Orbit Dwelling through its Directors and its Shareholders doth hereby indemnify and shall always keep indemnified the Plaintiff and/or its nominees in the event of any loss/damage suffered by them on account of the representations and assurances given by the Defendant, Respondent Nos.1 and 2, Orbit Dwelling and its shareholders.

2.3 These consent terms were taken on record and vide order dated 29 September 2016 passed in Chamber Summons (L) No.1666 of 2016 in Suit No.345 of 2015, the additional consent terms were accepted.

2.4 One Sunteck Realty Limited purchased the right, title and interest of Orbit Dwelling in Baug-E-Sara for Rs.34.2 crores. As per the additional

consent terms, this amount was to be paid to VDL only by way of part satisfaction of the original decree and Directors of Orbit Dwelling were liable for compliance of the additional consent terms only.

2.5 As can be seen, the major portion of the decree remained to be satisfied and in the execution as well as contempt proceedings, various orders came be passed.

2.6 VDL have also filed Contempt Petition No.66 of 2016 in Suit No.345 of 2015. Pursuant to the different orders passed by learned Single Judge from time to time, Pujit, Ravikiran and Gunjan have filed disclosure affidavits setting out income tax returns, bank statements, list of investments, movable and immovable properties etc. In the disclosure affidavit dated 9 March 2017, filed in Contempt Petition No.70 of 2017, Gunjan has not disclosed the flat at Angel, 2 Krishna Sanghi Path, Gamdevi, Mumbai-400 007 as her immovable asset, though Bunglow at Khandala, Flat at Marine Drive and Mukund Mansion are mentioned in the list of her immovable properties. Even in her additional affidavit of disclosure dated 26 March 2018, there was no mention about her ownership regarding the flat at Gamdevi.

2.7 Learned Single Judge vide his order dated 23 March 2018 passed in Contempt Petition No.70 of 2017 observed that a vast amount was shown to have been gifted to Gunjan Aggarwal after the additional consent terms were entered into. The learned Judge, in paragraph 8 of the said order, has observed thus :-

“8 In any case, any such question of segregation would arise only if it was shown that each of these four persons did not have any cross-linkage or interlinked interest. As it happens, the disclosures so far made, inadequate and incomplete though they are, show, for instance, that Pujit Aggarwal loaned an amount of Rs.15.61 crores to his wife Gunjan, and nearly Rs.92 crores to Ravikiran Aggarwal. This obviously means that assets held by Gunjan Aggarwal are not circumscribed or ring-fenced only because she enters the picture in the Additional Consent Terms. A loan liability to Pujit Aggarwal renders her assets equally liable in execution.”

By this order, learned Single Judge directed Pujit, Ravikiran and Gunjan to make further disclosures. As mentioned earlier, all of them filed additional affidavits of disclosure. In the context of the present appeal, amount of Rs.15.61 crores mentioned as loan amount given by Pujit to Gunjan is of significance.

2.8 Learned Single Judge passed another order dated 27 March 2018, in Chamber Summons (L) No.495 of 2018. Apart from other directions, the learned Judge was pleased to appoint a receiver in respect of immovable property at Gamdevi, Unit Nos.901A and 902A on the 9th Floor of a building known as The Angel, at 2, Krishna Sanghi Path, Gamdevi, Mumbai-400 007. The learned Judge directed the receiver to take actual physical possession of these two units. Pujit and Ravikiran were appointed as agents of the receiver. In the same order, the learned Judge in paragraph 7, observed that Gunjan was in the position of a garnishee *vis-a-vis* the liability of Pujit Aggarwal. Since this question is important in the

context of the present appeal, we therefore reproduce paragraph 7 as below :-

“7. In the statements that have so far been provided, Mrs. Gunjan Aggarwal is said to owe an amount of Rs.67,15,980/- to Ravi Kiran Aggarwal. In the list tendered on 23 March 2018, against the statement for Pujit Aggarwal, it is stated that Mrs. Gunjan Aggarwal has a loan from him in the amount of Rs.15,61,74,000/-. This would place Mrs. Gunjan Aggarwal in the position of a garnishee *vis-a-vis* the liability of Pujit Aggarwal.”

Learned Judge also directed the receiver to take actual physical possession of Gunjan's bungalow at Khandala. Paragraph-8 of the said order in that behalf reads thus :

“8 The statement in respect of Mrs. Gunjan Aggarwal shows that there is a bungalow known as Saniyya Villa in 5R ward, Hill Top Colony, Khandala, property No. WK35R012150 within the jurisdiction of the Loanvala Municipality and valued at Rs.64,66,120/-. The Receiver in execution will proceed to take actual possession of this property and get it valued through an empanelled valuer on an as-is-where-is basis.”

This order dated 27 March 2018 passed by learned Single Judge in Chamber Summons (L) No.495 of 2018 was challenged by Pujit by way of Commercial Appeal (L) No.175 of 2018 before a Division Bench of this court. By an order dated 3 April 2018, a Division Bench (Coram : Naresh H. Patil And G.S. Kulkarni, JJ.), directed the Court Receiver to take only formal possession of the properties mentioned in paragraphs 4 and 8 of the

impugned order on the condition that the Appellants would submit their reply on the next date (i.e. 4 April 2018) before the learned Single Judge. It was further observed that the learned Single Judge would deal with the contentions of the contesting parties on merits and would pass appropriate orders in the Chamber Summons on the material which would be placed before him.

Gunjan and Dinesh on their part, preferred Commercial Appeal (L) No.176 of 2018 challenging the order passed against their properties in Chamber Summons (L) No.495 of 2018. The said Commercial Appeal (L) No.176 of 2018 was also disposed of by the Division Bench vide its order dated 3rd April 2018.

2.9 On 4 April 2018, learned Single Judge passed another order in Chamber Summons (L) No.495 of 2018, recording that after the order of Division Bench, the reply affidavit was filed by Pujit for himself and on behalf of Ravikiran but Gunjan and Dinesh had not filed any affidavit in reply. The Learned Single Judge further observed that the conditional order permitted the Receiver to take only formal possession. But, since the condition was not fulfilled, the consequences had to follow in respect of the assets of Gunjan and Dinesh both. These observations are important and therefore, paragraph-9 of the said order dated 4 April 2018 is reproduced herein below as under :

“9. There is a Reply Affidavit dated today by Pujit Aggarwal for himself and on behalf of Ravikiran Aggarwal, and I will have to separately assess to what extent this justifies either a modification of my 27th March 2018 order or a separate

direction altogether. There was a companion Appeal filed by Mrs. Gunjan Pujit Aggarwal and Dinesh Ravikiran Aggarwal and which also received the same appellate conditional order. They have, however, filed no Affidavit in Reply. This makes a difference because Mrs. Gunjan Aggarwal has listed separate properties and I have in my order of 27 March 2018 made separate provisions and passed separate directions in respect of the assets he Receiver to taking only formal possession, and that condition is not met, the consequences must follow, and no further order or direction is required from me. The appellate order will govern and is sufficient in this regard. This is as regard the assets of Mrs. Gunjan Aggarwal and Dinesh Aggarwal or both.”

In paragraph-14 of the said order, learned Single Judge extended time for Gunjan and Dinesh to file an affidavit in reply to the Chamber Summons. Paragraph -14 reads thus :

“14. As the Reply on merits in the Chamber Summons, I will defer the consideration by a short date so that the Plaintiff has time to consider the disclosures and also responses. Since I am doing that, I will also extend time to Mrs. Gunjan Aggarwal and Dinesh Ravikiran Aggarwal to file an Affidavit in Reply to the Chamber Summons. This is of course necessarily subject to the foregoing observations in regard to non-compliance with the appellate court's direction that the Receiver is to take only formal possession of the Khandala property on condition that Gunjan Aggarwal and Dinesh Ravikiran Agarwal file their Affidavit in Reply by today. If they have not done so, the condition is not met, and the default consequence follows. The Court Receiver will act accordingly.”

2.10 On 18 April 2018, learned Single Judge passed another order in Chamber Summons (L) No.495 of 2018 in which it was observed that inspite of earlier orders passed by learned Single Judge, Gunjan entered into consent terms on 2 April 2018 with an alleged tenant in a tenancy dispute in the Small Causes Court, Mumbai. Learned Judge expressed his strong displeasure regarding this conduct of Gunjan.

2.11 Learned Single Judge made further reference to the litigation pending in the Small Causes Court, Mumbai in respect of Gunjan's Marine Drive flat in an order passed on 20 April 2018 in Chamber Summons (L) No.495 of 2018.

3. This is the background of the dispute between the parties before the order dated 8th August 2018 was passed by the learned Single Judge. The Appellants Pujit, Ravikiran and Gunjan have challenged the order dated 8 August 2018 in Chamber Summons (L) No.495 of 2018 in Commercial Execution Application No.673 of 2018 in Suit No.345 of 2015. In Chamber Summons (L) No.495 of 2018 taken out by VDL, various prayers were made. One of the prayers was for appointment of Receiver under Order XL Rule 1 of Code of Civil Procedure, 1908 in respect of all properties of the Respondents in the Chamber Summons, i.e. Orbit Corp., Pujit, Gunjan and Dinesh. By another prayer, it was prayed that these Respondents be directed to make disclosure of their properties. In this background, various orders referred to herein above and other orders were passed by the learned Single Judge.

4. In the impugned order dated 8th August 2018, the learned Judge observed that Gunjan had never mentioned that the flat at Gamdevi, i.e. on 9th Floor of 'Angel' was owned partially by her and for the first time, she had come up with the case that she owned part of the said 9th floor flat. In view of this varying stand, learned Judge directed the Court Receiver to take immediate physical possession of the entirety of the 9th Floor of the Angel at 2, Krishna Sanghi Path, Gamdevi, Mumbai-7 before 07.00 p.m. on 8th August 2018. By the same order, the learned Judge also directed the Court Receiver to take physical possession of Gunjan's Jewellery and further directed that the said jewellery should be placed in the safe custody in the locker mentioned in the affidavit. The keys were to be kept by the Court receiver. In the present appeal, this order is challenged by the Appellants herein.

5. We have heard Mr. Chirag Balsara, learned Counsel for the Appellants and Mr. D.D. Madon, learned Senior Counsel for VDL. With their assistance, we have gone through the compilations filed by the parties.

6. Mr. Balsara, submitted that Gunjan could not be described as "Garnishee" vis-a-vis loan granted to her. It is submitted that the provisions of Order XXI Rules 46 and 46-A to 46-F of the Code of Civil Procedure, 1908, are not followed and therefore, the Receiver could not have been appointed. He submitted that, as far as Orbit Dwelling was concerned, since Gunjan and Dinesh held 50 per cent shareholding each, their holding was in the nature of quasi-partnership. He submitted that Gunjan was entitled to half of the sale proceeds in respect of Baug-E-Sara

property. He further submitted that the said amount which Gunjan would have received; could be utilized as a set off for the loan of Rs.15.61 crores advanced by Pujit to her. Considering such set off, in fact, Pujit owed her money and therefore, she could not be termed as “Garnishee” and therefore, she was not liable to pay any amount in satisfaction of the debt incurred by Pujit. In support of his submission, he relied on the case of **Anand Singh Vs. Collector of Bijnor**¹ to contend that Gunjan was entitled to use her share of sale proceeds of Baug-E-Sara property against loan advanced by Pujit. He further relied on the case of **Allmark V. Burnham and another**² in support of his contention that arrangement of shareholding in Orbit Dwelling was in the nature of quasi-partnership. He relied on paragraph 137 of the said judgment, which reads thus :

“137. The question then arises as to whether or not the value of Mr. Allmark's 36% shareholding in the company should be discounted to reflect its minority status. This case has many of the features of a so-called 'quasi-partnership'. The whole venture was one founded on long-term person friendship. The parties' contributions differed both in monetary terms and in the nature of the work they performed. Mr. Allmark moved home from London to Hampshire, and realised all his capital, in order to undertake it. The parties regarded themselves as partners in the business. This is a clear case of a pro-rata valuation without a 'minority discount'.

1 AIR 1932 Allahabad 610

2 (2015) EWHC 2717 (Ch)

Mr. Balsara, also relied on the judgment of **Jagjit Singh Chawla and Others Vs. Tirath Ram Ahuja Ltd and Others**³ passed by the Company Law Board-Principal Bench in support of his contention that the arrangement of holding in Orbit Dwelling was in the nature of quasi-partnership.

7. Mr. Balsara, further submitted that Gunjan was part owner of 9th floor flat in the building Angel at Gamdevi. He submitted that Gunjan had legitimate documents to prove her claim. These documents are not produced before learned Single Judge, instead Commercial Notice of Motion No.681 of 2018 was filed in the present appeal. It was prayed in the said Notice of Motion that liberty be granted to the Appellants to produce the additional documents. The Appellants wanted to rely on registered conveyance deed dated 7 March 2002 showing transfer of Flat No.902 B in favour of Gunjan and also share certificate in respect of the said flat transferred in her name. It was mentioned in the affidavit in support of the Notice of Motion that the Appellants due to *bona fide* reasons were prevented from producing the said documents before the learned Single Judge. Apart from these avermetns, there are no reasons mentioned in the said affidavit in support of the Notice of Motion. In our opinion, this does not satisfy requirement of Order XLI Rule 27 of the Code of Civil Procedure, 1908, which provides for circumstances in which additional evidence can be produced in the Appellate Court.

8. Mr. Balsara further submitted that Jewellery which is taken charge of by the court receiver consists of Gunjan's Stridhan and therefore, the

3 2004 Company Cases 385

learned Single Judge could not have directed the Court Receiver to take charge of her jewellery. In this connection, Mr. Balsara submitted that the jewellery received not only on or before or at the time of marriage, but even subsequent to the marriage, could form Stridhan and therefore, was free from attachment and the Court Receiver could not have taken charge of the same. In support of his contention, Mr. Balsara, relied on the judgment in the case of **Vinod Kumar Sethi and Others Vs. State of Punjab and another**⁴ as well as the judgment in the case of **Pratibh Rani Vs. Suraj Kumar and another**⁵.

9. Mr. Balsara, further submitted that though Gunjan had not disclosed about ownership of some portion of 9th floor flat, Angel, Gamdevi in her earlier affidavit, she could not do so because of paucity of time. He submitted that there was no deliberate attempt to hide her ownership of the 9th floor flat from the court. He further submitted that in view of clinching evidence in the form of documents, her ownership was sufficiently established. He further submitted that Gunjan was not judgment-debtor and therefore, her share of the said flat could not have been affected by appointing the Court Receiver.

10 On the other hand, Mr. D.D. Madon, learned Senior Counsel for VDL supported the impugned order. He submitted that there were no pleadings in respect of Gunjan's ownership of part of the flat on the 9th floor of the building 'Angel' at Gamdevi. He further submitted that without proper pleadings, it was not open for Gunjan to contend that she had any right by way of ownership of any portion of the property. He further

4 AIR 1982 Punjab And Haryana 372

5 AIR 1985 S.C. 628

submitted that Gunjan had sufficient opportunity to produce documents in respect of her ownership of the said property, but Gunjan did not produce any document before the learned Single Judge. He submitted that Pujit and Ravikiran had separately challenged the order of appointment of the receiver in respect of 'Angel' property. Appeal against the said order was not entertained and therefore, order appointing the Receiver in respect of the said flat cannot be interfered with by way of the present appeal. He submitted that the receiver taking possession of Gunjan's property at Khandala was merely a consequence which had to follow as a condition mentioned by Division Bench in Criminal Appeal (L) Nos.175-176 of 2018 were not complied with by Gunjan and therefore, even in that respect, no interference is called for. He further submitted that Gunjan had not specified as to which part of the jewellery was her Stridhan and therefore, learned Judge had no option but to appoint receiver to safeguard the jewellery. The proceedings were still pending and learned Judge had not passed final order of attachment of jewellery and therefore, it cannot be said that Gunjan's Stridhan was attached. In support of his contention, Mr. Madon, relied on the judgment in the case of **Bachhaj Nahar Vs. Nilima Mandal And Another**⁶, in which it is held that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief. Only in exceptional cases, can this general rule be deviated from, if the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of the issue, had led evidence on such issue. Mr. Madon submitted that in the present case, Gunjan's contention cannot be termed as an exceptional case and in the absence of pleadings, no document could

6 (2008) 17 Supreme Court Cases 491

be looked into. Mr. Madon further strongly objected to grant relief in the present Notice of Motion No.681 of 2018, whereby Gunjan had sought permission to produce additional documents on record which were not produced before learned Single Judge in respect of ownership of portion of 9th floor flat, Angel, Gamdevi. Mr. Madon further relied on the judgment of **Union of India Vs. Ibrahim Uddin and Another**⁷, wherein it is held that under Order 41 Rule 27 of the Code of Civil Procedure, 1908, the discretion of the appellate court in allowing production of document in exceptional circumstances should be exercised judicially provided under Rule 27. Mr. Madon, further submitted that the authorities relied upon by Mr. Balsara, learned Counsel for the Appellants are not applicable to the present case. He submitted that Gunjan cannot contend that Orbit Dwelling was in the nature of quasi-partnership and therefore, she was entitled to half of the sale proceeds of the property Baug-E-Sara. He further submitted that authorities in respect of Stridhan have not laid down the law that every gift after marriage is a part of Stridhan of a married woman.

11. We have carefully considered the rival contentions of the parties. A crucial question arises in this appeal is as to whether the learned Single Judge could have appointed the Court Receiver in respect of 9th floor of the building Angel at Gamdevi, if Gunjan had ownership of some part of units of the 9th floor. One of the contentions on behalf of the Appellants was that Gunjan was not a judgment-debtor and therefore, no order could be issued in respect of her property. There is history of litigation. It can be seen that first consent term was filed between VDL and Orbit Corp., as they were

7 (2012) 8 Supreme Court Cases 148

original parties to the Suit. The additional consent terms dated 23rd September 2016 mentioned that shareholders and directors of Orbit Dwelling had passed resolution dated 19 September 2016, agreeing and confirming to become a party to these additional consent terms and to abide by the decree passed to the extent of the net sale proceeds of Baug-E-Sara property, thereby undertaking to discharge a part of the liability of the Defendant (i.e. Orbit Corp) in respect of the decree passed in the Suit. These additional consent terms also mention that Directors of Orbit Dwelling, i.e. Gunjan and Dinesh were also personally liable to ensure compliance of these additional consent terms. Thus, Gunjan and Dinesh have undertaken to pay the amount received by way of sale proceeds of Baug-E-Sara property to the decree-holder in part satisfaction of the original decree, of which Orbit Corp was the judgment-debtor. The title and interest of Orbit Dwelling in Baug-E-Sara property was purchased by M/s Sunteck Realty Limited for Rs.34.20 crores. VDL as a decree-holder in the main suit was entitled to receive this amount pursuant to the additional consent terms dated 23 September 2016.

12. In the further proceedings, Gunjan has contended that pursuant to sale of Baug-E-Sara property, she would have received half of the sale proceeds as she was 50 per cent shareholder of Orbit Dwelling. Her further contention is that she was entitled to set off this amount for repayment of the loan advanced by Pujit to her. In that case, there was no liability on her as a Garnishee. According to Gunjan, VDL as decree-holder in the original suit has no right to proceed against Gunjan. Mr. Balsera, submitted that Baug-E-Sara property was an asset of Orbit Dwelling and therefore, Gunjan was entitled to her 50 per cent share of any profits

included sale proceeds of Baug-E-Sara property. We find that this argument is fallacious. The additional consent terms dated 23rd September 2016 clearly mention that Orbit Dwelling upon sale of Baug-E-Sara property was to pay net sale proceeds received by it to VDL towards part satisfaction of VDL's claim. These additional consent terms show that sale of Baug-E-Sara property was not for profit of Orbit Dwelling and the directors, i.e. Gunjan and Dinesh were not entitled to receive any part of the sale proceeds. Therefore, we do not see as to how any part of net sale proceeds could have been described as asset, dividend or any other benefits accruing to Gunjan to the extent of her 50 per cent shareholding in Orbit Dwelling. Gunjan or Dinesh were not beneficiaries of sale of Baug-E-Sara property. Therefore, in our opinion, Gunjan was not entitled to set off half of the net sale proceeds, i.e. half of Rs.34.20 crores against loan advanced by Pujit to Gunjan. By the additional consent terms, Pujit had undertaken to submit to the decree passed in terms of consent terms in the suit and clearly accepted that the decree was binding on him in his individual capacity as mentioned in clause 5 of the additional consent terms. Therefore, once Pujit has accepted his liability under the decree, he becomes judgment-debtor consequently, since he had advanced loan to Gunjan, Gunjan becomes Garnishee and she is liable to be proceeded as a "Garnishee" under Order XL Rule 46 of the Code of Civil Procedure, 1908. The question as to whether Rules 46-A to 46-F of Order XL, are followed or not, is a matter which can be raised by the parties before the learned Single Judge. In fact, the orders passed by the Division Bench in Commercial Appeal (L) Nos.175-176 of 2018 mention that contentions of the parties on merits were left open. This observation would also cover all the questions in that behalf. Once Orbit Dwelling had undertaken to give entire net sale

proceeds of Bag-E-Sara to VDL, it was not open for Gunjan to use half of the said amount to set off her personal loan. This would deprive VDL, of their claim to recover outstanding loans advanced by Pujit and in particular that would affect VDL's right to proceed against Gunjan as Garnishee. In our opinion, therefore, Gunjan's contention that she cannot be termed as garnishee as she was entitled to set off half of the net sale proceeds of Baug-E-Sara against the loan advanced by Pujit has no legal basis.

13. In any case, by the additional consent terms dated 23 September 2016, vide clause-9, Gunjan in the capacity of director of Orbit Dwelling had accepted that the decree passed in terms of the additional consent terms was binding on Orbit Dwelling and directors of Orbit Dwelling (Gunjan and Dinesh) were personally liable for compliance of the additional consent terms to the extent of their obligations under these additional consent terms. Therefore, Gunjan is personally liable, if the entire amount of net sale proceeds of Baug-E-Sara property is not given to VDL. Therefore, to that extent, VDL can proceed against Gunjan in her personal capacity. Thus, looking at the case from any angle, we find that the learned Single Judge was right in appointing the Receiver in respect of Gunjan's property.

14. Having held that Gunjan could be termed as Garnishee and therefore, court receiver could be appointed in respect of her property, the controversy regarding her part ownership of 9th floor Angle, Gamdevi loses its sting. We have already mentioned that Notice of Motion No.681 of 2018 is liable to be dismissed and therefore, documents attempted to be brought on record belatedly at the appellate stage by Gunjan cannot be

taken into consideration. These documents were not before the learned Single Judge and therefore, Gunjan had no locus to challenge appointment of the receiver in respect of 9th floor of 'Angle' at Gamdevi. Even assuming for a moment that Gunjan had some title in part of the said property, even then, in her capacity as Garnishee, her property can be proceeded against and the Court Receiver can be appointed. In this view of the matter, the judgments relied on by Mr. Balsara, learned Counsel for the appellants, as to whether Orbit Dwelling was quasi-partnership or not, is not a material issue in the context of the case.

15. As far as the jewellery of Gunjan is concerned, the learned Single Judge has observed that inspite of various opportunities, Gunjan had still not *prima facie* satisfied the court that part of her jewellery was 'Stridhan'. The learned Judge has observed that there were no documents showing that in the Wealth Tax Returns, she had declared any particular jewellery as her Stridhan. Mr. Balsara submitted that her marriage had taken place twenty years back and therefore, it was difficult to get such Wealth Tax Returns or other documents. However, Gunjan will still have to show to the satisfaction of the Court that which part of Jewellery was her Stridhan and only that jewellery can be protected from attachment. The decision as to what constituted her Stridhan, has not attained finality, as the learned Single Judge has not passed final order in respect of her Stridhan. Gunjan can still satisfy the learned Judge as to what is her Stridhan. The learned Judge has only safeguarded the jewellery, so that before the final decision, it could not be tampered with. We see no fault with this approach and therefore, we do not find any need to interfere with that part of the order.

16. Based on the above discussion, we do not find any reason to interfere with the impugned order dated 8 August 2018.

17. With the result, Commercial Appeal (L) No.361 of 2018 is dismissed.

18. As the appeal is dismissed, Commercial Notice of Motion (L) No.804 of 2018 for stay of the impugned order does not survive and the same is also accordingly dismissed.

[SARANG V. KOTWAL, J.]

[SHANTANU KEMKAR, J.]