

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (Lodg) NO. 365 OF 2018
in
Chamber Summons (L) No.1140 of 2018
and
Chamber Summons (L) No.1133 of 2018
with
Chamber Summons No.907 of 2017
Chamber Summons No.1755 of 2010
Chamber Summons No.84 of 2015
Chamber Summons No.1576 of 2015
and
Chamber Summons (L) No.593 of 2018
ALL IN
Execution Application No.581 of 2010
in
Arbitration Proceeding No.1 of 2006

Swarup Group of Industries.

...Appellant

Versus

1.National Agricultural Cooperative Marketing
Federation of India Ltd. & Anr.

...Respondents

Mr.E.P.Bharucha, Senior Advocate with Mr.Mohit Chaudhary, Mr.Prasad Das
I/b. Das Associates, for the Appellant.

Mr.Aditya V. Kumar with Mr.Shashipal Shonkar, for Respondent no.1.

Mr.Snehal Shah, Mr.D.V.Deokar, Mr.Pinakin Modi, Mr.Parikh I/b. Parimal
Shroff & Co., for Respondent No.2.

**CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.**

DATE : 13th August, 2018

P.C.:

1. Heard the learned Counsel for the parties. The appellant/original judgment debtor has filed this appeal challenging the order dated 6th August, 2018 passed by the learned Single Judge in Chamber Summons (L) No.1140 of 2018 as taken out in the execution proceedings by one Silver Moon Construction Pvt. Ltd. (for short “**Silver Moon**”). As seen from the title of the impugned order, also other chamber summons were listed.

2. The grievance as urged on behalf of the appellant is two fold; firstly that Chamber Summons (lodg) No.1140 of 2018 was not served on the appellant before the same was taken up for hearing when the impugned order was passed. The other grievance is in regard to the observations made in paragraphs 4 and 10 of the impugned order which reads thus:-

4. Having regard to the fact that the maintenance charges and other amounts due to Silver Moon have not yet been paid and that these amounts to, today, Rs.21,52,79,776/-, I have little choice but to make Chamber Summons (L) No.1140 of 2018 absolute. However, since this is a civil proceedings, rather than allowe intervention, a difficult concept in civil procedure, I will permit Silver Moon to be joined as a Respondent to Execution Application No.581 of 2010 filed by the Judgment Creditor. Amendment to be carried out without need of re-verification within one week from today.

...

10. There is one contention by the Judgment Debtors that needs to be rejected immediately. This is

the contention that Silver Moon has an unadjudicated claim. There is no substance to this. Without satisfying the demand from Silver Moon and paying stamp duty and registration charges the Judgment Debtor has no title at all and, in any event, even the Consent Award makes it clear that the contemplated transfer was subject to payment of all these charges. Therefore, there is no question today of the Judgment Debtor disputing the claim being made by Silver Moon or the requirement of paying stamp duty and registration charges.”

3. Mr.Bharucha, learned Senior Counsel contends that there was no opportunity granted to the appellant to contest the assertion of Silver Moon, when the above observations were made by the learned Single Judge, to the effect that Rs.21,52,79,776/- has become due and payable by the appellant and further as observed in paragraph 10, the appellant has no title at all in the property situated at Mega Mall.

4. The contention as urged on behalf of the appellant is opposed on behalf Mr.Shah who appears for Silver Moon as also by the judgment creditors. It is contended on behalf of Silver Moon that in pursuance of the order dated 21st March,2013, the appellant was liable to pay future maintenance charges as also penalty and interest due on the outstanding amount.

5. We have heard the learned Counsel for the parties. We have perused the impugned order and the record.

6. In the facts and circumstances of the case, we are of the opinion that now as the chamber summons of Silver Moon has been

allowed and as Silver Moon is now a respondent in the execution proceedings, it would be proper and permissible for Silver Moon to move an appropriate application in the pending proceedings in regard to any of its claims.

7. We accordingly grant liberty to Silver Moon to move a necessary application before the learned Single Judge to raise any claim, if so permissible in law. If any such application is moved by Silver Moon then, the appellant and all the other necessary parties would be entitled to assert their respective pleas either in opposition or in support of such application. All contentions of the parties in that regard are expressly kept open.

8. Needless to observe that the learned Single Judge shall decide the said application on its own merit and without being influenced by the impugned order.

9. The appeal is accordingly disposed of in the above terms.
No costs.

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]

Prashant
Vilas
Rane

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signed by
Prashant
Vilas Rane
Date:
2018.08.14
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