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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 2010 OF 2009
IN
EXECUTION APPLICATION NO. 20 OF 2010
IN
ARBITRATION NO. 483 OF 2006**

Itochu Corporation	...Applicant
<i>Versus</i>	
Sanjay Trade Corporation & Ors	...Respondents

**WITH
CHAMBER SUMMONS NO. 354 OF 2010
IN
EXECUTION APPLICATION NO. 20 OF 2010
IN
ARBITRATION CASE NO. 13520/MS/JB
AND
CHAMBER SUMMONS NO. 885 OF 2017
IN
EXECUTION APPLICATION NO. 20 OF 2010
IN
ARBITRATION NO. 483 OF 2006
AND
NOTICE OF MOTION (L) NO. 352 OF 2018**

IN
EXECUTION APPLICATION NO. 20 OF 2010
IN
ARBITRATION NO. 483 OF 2006

Mr Dinyar Madon, Senior Advocate, with Shoma Maitra, I/b Wadia Ghandy, for the Applicant in NMSL/352/2018 – Sanjay Mehta.

Mr Archit Jayakar, I/b Jayakar & Partners, for Respondents Nos. 1 & 2 & Applicant in CHS/354/2010 & CHS/885/2017.

Mr Prathamesh Kamat, with Zueb Cutlerywala, Vikram Kamath & Pinak Bhagwat, I/b Kochhar & Co., for the Applicants in CHS/2010/2009.

Mr Archit Jayakar, with Rahil Jhaveri, I/b Jayakar & Partners, for Respondents Nos. 1 and 2 in CHS/2010/2009.

Mr Prathamesh Kamat, I/b Kochhar & Co., for the Plaintiffs in LPTNL/197/2018 for the Defendant.

CORAM: G.S. PATEL, J

DATED: 25th June 2018

PC:-

Chamber Summons No. 2010 of 2009:

1. The Chamber Summons will be disposed of with the following observations:

2. The first prayer is for leave under Order 21 Rule 51 of the Code of Civil Procedure 1908. This is never necessary and no order needs to be passed in that regard.

3. Second, the prayer for dispensing with the notice under Order 21 Rule 22 of the Code of Civil Procedure 1908 is also not necessary because the Award became executable on the dismissal of the challenge Petition under Section 34 of the Arbitration and Conciliation Act 1996 on 13th September 2009 and the Execution Application followed very shortly thereafter on 11th December 2009, well within the two year period contemplated under Order 21 Rule 22.

4. The Chamber Summons is disposed of in these terms. There will be no order as to costs.

Chamber Summons No. 354 of 2010:

5. Mr Jayakar appears for the 1st and 2nd Respondents to the Award. The Chamber Summons is by them to raise an attachment under a warrant dated 19th January 2010. Mr Jayakar submits that the partnership firm and its partner, Umesh Prataprai Mehta, have filed an Appeal under Section 37 of the Arbitration and Conciliation Act 1996. That Appeal is admitted but in view of the recent amendments to the Arbitration Act, a separate application for stay of execution of the Award is as yet pending though it has been filed and served.

6. The submission by Mr Jayakar is to adjourn the Chamber Summons by a few weeks until the Appellate Court hears the application for stay. Mr Kamat for the Decree Holder is correct in pointing out that the Appeal Court has heard an ad-interim

application on Mr Jayakar's Notice of Motion for stay. It allowed the execution to proceed and did not stay the execution of the Decree. The Notice of Motion itself, however, is pending hearing and final disposal in the Appeal Court. This does not by itself mean that Mr Jayakar's present Chamber Summons is liable to be summarily dismissed on that ground. After all, the Notice of Motion before the Appellate Court is as yet pending. In my view, the correct course, so as not to overreach the Appeal Court, would be to simply adjourn Chamber Summons No. 354 of 2010 at least by three weeks while granting leave to the Decree Holder to apply. Otherwise, the pending Notice of Motion before the Appeal Court would be rendered infructuous.

7. So ordered.

Chamber Summons No. 885 of 2017:

8. Mr Kamat is correct in saying that the further disclosure Affidavits by Defendants Nos. 1 and 2 do not comply with the previous directions. Even the names of other partners of Defendant No. 1 are not disclosed. What is said to be disclosed as the income-tax returns with accompanying acknowledgements, and the statements of computation of income border on the absurd. There are no annexures. These are not even audited statements. The format is irregular and, in some places, incomprehensible. There are references to further particulars in these statements, but those particulars are not produced.

9. I refuse to particularize what is required from these Defendants Nos. 1 and 2. Judgment Debtors have now become prone to making limited disclosures and saying that they were 'only asked' to disclose this or that asset. Let me make it plain. There has to be a disclosure of every single asset, without exception. It has to be a disclosure for the firm, the 2nd Defendant, and on behalf of all partners of the firm, whether they are parties to this Chamber Summons or not. I will not explain further what this means. But I *will* have quite a lot to say if I do not have a disclosure of everything by both defendants and by all the current partners of the 1st Defendant.

10. These disclosures will be filed and served on or before 29th June 2018.

11. The Defendants have misfiled their Affidavits in a disposed Chamber Summons No. 887 of 2017. Those Affidavits as they stand will be filed again in Chamber Summons No. 885 of 2017. Similarly the first Affidavits dated 22nd January 2018 filed by these two Defendants will also be filed in this Chamber Summons. The earlier Affidavits are to be re-filed in this Chamber Summons on or before 27th June 2018.

12. Previous orders of attachment will continue to operate until further orders.

13. List the Chamber Summons on 3rd July 2018.

Notice of Motion (L) No. 352 of 2018:

14. This Notice of Motion stands perhaps on a slightly different footing. The Applicant is Sanjay Mehta. It is his case that although he was once a partner of the 1st Respondent-firm, he retired from that firm under a Deed of Retirement dated 7th February 2003 with effect from 3rd December 2002. Mr Madon states that the Applicant informed the Decree Holder of this by a letter dated 7th March 2004. The 2nd Defendant informed the 1st Defendant of the 3rd Defendant's retirement on 29th January 2005.

15. The difficulty apparently is that the correspondence that is now relied on by Mr Madon admitted did not form part of the arbitral record. Sanjay Mehta joined in the challenge Petition under Section 34 of the Arbitration Act in his capacity as a partner. It is only when he filed his Appeal under Section 37 that Sanjay Mehta pointed to these documents and about his having retired.

16. Sanjay Mehta also made an application for stay in Notice of Motion (L) No. 87 of 2018 in his Section 37 Appeal No. 172 of 2010. That Notice of Motion was dismissed by the Division Bench on 6th February 2018. In that Notice of Motion, Sanjay Mehta sought a stay of my order dated 30th January 2018 by which I directed all the Defendants to make disclosures. A day after the Appellate Order which was passed on 6th February 2018, I heard Mr Madon again on 7th February 2018 and directed that his client's Affidavit of Disclosure, i.e. the disclosure made by Sanjay Mehta, was to be kept in a sealed cover and not to be open or disclosed without further

leave of the Court. That Affidavit was ready but not actually taken on record.

17. Mr Kamat for the Decree Holder submits that now that the application for stay has been dismissed by the Division Bench, execution should proceed also against Sanjay Mehta and at the very least his Disclosure Affidavit must be made known to the Decree Holder. I am not inclined to order this at this stage. I believe that Sanjay Mehta's case stands on a distinct footing than the other two Judgment Debtors. His Appeal will have to be heard on that additional or different footing as well. Even without addressing the merits of the arbitral award, should he succeed on this limited point of carrying no liability as a partner, having retired well before the award, there would be considerable and irreversible prejudice caused to him if, in the meantime, his assets are disclosed and execution proceeds against him.

18. What I will only direct at this stage, therefore, is that the Disclosure Affidavit in a sealed cover be taken on record and placed with the Prothonotary and Senior Master until further orders. I will *simpliciter* adjourn the present Notice of Motion *sine die* and give both the parties liberty to apply.

19. So far as execution against Sanjay Mehta is concerned, for the present it will have to stayed. So ordered.

(G. S. PATEL, J)