

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
CHAMBER SUMMONS (L) NO. 1647 OF 2018
IN
COMM EXECUTION APPLICATION NO. 51 OF 2017**

Amit Chandrra & Anr	...Applicants
<i>In the matter between</i>	
Kapur Films	...Petitioner
<i>Versus</i>	
Invincible Entertainment Pvt Ltd & Ors	...Respondents

Mr LH Patil, *with Sanjay R Malhotra, for the Plaintiff.*
Mr Abhijit G Kadam, *i/b Daljeet Singh Bhatia, for the Applicant in*
CHSCDL/1647/18.
Mr Jignesh Shah, *for the Respondents.*
Mr SD Chitgopekar, *Deputy Sheriff, present.*

CORAM: G.S. PATEL, J
DATED: 30th October 2018

PC:-

1. This is one of those remarkable Chamber Summons that dismisses itself. It certainly requires no reply. The only basis on which this Chamber Summons is filed is that the liability of Respondents Nos. 2 and 3 is limited to the extent of their shareholding in Respondent No. 1 and its paid up capital.

2. The entire application is misconceived. Respondents Nos. 2 and 3 were so arrayed in the arbitration proceedings. It is today claimed that before the arbitrator the liability of Respondents Nos. 2 and 2 was limited to their capacity as directors and nothing further. This is not reflected in the operative portion of the Award at all which, at page 31, in more than one place, holds all three of the Respondents to be jointly and severally liable for payment of the amount of Rs. 1,55,58,472/-. That portion of the Award reads:

"IN CONCLUSION, the Claimant is thus entitled to recover from the Respondents, **jointly and severally** the sum of Rs.1,55,58,472/- (One Crore Fifty Five Lacs Fifty Eight Thousand Four Hundred and Seventy Two only) with further interest @18% p.a. w.e.f. 31-10-2013 on the said amount till the realisation of the entire outstanding amount.

IN THE RESULT, I HEREBY AWARD AND ORDER AS UNDER:

A.THAT, the **Respondents shall pay jointly and severally to the Claimant** a sum of Rs.1,55,58,472/- (One Crore Fifty Five Lacs Fifty Eight Thousand Four Hundred and Seventy Two only) with further interest @18% p.a. w.e.f. 31-10-2013 till the entire payment is received or recovered by the Claimant from the Respondents.

B.THAT, the Claimant is also allowed to recover from the Respondents a sum of Rs.1,40,600/- (Rs. 50,000/- on account of counsel's fee, Rs.75,000/- on account of arbitral fees and expenses and Rs. 15,600/- towards cost of Non-Judicial Stamp Paper purchased for passing the Arbitral Award) as cost and expenses which has been incurred by the Claimant in recovering the awarded amount as also the

cost/expenses of Arbitral Proceedings incurred by the Claimant.

Signed and delivered on this 17th day of June 2014."

(Emphasis added)

3. It is now sought to be argued that I should re-examine this Award, or at the very least re-interpret it, so as to limit this liability of Respondents Nos. 2 and 3; or, in other words, I should completely exclude from the Award in execution the words "jointly and severally" as they apply to the awarded amount. I am, in fact, asked to modify the decree against Respondents Nos. 2 and 3. I should do all of this in my capacity as an executing Court. In other words, as a Court in execution I should go behind the decree, through the decree, under it, over it and replace it entirely.

4. That, according to me, is not the law and has not been the law for only approximately 2000 years. Apart from anything else, a substantive challenge to this Award before the Delhi High Court was comprehensively repelled and failed. There is, therefore, no question of accepting the submission that is now sought to be made.

5. The Chamber Summons is misconceived and is dismissed as such. No costs.

(G. S. PATEL, J)