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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1567 OF 2006
IN
EXECUTION APPLICATION NO. 376 OF 2006

Tata Iron & Steel Company Limited ...Claimants
Versus
Fancy Enterprises Private Limited ...Respondents
And
Vipul B Kadakia ...Applicant

Mr Gaurang Mehta, *with Ms Ruta Shah, for the Applicant.*
Mr Kazan Shroff, *with Mr Avinash Joshi, i/b Mulla & Mulla, for the Judgment Debtor / Respondents.*

CORAM: G.S. PATEL, J
DATED: 8th April 2019

PC:-

1. This is a Chamber Summons by a third party, one Vipul Bhikalal Kadakia, seeking to raise attachment levied on an office at 48, Baroda Street, Carnac Bunder, Mumbai 400 009. Mr Mehta points out that there is a typographical error in prayer clause (b) which seeks interim relief but mentions another property. All are agreed that the reference in prayer (b) must be to the Baroda Street property alone.

2. The Claimant, Tata Iron & Steel Co Ltd., obtained an Arbitral Award on 7th December 2004. Before proceeding further, I will immediately allow the Claimant to amend to show its current. This change will be carried out in the execution application, this chamber summons, all other chamber summonses and in all warrants of attachment without need of reverification within two weeks from today.

3. The Respondent to the Award was Fancy Enterprises Pvt Ltd., a company apparently promoted by one Fancy K. Wassa. The Affidavit in Support of this Chamber Summons says that the premises belonged to the Mumbai Port Trust. About this there is no dispute at all. One Western India Hardware Mart was the original tenant. Western India Hardware approached the Port Trust and sought to transfer this tenancy in favour of Kadakia and one Kamal Sharma by a letter dated 14th June 2003. Fancy Wassa is said to be the successor in title of Western India Hardware Mart and, therefore, this application to Mumbai Port Trust to induct Kadakia was at Fancy Wassa's instance.

4. Kadakia says that he has been in possession of the premises since 2003 and carries on a business there.

5. For some reason that I am unable to understand everybody treated this as an obstructionist proceeding and even went to trial on that footing. That should never have been done. Even before a question is tested as to whether Kadakia has any right, title or interest in the property as a tenant, a threshold question is whether the property at Baroda Street was ever an asset of the Award Debtor private limited company, Fancy Enterprises Pvt Ltd. That is not shown. An attempt is made to say that the registered office of Fancy Enterprises Pvt Ltd is at the Baroda Street premises. But that does not establish anything, let alone that this is an asset of the company. Indeed, the one thing that is undisputed is that the property is that of the Mumbai Port Trust. It is not an ownership asset of Fancy Enterprises Pvt Ltd. It is not an asset of Fancy K Wassa, since deceased. It does not vest in his estate. At best, the premises can be said to have been given on tenancy and whether this tenancy stood transferred or to Kadakia or not is actually immaterial. It is not established that the Respondent to the Award, Fancy Enterprises Pvt Ltd., held these premises as an asset that could be attached in execution and put to sale. If it is property of the Mumbai Port Trust, clearly that property could not have been put to sale, not being an asset of the Award Debtor.

6. In this view of the matter, Chamber Summons will have to be made absolute in terms of prayer clause (a).

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

8. All other rights and contentions of the Award Holder against the Award Debtor are expressly kept open.

(G. S. PATEL, J)