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

**CHAMBER SUMMONS NO. 322 OF 2019  
IN  
EXECUTION APPLICATION (L) NO.257 OF 2019  
IN  
ARBITRATION AWARD DATED 12TH JUNE, 2013**

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|---------------------------------------|--------------------------------|
| Mehfuza wd/o. Yakoob Patrawala & Anr. | ... Applicants /<br>Plaintiffs |
| V/s.<br>Kadir Yakoob Patrawala & Ors. | ... Defendants                 |

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Mr. Swapnil Bangur with Mr. Deepak Shukla I/b Vinodkumar & Co.  
for the Applicants / Plaintiffs.  
Mr. Mutahhar Khan, I/b. Abhijeet Mahadeokar for Respondent  
Nos. 1 to 4.  
Mr. Som Sinha with Sneha Prabhu I/b. M/s. Som Sinha and  
Associates for Respondent Nos. 5, 6 and 7.

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| <b>CORAM:</b> | <b>R. I. CHAGLA, J.</b> |
| <b>DATE:</b>  | <b>26TH JUNE, 2019</b>  |

**PC:-**

1. The Applicants by this application is seeking certain directions including the continuation of the Court Receiver, High Court, Bombay as Receiver in respect of the subject property and for a direction directing the Court Receiver to physically demarcate / partition the subject property and to hand over possession of the subject property to the Applicants and the

Respondents to extent of of their shares as the partners of the erstwhile Firm M/s. Modern Enterprises as determined by the Arbitrator in the award dated 12th June, 2013. The Applicants are further seeking directions against the Taxing Master / Office of the Prothonotary and Senior Master to draw accounts and to distribute the amounts lying with the Prothonotary and Senior Master with accrued interest in the respective shares of the partners upon winding up of the Firm in execution of the award dated 12th June, 2013.

2. The learned Arbitrator Justice R.J. Kochar (Retired) had held that the Deed of Partnership dated 26th May, 2006 to be a legal and valid document and the partnership being at will, the Claimants / Applicants herein were entitled to dissolve the partnership Firm. The learned Arbitrator after holding that the partnership deed dated 26th May, 2006 to be a legal and valid agreement awarded upon the dissolution of the Firm, the distribution of the amounts received by the said Firm as and by way of lease rentals from M/s. Pantaloon Retail (India) Pvt. Ltd. amongst the partners in the shares determined as per the partnership deed dated 26th May, 2006. The learned Arbitrator had made it clear that the dispute in the arbitration was restricted to the leased property and the income agreed and accruing from

it. He was only concerned with the claim of the Claimants as partners of the erstwhile Firm for dissolution of the partnership firm and drawing up of accounts and disbursement of amounts which were as and by way of lease rentals from M/s. Pantaloon Retail (India) Pvt. Ltd. who were lessees of the subject property.

3. The learned Counsel for the Applicants has submitted that the subject property is the only asset of the erstwhile Firm M/s. Modern Enterprises and that the relief of demarcation / partition of the subject property and handing over of possession of the respective premises to the Applicants and the Respondents to the extent of their shares as determined by the award dated 12th June, 2013 be granted.

4. The learned Counsel for the Respondents has submitted that the prayers in the Chamber Summons go well beyond the award which is being executed as a decree of the Court. He has submitted that the dispute in the arbitration did not pertain to the demarcation / partition of subject property and the award was only in respect of declaration of dissolution of the Firm and the drawing up of accounts as well as the disbursement of the lease rentals amongst the partners of the said Firm in their respective shares as determined in the award. He has submitted that the Applicants can

not seek partition of the subject property which goes beyond the award of the learned Arbitrator.

5. It appears that the Respondent Nos. 1 to 4 had challenged award under Section 34 of the Arbitration and Conciliation Act, 1996 and by an order dated 11th February, 2018, the Arbitration Petition was dismissed. Thereafter, the Respondent Nos. 1 to 4 preferred an Appeal in this Court under Section 37 of the Act and the Appeal also came to be dismissed. Accordingly, upon dismissal of the Section 34 Petition as well as Section 37 Appeal the award became executable as a decree of this Court. It is clear from the award that the learned Arbitrator has only declared the partnership firm to be dissolved and passed an award for drawing up of accounts of the dissolved firm as well as the distribution of these lease rentals from M/s. Pantaloon Retail (India) Pvt. Ltd. who were lessees of the subject property which is claimed to be the only asset belonging to the partnership firm. I find from the prayers of the Chamber Summons, particularly prayer (b), the Applicant is seeking to go beyond the award of the learned Arbitrator which is now a decree of this Court. In fact, the Arbitrator was in no way concerned with the partition of the subject property of the said Firm.

6. The Court Receiver who was appointed and whose appointment was continued by this Court in the order dismissing the Section 34 Petition and thereafter further continued by a further order under Section 34 of the Petition continues as Court Receiver and the Applicants are seeking further continuation of the Court Receiver in respect of the subject property. It appears that the purpose of continuation of the Court Receiver is for the demarcation / partition of the subject property. By an order dated 8th February, 2019 passed by the learned Judge of this Court in the present Chamber Summons, consent of the parties were recorded to continue to Court Receiver until further orders. By consent, the subject property was directed to be demarcated by agency to be appointed by the Court Receiver and the fees and expenses of the Agency be used from the funds available with the Prothonotary and Senior Master of this Court. This was subject to further orders to be passed in this Chamber Summons. The Respondents are no longer consenting to the continuation of the Court Receiver. Further, in my view the Chamber Summons, in particular prayer (b) of the Chamber Summons goes beyond the award / decree which is being executed and it is well settled that the executing Court cannot go beyond the award / decree.

7. Having held as above, the prayers (a) and (b) which seeks continuation of the appointment of the Court Receiver as well as for the Court Receiver to appoint an architect / surveyor for demarcation / partition of the subject property and handing over the share of the Applicants in the subject property cannot be granted. The only prayer which in my view can be granted is prayer (c) of the Chamber Summons which is for drawing up of accounts for distribution as per the award dated 12th June, 2013. These amounts which are lying in the office of the Prothonotary and Senior Master of this Court is required to be distributed to the Applicants and Respondents in proportion of their shares as determined in the award.

8. In the light of the above findings, the Chamber Summons is partly made absolute in terms of prayer (c).

9. The Court Receiver shall stand discharged subject to payment of costs, charges and expenses and without passing of accounts. The costs of the Receiver shall be borne equally by Applicants and Respondents.

10. At this stage, Mr. Bangur, the learned Counsel appearing for the Applicants seeks continuation of the Court Receiver for preserving the subject property for a period of four weeks. The

request appears to be reasonable. The Court Receiver shall continue for a period of four weeks.

11. The Chamber Summons is disposed of in these terms with no order as to costs.

**( R I. CHAGLA, J. )**