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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN INSOLVENCY**

**CHAMBER SUMMONS NO. 498 OF 2011
IN
CHAMBER ORDER NO. 561 OF 2004
IN
EXECUTION APPLICATION NO.267 OF 2003
IN
SUMMARY SUIT NO. 1089 OF 1999**

Smt.Savitri M. Sanghvi, deceased
through heirs
Smt.Bharti R. Khokhani & Ors. ...Plaintiffs
Vs
Dr. Pankaj C. Gandhi & Ors. ...Defendants

**WITH
IPA NO.119 OF 2018
IN
CHAMBER SUMMONS NO. 498 OF 2011**

Savitri M. Sanghvi ...Plaintiff
Vs
Pankaj C. Gandhi ...Defendant

**WITH
IPA NO.120 OF 2018
IN
CHAMBER SUMMONS NO. 498 OF 2011**

Ila Rohit Sanghvi And Ors. ...Plaintiffs
Vs
Dr. Pankaj C. Gandhi & Ors. ...Defendants

**WITH
NOTICE OF MOTION NO. 27 OF 2019
IN
INSOLVENCY PETITION NO. 10 OF 2008**

...Applicants
vs.
Mr.Pankaj C. Gandhi & Ors. ...Respondents

WITH
NOTICE OF MOTION NO. 58 OF 2019
IN
NOTICE OF MOTION NO.27 OF 2019
WITH
NOTICE OF MOTION NO. 59 OF 2019
IN
INSOLVENCY PETITION NO.10 OF 2008

Maneklal & Co. And Others	...Applicants
vs.	
Mr.Pankaj C. Gandhi & Ors.	...Respondents

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Mr. Pankaj Gandhi, Insolvent present in person.

Mr. S.C. Naidu, Counsel, a/w. Mr. Anshel Anjarlekar, i/b. Raval Shah & Co., for Plaintiff 6(a), 6(b) and 6(c) in Chamber Summons No.498 of 2011 and for the Applicant in Notice of Motion Nos.58 and 59 of 2019.

Mr. K.K. Trivedi, Official Assignee present.

Mr. E.B. Sivakumar, Deputy O.A.

Mr. Pallavi Biranje, for Respondent No.1.

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CORAM : S.C. GUPTE, J.

17 DECEMBER 2019

P.C. :

. Heard Dr. Pankaj C. Gandhi, who is the Judgment Debtor and Insolvent in this matter. He has taken out the present chamber summons in his capacity as a defendant to the original summary suit. He makes various prayers in the chamber summons. Many of these prayers involve declaration of invalidity or recall of orders passed by this Court in the matter earlier, including Judge's Order No.230 of 2003, Chamber Order No.561 of 2004, warrants of attachment dated 11 July 2003 and all steps taken in execution of the original money decree in pursuance of these

warrants. It also seeks various directions for initiation of perjury proceedings and suo motu criminal proceedings under Section 340 of Criminal Procedure Code against the CA of the plaintiff, who had prosecuted the summary suit.

2. The record bears out that the money decree was passed against the Defendant herein on 10 December 2002. An execution application was filed on the basis of the money decree by the plaintiff through his CA. Pending such application, by Judge's Order No.111 of 2003, the Plaintiff was allowed to execute the money decree before sealing. Though Judge's Order No.111 of 2003 was recalled on 14 August 2003, by a fresh Judge's Order, namely, Judge's Order No.230 of 2003, the same relief was granted. At that stage, an obstruction was raised by the Defendant's wife Jyoti P. Gandhi. A Chamber Summons was, thereupon, preferred for removal of the obstructionist (Chamber Summons No.395 of 2004). This chamber summons, along with another chamber summons, which was the obstructionist's formal application objecting to execution of the money decree against her matrimonial home, was heard by this Court. On 24 February 2016, this Court raised the general attachment of the suit flat, namely, Flat No.21, 5th floor, Gautam View C.H.S. Ltd., Seven Bungalows, Andheri (West), Mumbai 400 053 and instead ordered attachment of only the share of the Judgment Debtor, namely, the Defendant/Applicant herein, which was to the extent of 25% of undivided share in the suit flat, in execution of the decree dated 10 December 2002 passed in the summary suit. The Court reserved liberty unto the decree holder to adopt such proceedings as he may choose in respect of the shares of the defendant's two sons in the HUF property. That is how both chamber summonses were disposed of. This order, read with the corrections made on 28 March 2016,

was the subject matter of challenge in an appeal before the Division Bench (Appeal (Lodging) No.121 of 2016). This appeal has been admitted and the interim arrangement made by Clause 14 of the order passed on the two chamber summonses, has been continued. Clause 14 requires the other co-parceners not to dispose of their respective shares or create any third party interest in respect thereof.

3. On these facts, what is apparent is that the attachment of 25% share of the Judgment Debtor in the subject flat, as ordered by this Court in its order dated 24 February 2016, stands. So also, as far as the share of the two co-parceners in the flat (as HUF property) is concerned, there is an interim direction not to dispose of the same or create any third party interest therein.

4. At this stage, after all these orders are passed, the Judgment Debtor cannot seek to recall procedural orders passed at various stages in execution. Judge's Order No.230 of 2003 is for allowing execution before sealing. This order has no infirmity. There is no fraud on the part of the judgment creditor in so far as this order is concerned, which calls for recall of that order. So also, Chamber Order No.561 of 2004, which simply extends the returnable date of the warrants of attachment originally issued as per Order 21 Rule 54 of the Code of Civil Procedure. The warrants of attachment issued on 11 July 2003 cannot be termed as redundant in view of the challenge laid later on behalf of the obstructionist and the same having been partly accepted and the attachment being modified. The original attachment order has now merged in the new order passed by this Court on 24 February 2016, which, as we have noted above, has not been interfered with or stayed by any court. The steps taken in execution also cannot be termed as illegal or non-est. Since main reliefs themselves are

rejected, there is no merit in other incidental reliefs sought concerning initiation of perjury proceedings or sou motu criminal proceedings under Section 340 Criminal Procedure Code.

5. There is, accordingly, no merit in the chamber summons. The chamber summons is dismissed.

6. The three notices of motion taken out in the matter are stood over to 7 January 2020.

Smita
Gonsalves

Digitally signed by
Smita Gonsalves
Date: 2020.01.10
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(S.C. Gupte, J.)