

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

CHAMBER SUMMONS NO.884 OF 2016

IN

EXECUTION APPLICATION NO.151 OF 2013

The Shamrao Vithal Co-Op. Bank Ltd. ...Applicant
/Claimant

In the matter between

The Shamrao Vithal Co-Op. Bank Ltd. ...Applicant

versus

Hemang Chandrakant ShahOpponent

.....

- Mr. Vishal V. Narkar, for the Applicant.

CORAM: R. I. CHAGLA J.
DATE : 14th NOVEMBER, 2019

P.C. :

This Chamber Summons has been taken out for restoration of Execution Application to the file of the Commissioner for Taking Accounts. By an order dated 10/7/2015, the Commissioner for Taking Accounts had removed the Execution

Application under Rule 498 of the High Court Original Side Rules on account of the matter being adjourned from time to time and nobody appearing for applicant bank.

2. It has been stated in the affidavit in support of the Chambers Summons that the opponent had approached the Bank with a request that he is in financial difficulty and hence would not be able to pay the outstanding amount at one go but he would be able to pay in monthly installments. The deponent of the said Affidavit has stated that the applicant bank relied upon the promise of the opponent and did not take further action. However, the opponent failed to live up to his promise. As a result of the reliance of the applicant bank on the promise of the opponent to settle the dues that the Applicant did not remain present before the Commissioner for Taking Accounts and the matter was removed by the impugned order. The deponent has further stated that the applicant bank became aware of the impugned order of removing the matter passed by the Commissioner for Taking Accounts at a much later stage as the opponent continued to represent to the applicant bank that the matter would be settled.

3. Accordingly, the Chambers Summons has been taken out for condonation of delay as well as for restoration of the Execution Application to the file of the Commissioner for Taking Accounts.

4. Having perused the evidence in support of the Chamber Summons for restoration of Execution Application, I am satisfied that sufficient cause has been made out for restoration of the Execution Application to the file of Commissioner for Taking Accounts. The non appearance of the applicant bank appears to be on account of the promise made by the opponent to settle the amounts due to the applicant by way of monthly installments and this representation continued. It was by virtue of the reliance on the promise that the applicant bank did not appear before the Commissioner for Taking Accounts when the impugned order dated 10/7/2015 was passed. Although there is delay in taking out the Chamber Summons on 21/4/2016, it appears to be on account of the settlement of the dues as promised by the opponent.

5. Accordingly, by condoning the delay in taking out the

Chamber Summons, the Chamber Summons is made absolute in terms of prayer clauses (a) and (b) and is disposed of.

(R. I. CHAGLA J.)