

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL NOTICE OF MOTION NO.649 OF 2017
IN
COMMERCIAL SUIT NO.679 OF 2017**

Rajul Patel and Anr.Applicants/Plaintiffs

Vs.

Ajay Mody and Ors.Defendants

Mr. Abhay Dhadiwala a/w. Mr. Amogh Joshi I/b. Jayakar and Partners for applicants/plaintiffs.

Mr. Zain Mookhi a/w. Mr. Ajinkya Patil I/b. Naik Patil Salvi Associates for defendant no.1.

Mr. R.A. Shah a/w. Mr. Niraj J. Marjadi and Ms. Janhavi Doshi I/b. Mansukhlal Hiralal and Company for defendant nos.2 and 3.

CORAM : K.R.SHRIRAM, J.

DATE : 5th MARCH 2019

P.C.:

1 Defendant no.1 had given an undertaking on 21st June 2017 to file an affidavit of disclosure in respect of his assets, both encumbered and unencumbered within a period of four weeks. Mr. Mookhi states that affidavit dated 18th July 2017 has been filed purportedly in compliance with the order passed by this Court on 21st June 2017.

2 I find the affidavit of disclosure to be lacking in particulars. First of all, it does not give details of the bank accounts, it does not give the vehicle number, does not provide copies of the agreements of alleged liabilities and the alleged loans and advances mentioned in the capital account. Mr. Mookhi states that he will furnish the details but has no

explanation as to why these details were not furnished earlier.

3 Therefore, defendant no.1 is directed not to create any third party rights or encumber or deal with or part with possession of any of the assets, which are in the name of defendant no.1, until the hearing and final disposal of the suit. That would not mean that defendant no.1 need not file any further affidavit.

4 Defendant no.1 shall file a further affidavit within three weeks from today giving details of every document and agreement based on which the loans and advances (debit) and loans and advances (credit) is mentioned. Defendant no.1 shall also disclose every detail of every account and assets. For example, vehicle number, make of computer, scooter number. Defendant no.1 shall also annex to the affidavit certified copies of his annual returns including profit and loss accounts and balance sheet for the financial year beginning 1st April 2007 upto 31st March 2018 duly certified as true copy by the Chartered Accountant.

5 Mr. Shah, counsel for defendant nos.2 and 3 reiterates the statement made as recorded on 21st June 2017.

6 Therefore, in view of the order as recorded above against defendant no.1 and in view of the statement of Mr. Shah on behalf of defendant nos.2 and 3, who are owners of suit property, which is the subject

matter of mortgage that defendant nos.2 and 3 shall not create third party rights in respect of or part with possession of the suit flat, notice of motion stands disposed.

7 Mr. Dhadiwala, counsel for plaintiffs states that the writ of summons had been served before December 2017. Mr. Mookhi and Mr. Shah do not dispute that. No written statement is on record. The time prescribed under Order 8 Rule 1 of the Code of Civil Procedure 1908 expired long ago. As held by the Apex Court in its judgment dated 12th February 2019 in Civil Appeal No.1638 of 2019 in the matter of M/s. SCG Contracts India Private Limited V/s. K.S. Chamankar Infrastructure Private Limited and Ors., defendants have forfeited their right to file written statement.

8 In the circumstances, the suit be listed as an undefended suit.

(K.R. SHRIRAM, J.)