

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.608 OF 2013
IN
EXECUTION APPLICATION NO.362 OF 2017**

L & T Finance Ltd.

..Claimant/Applicant

Vs.

Mrs. Bulilata Ojha w/o

M. T. Amulya Kumar Ojha & Ors

.Respondent

Ms S. I. Joshi a/w Ms Nikita Pawar I/b S. I. Joshi & Co. for Claimant
/Applicant

Mr. Parth Dua I/b Khaitan Legal Associates for Respondent No.3

**CORAM : K.R.SHRIRAM, J.
DATE : 7th MARCH, 2019**

P.C.:

1 There are various affidavits on record which confirm that defendant nos.1 and 2 have been served. Mr. Dua appearing for respondent no.3 states that he has been contacted by respondent no.3 who has instructed him to take time and respondent no.3 will personally come and explain or will appoint another advocate. Ms Joshi strongly opposes and states that respondent no.3 is not someone who could be trusted. Ms Joshi states that respondent no.3 had to be arrested and brought to the court because he was avoiding service and refusing to remain present in court. Ms Joshi states that even non bailable warrants have been issued against respondent no.3. In view of this statement, I am not inclined to grant any adjournment.

2 All respondents, therefore, have been served. No affidavit in reply has been filed by respondent nos. 1 and 2. Respondent no.3 has filed an affidavit in reply and also disclosing his assets. In the affidavit in reply the stand taken by respondent no.3 is that he belongs to lower strata of society, he is ignorant about any arbitration proceedings, he has not seen any documents as regards the alleged loan to respondent nos.1 and 2 and he has not signed any document as guarantor.

3 Ms Joshi states that in the affidavit in rejoinder, copy whereof has been served upon respondent no.3, a copy of the Deed of Guarantee signed by respondent no.3, has been annexed. No affidavit challenging this document is filed. Ms Joshi further submits that respondent no.3 has given false statement because he has in paragraph 15 of the affidavit in reply disclosed four bank accounts and that he owns three vehicles and one vehicle has been purchased on loan obtained from applicant herein. Ms Joshi states that respondent no.3's opposition should be rejected.

4 I have heard the counsel and also considered affidavit in reply of respondent no.3. I would agree with Ms Joshi that respondent no.3's stand that he belongs to lower strata of society and he is ignorant of any arbitration proceedings or he has not signed any documents and he does not know respondent nos.1 and 2 at all, cannot be believed. Respondent No.3

has got four bank accounts which he has disclosed in paragraph 15 and three vehicles which he has disclosed in paragraph 16 of the affidavit in reply. In paragraph 14 of the affidavit in reply he has also disclosed that he owns immovable property. Moreover, respondent no.3 has not denied the document being the Deed of Guarantee annexed to the affidavit in rejoinder. In the circumstances respondent no.3's objections has to be rejected.

5 Chamber summons accordingly allowed and disposed in terms of prayer clauses (a) and (I) which read as under:

“(a) that the defendants be directed to deposit decretal amount a sum of Rs.15,11,605.89 with further interest on Rs.12,41,883/- from 08.05.2012 @ 24% p.a. till payment and/or realisation thereof.”

(i) this Hon'ble Court be pleased to issue precept under section 46 of Code of Civil Procedure 1908 attaching the properties belonging to Defendants and disclose by the Defendants under order XXI rule 41 of CPC and which are not within the jurisdiction of this Hon'ble Court.

6 If respondents do not deposit the decretal amount within 4 weeks from today, then prayer clauses – (c) and (h) will get activated which read as under :

“(c) that the defendants be detained in the civil prison as per Order 21 Rule 41 subrule 3 of the Code of Civil Procedure for noncompliance of the order passed by this Hon'ble Court in terms of prayer clause (b) hereinabove;

(h) that the defendants be arrested and detained in civil prison as per the provisions of Section 51 of the Code of Civil Procedure.”

7 Applicant shall deliver this order upon respondents by hand delivery apart from other modes of delivery.

8 In the circumstances, execution application stands disposed.

9 All to act on authenticated copy of this order.

(K.R. SHRIRAM, J.)