

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 689 OF 2014
IN
EXECUTION APPLICATION NO. 538 OF 2013**

Sanderson Group India Pvt Ltd	...Applicant
<i>Versus</i>	
BJN Hotels Ltd	...Respondent
<i>And</i>	
Oberoi Mall Limited	...Intervener

Mr Pratik Kothari, *i/b IC Legal, for the Applicant.*
Ms Shristi Shetty, *i/b M/s Divekar Bhagwat Co, for the Judgment Debtor.*

CORAM: G.S. PATEL, J
DATED: 13th March 2019

PC:-

1. The Chamber Summons is by a third party to the execution proceedings. It was served on the Judgment Debtor by hand delivery and there is an Affidavit of Service dated 6th December 2017. The Chamber Summons was served on the Judgment Creditor Sanderson Group India Pvt Ltd on 29th November 2017 by Registered Post AD and through the Speed Post. A separate Affidavit of Service in that regard is to be filed within a week from today.

2. This is what the Chamber Summons seeks. The Applicant is Oberoi Mall Limited. It owns a popular shopping mall in Goregaon in the city's western suburbs. There is a commercial Unit No. R-04 on the third floor of this mall. Oberoi Mall granted the Judgment Debtor, BJN Hotels India Pvt Ltd, a license on 2nd September 2008 to use these premises till 14th September 2013. That agreement is registered. There was also an accompanying Amenity Agreement. On 30th July 2013, during the tenure of the Leave and License Agreement, Oberoi Mall learnt of an attachment that Sanderson Group had got levied on this mall. That attachment was of 26th July 2013. It was supposedly in respect of the right, title and interest of BJN Hotels in its properties and this unit was included in that list. BJN Hotels was managing and conducting a Chinese cuisine restaurant from those premises.

3. Oberoi Mall challenged that attachment by Chamber Summons (L) No. 1005 of 2013 and sought that the attachment be raised. That Chamber Summons was disposed of on 17th September 2013. At that time, the Oberoi Mall agreed to deposit an amount of Rs.20,10,800/- in Court. This was the excess that was lying with Oberoi Mall from the security deposit placed by BJN Hotels under the leave and license agreement. For its part BJN Hotels agreed to remove its movables and deliver vacant possession of the Unit to Oberoi Mall. The attachment in respect of the movables — since these clearly belonged to BJN Hotels — continued. The Court went on to observe that whether the Sanderson Group (the Judgment Creditors) would be entitled to recover any amount from the Oberoi Mall's deposit would be decided in appropriate proceedings that Sanderson Group would have to file. Till then the amount was to

remain deposited with the Prothonotary and Senior Master. At that time, Oberoi Mall handed over to the Court a statement that was taken on record and marked 'X' showing how it had computed this amount of Rs. 20,10,800/-. This is where matters stand.

4. It does not appear that Sanderson Group has taken any steps to determine or have determined whether it is entitled to any part of this deposit. Also, it now seems that the amount of Rs.20,10,800/- was an overstatement. The present Affidavit in Support of this Chamber Summons sets out from paragraph 11 that Oberoi Mall overlooked its claim for validly recoverable amounts under the Amenity Agreement and that the difference would be about Rs. 6,61,236/-. Thus, what was and ought to have deposited should have been reduced by this amount and should have been only Rs.13,49,564/-. The application now is that Oberoi Mall be permitted to withdraw the amount of Rs. 20,10,800/-, the Sanderson Group having made no claim over it or, in the alternative, that it be permitted to withdraw an amount of Rs. 6,61,236/- since this is, on any reckoning, an excess deposit.

5. Sanderson Group had an opportunity since 2013 to make its claim. In any such application it would have had to make Oberoi Mall a party as also BJN Hotels. It has done nothing. Oberoi Mall has received no notice of any such application. Neither has BJN Hotels. It would not, therefore, be unreasonable to conclude that at least as regards this amount of Rs. 20,10,800/- that the Sanderson Group has no claim at all. From another perspective, if Sanderson Group was today to make a claim in a proper civil suit, its claim would be entirely barred by limitation.

6. I can see no reason to refuse prayer clause (a). The Chamber Summons is made absolute in terms of prayer clause (a). The Applicant, Oberoi Mall Limited, is at liberty to withdraw the entire amount of Rs. 20,10,800/- with all accrued interest. The Prothonotary and Senior Master will act on production of an authenticated copy of this order. The Advocates for the Applicant will communicate the necessary bank account and IFSC code details to the Prothonotary and Senior Master so that remittance can be made online to save time.

7. The Chamber Summons is disposed of in these terms. No costs.

(G. S. PATEL, J)