

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 519 OF 2016

IN

EXECUTION APPLICATION NO. 74 OF 1988

IN

SUIT NO. 464 OF 1973

Axis Builders Pvt Ltd	...Applicant
<i>In the matter between</i>	
Nusli N Wadia & Ors	...Plaintiffs
<i>Versus</i>	
Phiroze Shah Ardeshir Irani & Ors	...Defendants
<i>And</i>	
Shreechand Punjabi	...Respondent

Mr Vishal Kanade, i/b Swati P Gautam, for the Applicant.
Mr Bhupendra Singh, i/b RR Mishra, for Plaintiffs Nos. 1, 2 & 4.
Mr Shreechand Punjabi, Respondent present.

CORAM: G.S. PATEL, J
DATED: 22nd April 2019

PC:-

1. This Chamber Summons has been pending for the better part of three years. It cannot be adjourned indefinitely. My order of 22nd October 2018 summarised the relevant facts:

"1. The Applicant in the Chamber Summons is one Axis Builders Pvt Ltd ("**Axis Builders**"). It seeks an order permitting amendments to the Execution Application. The

entire controversy is in relation to a Deed of Conveyance of 27th January 1995 and a substantial property at Malad (North) described as CTS No. 158, 158/1 to 17 with two buildings of ground floor and two storage units having totally 96 rooms at Irani Wadi, Malad(North), Survey No. 83 part of village Malad. There is no dispute that the four Plaintiffs conveyed this property to the 5th Respondent, one Shreechand Punjabi. He in turn is said to have transferred his rights to the Applicant, Axis Builders.

2. Shreechand Punjabi is personally present in Court. He evidently has some infirmities due to age, including some hearing loss. He has no documents. He does not recollect any specifics. He does recollect having sold some rights to one Thakkar, who Mr Kanade for the Applicant says is the person or promoter of the Applicant, Axis Builders.

3. Mr Punjabi has some documents of identification but I think this is altogether too thin a basis to allow the application as it currently stands. Apart from anything else I believe Mr Punjabi needs complete clarity about anything said to have been done in his name, or which may be attributed to him. For this reason it is best that he file an Affidavit, taking the assistance of some Advocates, so that he can state with precision on oath what precisely was his transaction with the Applicant. That Affidavit by Mr Punjabi will be filed and served on or before 29th November 2018 and I will list the Chamber Summons on 4th December 2018.

4. In that Affidavit Mr Punjabi must explain the nature of the transaction, the property that he transacted, and to the extent of his recollection, the person or persons with whom he dealt in that transaction."

2. Shreechand Punjabi has been served a notice. He has filed no Affidavit in opposition of this Chamber Summons. On behalf of the original Plaintiff it is argued that there are deficiencies in the documents on which Axis Builders claims title. But that is surely something that Shreechand Punjabi could and should point out, not the original Plaintiffs. There is no manner of doubt that the original Plaintiffs, as trustees of the FD Dinshaw Charities, completely divested themselves of title to the Malad property by conveying it to Shreechand Punjabi. Therefore, the right to recover possession would continue not to them but to Shreechand Punjabi. If Shreechand Punjabi in turn further transmitted his rights to Axis Builders then it is Axis Builders that would be entitled to exercise those rights. This is of course subject to Axis Builders being able to establish that its documents of title are valid and legally enforceable. There is none available to oppose the claim made by Axis Builders.

3. There is a considerable delay but this is at the stage of execution. All rights of any third parties in occupation, and who are not subjected to the decree, will of course remain unaffected.

4. The Chamber Summons is accordingly made absolute in terms of prayer clauses (a), (b), (bi), (c) and (d). All amendments to be carried out within three weeks.

5. The Applicant must obtain leave of the Court to proceed further in execution.

(G. S. PATEL, J)