

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

**CHAMBER SUMMONS NO.1441 OF 2016
IN
EXECUTION APPLICATION NO.715 OF 2010**

Ajay Kanoria & Ors.

...Applicants

In the matter between

Ajay Kanoria & Ors.

...Claimants /
Judgment Creditors

versus

Tony Guinness & Anr.

...Respondents /
Judgment Debtors.

.....

- Gaurav Mehta a/w. Ajay Hailkar i/b. M/s. Bachubhai Munim & Co., for the Claimant / applicants.
- Mr. Chirag Bhatia i/b. Advani & Co., for the respondents.

CORAM:

R. I. CHAGLA J.

DATE :

14th NOVEMBER, 2019

P.C. :

This Chamber Summons has been taken out for recalling exparte order dated 8/5/2015 passed by this Court by which the Execution Application No.715/2010 was dismissed for non prosecution under Rule 329 of the High Court (Original Side) Rules, 1980 and for restoration of the Execution Application No.715/2010 to file. It appears that by a common order dated 8/5/2015 several Execution Applications listed before this Court

were directed to be proceeded with within four weeks or else the applications would stand disposed of as dismissed without further reference to this Court under Rule 329 of the High Court (Original Side) Rules.

2. It has been stated in affidavit in support of the Chamber Summons that board of the Learned Single Judge was discharged on 8/5/2015 and the claimant was under the impression that the matter would be listed thereafter. However, since the Execution Application was not listed for some time, after last listed on 8/5/2015, the claimant's Advocate checked the Court's status on High Court's website and it is only then on the 13/6/2016 that the claimants learnt that the aforesaid Execution Application had been dismissed by the said order. It is stated that there was no intentional default by the claimants and the claimants are desirous of proceeding with their Execution Application.

3. This Chamber Summons is opposed by the respondents. The learned Counsel to the respondent submits that there has been negligence on the part of claimant's Advocate who

had checked the website after lapse of a year of the Execution Application having been dismissed on 8/5/2015. The claimant's Advocate learnt of the dismissed on 13/6/2016 after checking the website and despite which the current application was moved one month later on 18/7/2016. He has submitted that the applicant be directed to pay cost in the event this Court is inclined to make Chamber Summons absolute.

4. Having considered this submission, it appears from the exparte order dated 8/5/2015 that several Execution Applications were listed before this Court on that date and common order was passed granting four weeks time to the Applicant to proceed with the Execution Application or otherwise, the applications would stand disposed of as dismissed without further reference to the Court under Rule 329 of the High Court (Original Side) Rules. It appears from the affidavit in support of the Chamber Summons that the applicant was not aware of the exparte order dated 8/5/2015 and became aware much later when the claimant's Advocate checked the case status on the High Court's website. On 13/6/2016, the claimant's learnt that the Execution Application

had been dismissed by the said order. Considering that there was no intentional default by the claimant and that the said order dated 8/5/2015 was an ex parte order whereby several Execution Applications had been taken up together and in the absence of applicants, adjourned by four weeks upon the direction that Advocate for the applicants / parties shall proceed with the Execution Application or otherwise they would be dismissed. It appears that the Applicant had all along thought that the board had been discharged on that date and the Execution Application was still to come up before this Court. It was only much later on checking the website of this Court that the Applicant became aware of the dismissal. Hence, in the interest of justice, it will be appropriate to restore the Execution Application to the file by granting prayer clause (b) in the Chamber Summons. The delay in taking out the Chamber Summons is also condoned. Accordingly, the Chamber Summons is made absolute in terms of prayer clause (a) and (b) and is disposed of.

(R. I. CHAGLA J.)