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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 874 OF 2018
IN
SUIT NO. 2217 OF 1948
WITH
CHAMBER SUMMONS NO. 337 OF 2016

Manilal Kilabhai Shah & Anr	...Plaintiffs
<i>Versus</i>	
Bhagwandas Harakchand Shah & Ors	...Defendants
<i>And</i>	
Bipinlal Jaysukhlal Mehta & 10 Ors	...Applicants

Mr Zal Andhyarujina, i/b Sunanda Kumbhar, for Applicants.

CORAM: G.S. PATEL, J
DATED: 18th March 2019

PC:-

1. In my order of 25th January 2019, I set out the background of this suit and the scheme sanctioned for the Trust. The Applicants are presently its Trustees. As I noted in the order dated 25th January 2019, the Applicant-Trust and its Trustees proceeded to take an assignment of a property at Matunga but overlooked the need for prior sanction of this Court. I allowed the application then made for what was essentially a ratification of the assignment. In

paragraph 4, I noted that the old structure needs to be pulled down, and a new structure is to be put up in its place. Evidently, this means that the new constructions will need to be financed. That cannot be done without the Trust being able to offer the Trust's properties, including the present one, as security for a loan.

2. The application in this Chamber Summons is, therefore, for permission and sanction to permit the Applicants to mortgage the existing properties mentioned in the prayer (reproduced below). The words "to be acquired" in prayer clause (a) will have to be deleted and excluded because the scheme as it currently stands requires prior sanction for each acquisition. Unless that scheme is appropriately modified, a generalized direction applicable to all future properties or future acquisitions cannot be granted.

3. The Chamber Summons is thus made absolute in terms of prayer clause (a), except the words "and to be acquired".

"(a) That this Hon'ble Court be pleased to grant its consent and sanction to the Applicants to mortgage the existing [~~and to be acquired~~] properties of the Trust viz. Jivanbhai Abjibhai Gyanmandir, Nathalal Parekh Marg, Matunga, Mumbai 400 019 and property known as Chetan Building situating at Plot No. 6B, Sewree Wadala (North), Nathalal Parekh Marg, King's Circle, Mumbai 400 019 to the Syndicate Bank, Matunga Bazar Branch, Telang Cross Road, Mumbai 400 019 or any other bank for a sum of Rs. 22 crores proposed to be raised by the Applicants from the said bank."

4. It is clarified that the property that is already acquired by the Deed of Assignment dated 19th August 2016 (based on an Agreement of Assignment dated 3rd November 2015) may also be accordingly mortgaged by virtue of this order.

5. Further liberty to the Applicants to move a suitable application for amendment of the scheme, when appropriate.

(G. S. PATEL, J)