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

**COMMERCIAL CHAMBER SUMMONS NO.151 OF 2019
WITH
COMMERCIAL CHAMBER SUMMONS NO.351 OF 2019
WITH
COMMERCIAL CHAMBER SUMMONS NO.994 OF 2019
IN**

COMMERCIAL EXECUTION APPLICATION NO. 204 OF 2019

Ashok Surji Gangar

... Applicant /
Decree Holder

Vs.

Harji K. Devda & Ors.

... Respondents /
Judg. Debtors

Ms. Megha Chandra, with Mr. Sachin Chowdhari I/b Dharam & Co.
for the Applicant.

Ankita Upadhyay I/.b J.H. Mishra for Respondent Nos.1 and 2.

Mr. Yogendra M. Kanchan, for Respondent No.3.

Mr. Shenay Shah with Mr. Akshay Udesi I/b Sanjay Udesi & Co.
for the Intervener.

CORAM: R. I. CHAGLA, J.
DATE: 30TH AUGUST, 2019

PC:-

1. The Chamber Summons No.994 of 2019 has been taken out in the above Execution Application seeking a directions from this Court directing the Prothonotary and Senior Master of this Court to break fixed deposit of Rs.1,05,50,000/- only and to pay entire amount with accumulated interest to the Applicant as per paragraph 13 of the order dated 9th April, 2019 passed in Commercial Chamber Summons No.351 of 2019 taken out in the above Commercial Execution Application. The learned Counsel for

the Applicant states that Consent Terms had been entered into between the parties which is as per the consent award dated 8th September, 2016. By an order dated 9th April, 2019 which referred to the Consent Terms entered into between the parties, it was made clear in paragraph 11 of the said order that if there is a single default in payment of any one of these three instalments, the attachments will come into effect forthwith on and from the date of the default. In addition, this Court had recorded that there will be an order of costs of Rs.2 lakhs per month and additional amount of interest on the unpaid balance at the rate of 24% per annum from the date of default. In paragraph 13 of the said order, it was recorded that in the event there is a default in payment of any one of these instalments, then the fixed deposit will be broken or prematurely encashed by the Prothonotary and Senior Master with whom the sum of Rs.1,05,50,000/- was deposited and that the entire amount with accumulated interest will be paid to Award Holder. In that event Respondent No.3 would be entitled to recover the entire said amount with interest @18% per annum from Respondent Nos. 1 and 4 respectively without being required to file independent proceedings.

2. It is an admitted position that there has been default in payment of the instalments under the Consent Terms and

accordingly as per paragraph 13 of the order dated 9th April, 2019, the Prothonotary and Senior Master is required to break the fixed deposit and pay entire amount of Rs.1,05,50,000/- with accumulated interest to the Award Holder. Accordingly, the Chamber Summons is required to be allowed in terms of prayer clause (a). In so far as prayer clause (b) is concerned in paragraph 11 of the said order, this Court had made it clear that there will be order of costs of Rs.2 lakhs per month till payment of the unpaid balance amount of Rs.1,45,50,000/- being 50% of the amount due as per the statement annexed and marked as Exhibit – B to the Chamber Summons as well as additional amount of interest @ 24% per annum from the date of default i.e. 4th August, 2019 till the receipt of unpaid balance amount of Rs.1,45,50,000/-. In so far as prayer clause (b) is concerned, the learned Counsel for the Applicant seeks time in so far as the interest calculation is concerned as there is an accumulated interest on the deposited amount of Rs.1,05,50,000/- currently lying in fixed deposit which is not yet determined and can only be determined upon breaking the fixed deposit. This accumulated interest upon determination will have to be accounted for and adjusted from the additional interest ordered to be paid to the Applicant @ 24% per annum from the date of default. Accordingly, the cost which is payable under

prayer (b) shall be paid by Respondent No.1 to the Applicant and the interest payable @ 24% per annum thereon shall be paid after adjusting the said accumulated interest upon determination thereof by the Applicant.

3. Accordingly, the Chamber Summons is made absolute in terms of prayer clause (a) and partly in terms of prayer clause (b) to the extent of payment of costs of Rs.2 lakhs per month by the Respondent No.1 to the Applicant till payment of the amount of Rs.1,45,50,000/-. The remainder of the prayer clause (b) shall be considered after appropriate application is made by the Applicant upon the determination of the accumulated interest on the fixed deposit and adjustment thereof from the interest payable at 24%per annum to the Applicant by Respondent No.2.

4. The Chamber Summons is stood over to 9th September, 2019. Till then the Prothonotary and Senior Master is directed in terms of prayer clause (a) to break the fixed deposit and pay the entire amount of Rs.1,05,50,000/- with accumulated interest to the Applicant as per paragraph 13 of the order dated 9th April, 2019.

(R I. CHAGLA, J.)