

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Chamber Summons No. 1003 OF 2019
IN

COMMERCIAL EXECUTION APPLICATION (L) NO. 1364 OF 2019

Bajaj Finance Limited ...Applicant/Orig.Claimant
In the matter between
Bajaj Finance Ltd. ...Claimant
Versus
Minal Tukaram Kamble And Anr ...Respondents

Mr.Manoj Prajapati with Chinmay Gupte, for the Applicant.
None for the Respondents.

CORAM : G.S. KULKARNI, J.

DATE : 13th November, 2019P.C.:

1. Heard learned Counsel for the applicant on this chamber summons which prays for the following reliefs:-

(a) That pending the hearing and final disposal of the Execution Application, this Hon'ble Court be pleased to restrain the Respondent no.1, her agents, her servants and any persons claiming under her by an order of injunction from amalgamating or creating any third party rights or changing the user or nature of the said two premises from "residential to nursing home" i.e. "Flat No.G-1, (ground floor) and F-1 (1st floor), B-wing, Shree Reghunandan CHSL, Shriram Apartment, Building No.17, Plot no.34/2, General A.K.Vaidya Marg, Dindoshi Court, Malad (East), mumbai-400097 as also with each other adjoining premises."

2. The applicant is the award creditor under the arbitral proceedings which were held between the applicant and the

respondents. The arbitral tribunal rendered an award dated 12 March 2019 in the following terms:-

“ In view of the above I therefore DO HEREBY AWARD AND DETERMINE THAT the Respondents, will jointly and severally, pay to the Claimant, a sum of Rs.28333437.37/- inclusive of interest and other charges and further interest @ 10.55% p.a. on Rs.28333437.37 to be computed from 22 October 2018 till the date of payment/realization. In my opinion interest @ 10.55% p.a. is proper.”

3. By an order dated 13 September 2019, a notice was issued by this Court on this Chamber summons. The order reads as under:-

“1. The learned Counsel for the Applicant states that service is attempted on the Respondents but till today the service is not yet been affected. Accordingly, he requests that the matter be kept on 23.09.2019.

2. The office is also directed to issue notice of the Chamber Summons and Execution Application as well as notice of the next date, to the Respondents.

3. The Chamber Summons and Execution Application are accordingly adjourned to 23.09.2019.”

4. Thereafter on 11 October 2019 the Court has passed the ad-interim order which reads thus:-

“1. The learned Counsel for the Applicant seeks permission to file additional affidavit in the Chamber summons. The learned Counsel for the applicant states that an attempt to serve the Respondent was made but envelope was returned on the ground of it being unclaimed/intimation posted. He seeks permissions to file an affidavit of service to that effect. Permission is granted. The additional affidavit as well as affidavit of service shall be filed by the Applicant within a period of two weeks from the date of this order.

2. The Chamber Summons placed on 08.11.2019.”

5. The office report indicates that respondent no.1 is served. Also there are affidavits of service as placed on record on behalf of the applicant dated 25 October 2019 and 13 November 2019. Considering the affidavits and the postal remarks and return of the packets as placed on record by the office, in regard to respondent no.2, it is seen that respondent no.2 is also served.

6. Learned Counsel for the applicant in support of the prayers as made in chamber summons would contend that the flats in question as referred to in the prayer clause were offered as security to secure the loans which were disbursed to the respondents in pursuance of the loan agreement dated 31 October 2016. He has referred to the averments as made in the affidavit in support of the Chamber summons to contend that in respect of the flats being offered as security, as the award was not complied, steps are taken by the respondents to amalgamate both these flats which is *per se* impermissible in view of the clear terms as contained in the loan agreement and more particularly condition no.6.2(d) which would prohibit any amalgamation, merging of the property with any adjacent property. Clause 6.2 pertains to Negative Covenants and Clause 6.2(d) therein reads thus:-

“6.2 NEGATIVE COVENANTS

... ..

(d) amalgamate or merge the property with any other adjacent property or create any easementary right on the Property;”

7. After having heard the learned Counsel for the applicant and after having perused the record, it appears that the award is for a substantial amount. The respondents intend to defeat the security by making an alteration to the flats which are offered as security and contrary to the agreement as noted above. Having chosen not to appear and oppose the present chamber summons, the averments in the chamber summons are required to be taken as uncontroverted.

8. In the aforesaid circumstances, it would be in the interest of justice to protect the decretal interest of the applicant by granting prayers as made in the chamber summons. Accordingly, there shall be a relief in terms of prayer clause (a) of the Chamber summons which reads thus:-

“(a) That pending the hearing and final disposal of the Execution Application, this Hon’ble Court pleased to restrain the Respondent No.1, here agents, her servants and any persons claiming under her by an order of injunction from amalgamating or creating any third party rights or changing the user or nature of the said two premises from “residential to nursing home” i.e. premises at “Flat No.G-1, (ground floor) and F-1 (1st floor), B-Wing, Shree Raghunandan CHSL, Shriram Apartment, Building No.17, Plot no.34/2, General A.K.Vaidya Marg, Dindoshi Court, Malad (East), Mumbai-400097, as also with each other adjoining premises.”

9. Chamber summons is made absolute in the above terms keeping open the other contentions of the applicants.

10. Place the execution application for further hearing on 11 December 2019.
11. Learned Counsel for the applicant intends to file further additional affidavit in the Execution Application. Let the same be filed in the Office within two weeks from today.
12. Parties to act an authenticated copy of the order.

[G.S. KULKARNI, J.]