

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1280 OF 2018

Ashok D Rana	...Applicant
<i>In the matter between</i>	
Edit IT Productions & Anr	...Plaintiffs
<i>Versus</i>	
Standard Chartered Bank & Ors	...Defendants

Mr Rohaan Cama, *i/b Ms Sapana Raichure, for the Plaintiffs.*
Mr MR Yadav, *i/b MR Yadav & Associates, for the Applicant in*
Chamber Summons No. 1280 of 2018.
Mrs Kavita Ambekar, *Ist Assistant to the Court Receiver is present.*

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

PC:-

1. This is a common order that will dispose of the Chamber Summons No. 1280 of 2018 as also the application on a praecipe made on behalf of the Plaintiffs. The application on the praecipe is briefly this: Pursuant to the orders dated 7th August 2018 and 5th September 2018 in Court Receiver's Report No. 161 of 2017, on 29th September 2018, the Court Receiver took physical possession of Flat No. B/002 (or B/02), Kohinoor Apartments, Ground Floor, B wing, Kohinoor Apartment-G type, Near GCC club, Revenue

Village Ghodbunder, Mira Road (East), Thane 401107 (“**the Flat**”). The copy of the Report is annexed. By a letter dated 1st November 2018, the Plaintiff called on the Court Receiver to require one Ashok Rana (“**Rana**”), who claimed to have movables of which the Court Receiver had also taken possession of from the Flat, to remove those. On 30th November 2018, the Court Receiver fixed an appointment on 1st December 2018 for this purpose. Rana did not remove these belongings but said he would do so at the earliest. The site report notes that the Flat had an entrance from an adjacent Shop No.10. This shop is not itself the subject matter of any proceedings or orders either on a Court Receiver’s Report or otherwise. The shop is said to be occupied by or belongs to Rana. The connecting door or entrance between the shop and the Flat was closed by the Court Receiver by putting a plywood sheet over it. The Report from that time notes the consent of all, including Rana.

2. The application of the Plaintiff is now simply that the plywood partition be replaced and that the entrance be sealed so that there is no entrance from Shop No.10 into the Flat.

3. On 1st November 2018, the Plaintiff’s Advocates requested the Court Receiver to take appropriate directions and in response, the Court Receiver said the Plaintiff should obtain an order of this Court. Hence this application.

4. There is a comment in the praecipe that Rana is removing the plywood partition and attempting to use the Flat.

5. The Chamber Summons is by Rana and seeks impleadment in the suit. It also seeks that there be a restraint against the taking of forcible possession of this very flat.

6. Rana is one of the parties subjected to directions under previous orders. He was called on to deliver possession to the Court Receiver of the Flat. Even prior to that, he was required to show to the Court Receiver the documents under which he claimed to be entitled to possession of the said flat. The Court Receiver's Report noted that Rana had cooperated with the Court Receiver and had indeed handed over a copy of some agreement. That agreement was neither registered nor was it a registered document of transfer of title. If Rana now claims to have acquired full and proper title to the Flat by way of a registered document, this is something that is being said for the first time and has not been said before.

7. What is annexed to the Affidavit in Support of the Chamber Summons is some Deed of Confirmation dated 7th March 2011. It is an admitted position that the Deed of Confirmation is in respect of an Agreement for Sale dated 2nd July 2004. A copy of this Agreement is at page 20. There seems to be some misconception *prima facie* between what is being said across the bar and what is being shown. From this, it is difficult to say that there is a registered conveyance even *prima facie* in favour of Rana in respect of the Flat. I will, however, leave it open to Rana to file such proceedings to establish his title to the Flat as he may deem fit, and all contentions in that behalf are left expressly open. Any such proceeding will be dealt with on its own merits unaffected by any observations made in this order.

8. With these observations the Chamber Summons is rendered infructuous and is disposed of accordingly.

9. Therefore, the order on the praecipe as sought will have to be made. Even if Rana is ultimately established to be the owner of the Flat, that in itself does not entitle him to insert an aperture in the partition wall separating the shop from the Flat. It is not shown to me that the entrance is in any way authorised or sanctioned, and *prima facie* it seems difficult to accept that it could be.

10. The Court Receiver will, therefore, proceed to replace the plywood partition with the necessary brick masonry or solid construction to seal off the entrance between the shop and the Flat.

11. The Court Receiver will be entitled to take the assistance of an architect from its panels as to the materials to be used, and to engage a local contractor for these purposes. Rana will not obstruct the execution of these civil works. These will be done at the cost of the Plaintiffs subject to further adjustments to the suit. Before the work is commenced, the Court Receiver will give Rana a period of not more than one week to remove his belongings from the Flat. If Rana does not comply the Court Receiver will be at liberty to physically remove any such movables and place them in the adjacent Shop No.10 at the sole risk of Rana. The Court Receiver will endeavour to complete the sealing work within three weeks from today. If necessary, the Court Receiver will be entitled to take the assistance of the local police authorities who will act on production of an authenticated copy of this order.

12. The necessary permissions required for this work will be obtained by the Plaintiffs and if required, the Court Receiver will countersign any such applications. The authorities in question will not unreasonably refuse any such applications. A copy of this order may be forwarded to the authorities in question.

(G. S. PATEL, J)