

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

**CHAMBER SUMMONS NO. 1273 OF 2018
IN
NOTICE NO. 169 OF 2018
IN
EXECUTION APPLICATION NO. 100 OF 2018**

Allied Construction Company & Anr.	...	Applicants (Orig. Respondents)
 In the matter between		
Vipul Gala	...	Orig. Claimant/ Judgment Creditor
 Versus		
Allied Construction Company & Anr.	...	Orig. Respondents/ Judgment Debtors

Mr. Shirin Shaikh i/b Vivek Patil and Associates for Judgment Debtor.
Mr. Sandesh Shukla a/w Hafeez Patanwala i/b Sachin Hande for the Intervener.
Mr. Vishal Kanade a/w Mr. M.P. Vora i/b Pramod Kumar & Co. for the Orig. Claimant/Judgment Creditor.

CORAM : R.I. CHAGLA, J.

DATED : 3rd OCTOBER, 2019.

P.C. :

1 This Chamber Summons has been taken out in the Execution Application by the Applicants/Original Respondent Nos.1 and 2 seeking setting aside of the warrant of attachment of immovable property which

the Applicants/Original Respondent Nos.1 and 2, who are the Judgment Debtors claim are operating against them. It is stated that the Judgment Creditor's decree has been secured and the learned Counsel for the Applicants has referred to the consent terms between the Claimant and the Respondents dated 21.03.2017 which forms the basis of the decree. He has referred to certain properties mentioned in clauses 4a and 4b of the said consent terms wherein she has stated that the industrial gala/Unit No.C-01A mentioned in clause 4a, has been executed in favour of the Claimant and the agreement has been registered. Insofar as the Unit bearing No. C-402 admeasuring 221 sq. ft. which is referred to in clause 4b of the consent terms is concerned, she has stated that this is also executed in favour of the Claimant. In the affidavit in support of the Chamber Summons, it is stated that there are six properties in respect of which the attachment warrant has been issued. It has further been stated that the Applicants is willing to settle the matter with the Claimant. However, due to financial crises, the Applicants have requested for a certain time period for paying the balance decretal amount and have entered into draft consent terms / minutes of order which has been shared with the Advocate for the Claimant. It is stated that the Claimant has refused to accept and execute these consent terms. It is further stated that the Unit C-01B which has been referred to in the consent terms and which the Applicant has kept as security has a

market value of approximately Rs.1,86,00,000/- which in itself is satisfactory to satisfy the claim of the Claimant. She has sought time to furnish the valuation report in respect of the Unit C 01B.

2 She has tendered a statement of details of properties in respect of which the attachment of warrant has been issued. These properties according to the statement have been mortgaged to certain entities/banks as well certain of them are tenanted properties and certain property in respect of which leave and licence agreement has been entered into. She accordingly submits that attachment warrants in respect of these properties be lifted.

3 The learned Counsel for the Claimant has opposed the Chamber Summons on the ground that the Chamber Summons is not maintainable as it has been filed by the Judgment Debtors. He has submitted that the only ground mentioned in the affidavit in support of the Chamber Summons is financial crises as being the ground for not settling the claim of the Judgment Creditor. He has submitted that this is an unsatisfactory ground taken by the Judgment Debtors for not settling the claim of the Judgment Creditor, and at the same time seeking to set aside the warrant of attachment in respect of the immovable properties. He has further submitted that it is not open for the Judgment Debtors to rely on

clauses of the consent terms to submit that there are other properties which have been given as and by way of security to the Judgment Creditor. He has submitted that applications have been taken out by a third party Applicant in Chamber Summons Nos.1 of 2019, 7/2019, (L)1579/2018 and 304/2019 seeking raising of attachment in respect of two out of the six properties. He has accordingly stated that it will depend on these applications as to whether the two out of the six properties in respect of which attachment warrants executed are required to be raised. Accordingly, he has stated that the Chamber Summons taken out by Judgment Debtors be rejected.

4 Having considered the submissions, in my view the Chamber Summons is clearly misconceived as it has been taken out by the Judgment Debtors seeking the lifting of the attachment warrants in respect of six properties by relying upon certain securities mentioned in the consent terms which they claim fully satisfy the claim of the Judgment Creditor. It is not open for the Judgment Debtors to so contend as on the one hand in the affidavit in support of the Chamber Summons, the Judgment Debtors have stated that they are willing to settle the claims of the Judgment Creditor but due to financial crises they have not been able to settle the claims of the Judgment Creditor. Whereas on the other, they are seeking the relief of lifting of the attachment warrants issued in respect of the six

properties in respect of which mortgages have been created as well as two of the properties are tenanted properties and one property has been given on leave and licence agreement as per their statement tendered to this Court. It is for the Judgment Debtors and Judgment Creditor to execute the consent terms for settling the claim of the Judgment Creditor and merely referring to a draft consent agreement is not sufficient. It is also for the third party mortgagees as well as the tenants if they are so aggrieved to make an application for raising of the warrant of attachment as has been done by the third party Applicant in Chamber Summons Nos. 1 of 2019, 7/2019, (L)1579/2018 and 304/2019 in respect of two out of the six properties.

5 Accordingly, this Chamber Summons seeking the lifting of the warrants of attachment in respect of these six properties deserves to be rejected.

6 The Chamber Summons is accordingly dismissed with no order as to costs.

(R.I. CHAGLA, J.)

Note : This order is modified/corrected as per speaking to the minutes of the order dated 17.10.2019.