

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

CHAMBER SUMMONS NO.118 OF 2014
IN
EXECUTION APPLICATION (I) NO.1502 OF 2013

M/s.MSTC Ltd. ...Applicant
In the matter between
MSTC Ltd. ..Applicant
vs.
Joshi Bullion Gems & Jewellery Pvt.Ltd. ...Respondents

Ms.Isha Bina with Priyank Daga i/b. Jayakar & Partners, for the
Applicant.

Mr.Manish Bohra, for the Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 4 February 2020

P. C.

1. Heard learned Counsel for the applicant and learned Counsel for the respondent. Following are the prayers as made in the Chamber summons:-

- (a) this Hon'ble Court be pleased to pass an order directing the Respondents to disclose on oath their encumbered and unencumbered properties/assets both movable and immovable.
- (b) the Hon'ble Court be pleased to pass an order directing the Respondents to give the Applicants an unconditional Bank Guarantee"

2. A reply affidavit dated 12 January 2018 which is filed almost two years back, is already on record and the same was also served on the applicant. In the reply affidavit of Mr.Dhaivat Hitendrabhai

Vakharia, in paragraphs 6, 7 and 8, the following averments are made:-

“6. With reference to paragraph 5 of the said Affidavit, its contents are denied. I say that the Respondent Company does not have any properties, whether movable or immovable, after the CBI raided the premises of the Respondent Company, all the Bank accounts of the Respondent Company were attached by the CBI in the SPL CBI Case no.22 of 2013, pending in Session Court, Mumbai. Hereto annexed and marked as **Exhibit “B”** is the copy of the Panchnama. The details of the Respondent bank accounts are not available.

7. I say that I am submitting the cash flow for the amount received from Applicant evidencing that the funds were used only for procurement of gold and for no other purpose. The bank statement which the Respondent has in its possession, dated 22.11.2010, is annexed herewith and also reflecting the chart of utilization of funds received from MSTC as advance against sale of bill. Hereto annexed and marked as **Exhibit “C”** is the copy of the Statement of Account in possession of the Respondent.

8. I say that the Respondent company has not received payment from the other co-accused in SPL CBI Case no.22 of 2013 pending in Sessions Court, Mumbai to whom gold was sold and delivered for which the Respondent Company have filed recovery suits on the following three companies i.e. Ushma Jeweller & Packaging Exports Pvt.Ltd., K.A.Malle Pharmaceuticals Ltd. and Space Mercantile Limited. Hereto annexed and marked as **Exhibit “D”** collectively are the status of the case/prayers in the suit or orders passed in the suit.”

These submissions as made in the reply affidavit are not disputed by filing any rejoinder affidavit.

3. In the above circumstances, there is no purpose in keeping this chamber summons pending inasmuch as prayer clause (a) of the Chamber Summons stands itself worked out. Keeping open

the rights of the applicant to pursue prayer clause (b) in appropriate proceedings or any other prayers as permissible in law to be asserted in the present execution application, this Chamber summons is disposed of. All contentions of the parties are expressly kept open.

[G.S. KULKARNI, J.]