

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 830 OF 2018
IN
APPEAL NO. 112 OF 2010

Europlast India Ltd ...Appellant
Versus
Gorakhnath Electricals Pvt Ltd & Ors ...Respondents

Mr Pankaj Shah, *for the Appellant/Applicant in NMA/457/2019.*
Mr Denzil D'Mello, *for Respondents Nos. 5 to 7 and Applicant in*
NMA/830/2018.
Mr Arun Siwach, *with Priyanka Mitra & Karan Khetani, i/b Cyril*
Amarchand Mangaldas, for Respondent No. 2.

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CORAM G.S. Patel &
Gauri Godse, JJ.
DATED: 21st July 2022

PC:-

NOTICE OF MOTION NO. 457 OF 2019

1. This is the Motion by the original Appellant essentially seeking to modify the Consent Minutes dated 28th August 2015. These were Consent Minutes in the Appeal itself. Clause (3) of the Consent Minutes of the Order states that the Prothonotary and Senior Master would take the necessary steps to take the amount

deposited to an entity called Keva and to an unsecured creditors in accordance with their respective entitlements. This is sought to be modified by the Appellant seeking a disbursement of the amount deposited to the Appellant. A similar application was made and rejected on 3rd September 2018. That order by the Division Bench (AS Oka and MS Sonak, JJ) is available on record. We see no reason to take a different view. It makes no difference that the Appellant has given a public notice of its Motion. The Notice of Motion itself is misconceived. It is dismissed.

NOTICE OF MOTION NO. 830 OF 2018:

2. This is the Notice of Motion by a group of unsecured creditors. It is based on the same Consent Minutes of the order. Those Minutes record that one SH Kelkar & Co deposited some amounts as set out in the Consent Minutes in Court. On that deposit being made, it was agreed that the impugned order of 7th January 2010 would be set aside, that Kelkar's title to the property under a Deed of Conveyance dated 26th April 2007 would stand confirmed and that Kelkar would stand discharged of all its obligations. It is in this context that the Prothonotary and Senior Master was to take the necessary steps to disburse the amount deposited by Kelkar to Keva and to unsecured creditors. Mr D'Mello represents some of these unsecured creditors. He is agreeable to having the claims of each of the unsecured creditors assessed by the Prothonotary and Senior Master.

3. We request the Prothonotary and Senior Master to accept the representations by each of the Applicants. The Prothonotary and Senior Master will ensure that copies of these representations are served on the Appellant as also on the Advocates for Kelkar by way of abundant caution. All parties will be entitled to be heard.

4. We permit one Affidavit in Reply by the Appellant and by Kelkar. There is to be no Rejoinder before Prothonotary and Senior Master. We will require the Prothonotary and Senior Master to place before us a consolidated report with his findings on each claim presented to him. The claims are to be presented within two weeks from today. All Replies are to be filed within two weeks thereafter. We will request Prothonotary and Senior Master to prepare a final report within six weeks thereafter.

5. For the present we keep this Notice of Motion No. 830 of 2018 pending and with liberty to Mr D'Mello to apply. Mr D'Mello points out that there is a typographical error in prayer clause (a). The reference should be Exhibits "10" and "11" and not Exhibits "1" and "2".

6. List the matter on 6th October 2022.

(Gauri Godse, J)

(G. S. Patel, J)