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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL APPEAL NO. 64 OF 2022
IN
CHAMBER SUMMONS NO. 871 OF 2019
IN
SUMMONS FOR JUDGMENT NO. 49 OF 2017

Rodium Realty Limited …Appellant
Versus
Dilip Jairam Mukkawar …Respondent

Mr Simil Purohit, *with Rubin Vakil, i/b Tejas Shah, for the Appellant.*
Mr Ramesh Jain, *for the Respondent.*

CORAM **G.S. Patel &**
Madhav J. Jamdar, JJ.
DATED: **5th July 2022**

PC:-

1. On 25th November 2021, NJ Jamadar J had before him a Chamber Summons under Order XXI Rule 41(ii) of the Code of Civil Procedure, 1908. That was an application by the Plaintiff in a Summons for Judgment in a Commercial Suit. The application sought an order directing the Defendant to disclose on Affidavit "all properties, assets, both movable and immovable belonging to him either personally or jointly with any other person or party". The remaining portion of the prayer said that in case of any disobedience the Defendant be detained in civil prison. The suit itself was for decree of Rs.7,32,55,000/- and further interest on the principal amount of Rs.4.90 crores. The Plaintiff took out a Summons for Judgment. On 20th December 2017, the Defendant submitted to a decree on admission. This is been noted in Mr Justice Jamadar's order. We need not consider the remaining details.

2. There is no doubt that Mr Justice Jamadar allowed the Chamber Summons to the extent of the disclosure. He reserved liberty to apply for the remaining part, i.e. the prayer for detention in civil prison. The disclosure was to be made within six weeks, i.e. by mid January 2022. He disposed of the Chamber Summons.

3. The Defendant did not comply and the Plaintiff moved before Mr Justice AK Menon on 20th April 2022. In his discretion, Menon J said that it would be open to the Plaintiff to apply in execution and that no further orders were necessary in the disposed of Chamber Summons. This is the order under Appeal.

4. It will not be necessary to consider the Appeal itself because before us the Defendant tenders an Affidavit of Disclosure in ostensible compliance with Jamadar J's order. There is no explanation at all on Affidavit as to why the disclosure was not made within time. No application was made for extending the time to make the Affidavit of Disclosure, nor to condone the delay. Indeed what is shown to us, very surprisingly, is an Affidavit of Disclosure affirmed on 8th February 2022. The application before Menon J was of 20th April 2022. In other words, the Defendants deliberately withheld filing that Affidavit before Menon J.

5. A copy of this Affidavit of Disclosure is given to Mr Purohit in Court today. We are taking this Affidavit, for what it is worth, on file. It will be placed in the original proceedings in partial compliance with Mr Justice Jamadar's order.

6. We find, however, that this Affidavit is almost thoroughly unsatisfactory and can in no sense be said to be in compliance with even the letter, let alone the spirit, of Mr Justice Jamadar's order. The prayer before Mr Justice Jamadar was for a disclosure of all assets both moveable and immovable. This Affidavit discloses some tenancy properties and a motor car. That is all. There is no mention of bank accounts, investments, financial and other assets. Form 16-A of the CPC specifies the form in which an Affidavit of assets is to be made.

7. We direct the Respondent to file a supplementary Affidavit not only complying with Form 16-A but also containing:

(a) A disclosure of all bank accounts held by the Defendant wherever they may be along with authenticated copies of bank statements of one year.

(b) Income tax returns for the last three years. By this we mean not only the acknowledgement of the filing of the return but the actual statement of computation of income with all schedules annexed.

(c) A listing of all investments whether in demat shares, mutual funds, fixed deposits or other forms of investments of every description stating the current market value and, in the case of the mutual funds, the full name of the mutual fund and the number of units involved. If there are investments in demat shares, full particulars of the share holdings and the demat account numbers are also to be disclosed.

8. This Affidavit is to be filed by 1st August 2022. The disclosure is to be of all properties and assets held not only singly by the Defendant but also jointly with any other person. If the Defendant is a partner in any firm, he has to give full particulars of that firm and his shares in that partnership firm.

9. We are not disposing of the Appeal and will list it for compliance on 3rd August 2022.

10. The Court Associate is directed to ensure the Affidavit tendered today is filed in the Trial Court papers.

(Madhav J. Jamdar, J) **(G. S. Patel, J)**