



Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
CHAMBER SUMMONS NO. 471 OF 2018
IN
COMM EXECUTION APPLICATION NO. 1022 OF 2018
IN
WRIT PETITION NO. 922 OF 2015**

Advance Commercial Co Ltd ...Applicant
Versus
Pravin Jain ...Respondent

**Ms Mamta Sadh, with Kainaz Irani, I/b AS Mishra, for the
Applicant.**
Mr Anup Lahoti, with Priyal Sarda, for the Respondent.
Mr Pravin Jain, Respondent, present.

CORAM: G.S. PATEL, J
DATED: 4th October 2018

PC:-

1. There is an unacceptable application by the Respondent, who is in repeated breach of his commitments, seeking further time until 30th November 2016. This is not accompanied by the slightest down payment to show *bona fides*. Mr Lahoti says the Respondent is in negotiations with a third party and that these are 'at an advanced stage'. I have heard this before.

2. On 6th June 2018, at his request and on an assurance of payment, I gave the Respondent time until 1st October 2018. Even then I noted that the Respondent was by then already in breach of his commitments under the Consent Terms.

3. The Respondent's presence in Court is extremely disruptive. Although he has engaged an Advocate, he wants to address the Court himself, as if the general rules that apply to everyone else are inapplicable to him. Undoubtedly he wants to plead hardship; his lawyer is already doing just that, and it is likely to be no more persuasive or impressive because the Respondent says it himself. Despite a warning, the Respondent persists. I have asked him to leave Court.

4. No executable decree can be indefinitely delayed like this, most especially not in a matter covered by the Commercial Courts act, and within the commercial division of this Court. On the one hand, there is a statutory mandate for an early closure of commercial disputes, and on the other we have respondents such as this one who persist in delaying that result. Worse yet, they seem to think nothing of buying time on false assurances and undertakings to the Court. These are predictably breached and not honoured. Instead, even more time is sought. When it becomes a routine pattern, this constant delaying of enforcement of decrees is extremely subversive. It undermines the Rule of Law. When a respondent is made sanguine that he will obtain endless indulgence from a court and succeed in delaying the execution of a decree against him, the victim is not just the decree holder. It is the entire judicial system that is put under threat and is weakened.

5. The Decree Holder/Applicant is already in possession of the whole of the first floor of Sarosh Building, 251, DN Road, Fort, Mumbai 400 001. as the Court Receiver's agent. The premises are locked.

6. The Court Receiver will proceed with the process of sale of these premises, initially by public auction, and will take necessary steps including obtaining a valuation, the costs of which at first will be borne by the Decree Holder, subject to adjustment against the sale price. At a later stage, I will make the necessary orders, if necessary, for sale by private treaty. I am, however, now making it clear at the beginning that the Decree Holder is entitled to bid at any auction and to set off or adjust its entire decretal claim with all accumulated interest and costs against the property and to take the property in its name, if found to be the highest bidder, in favour of partial satisfaction of its decree.

7. The Court Receiver will place a report accordingly.

8. The entire process will undoubtedly cease, if between now and the time when the sale is confirmed, the Judgment Debtor makes a payment to the Decree Holder with up-to-date interest and costs.

(G. S. PATEL, J)