



Arun

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

Advance Commercial Company Ltd ...Applicant
In the matter between
Advance Commercial Company Ltd ...Petitioner
Versus
Pravin Jain ...Respondent

Mr Mamta Sadh, with Ms Kainaz Irani i/b Anju Mishra, for the
Petitioner.
Priyal G Sarda, i/b Mr Anup Lahoti, for Respondent No.1

CORAM: G.S. PATEL, J
DATED: 6th June 2018

PC:-

1. Heard Ms Sadh for the Applicant. This is a Commercial Execution Application in a Writ Petition that was originally filed in 2015. It relates to a building known as Sarosh Building, 251, DN Road, Mumbai – 400 001 and premises occupied by the Applicant as

a tenant of the entire first floor in that building. The litigation history is set out at some length in the Affidavit in Support. It is important to note that ultimately in that Writ Petition No. 922 of 2015, this Court appointed Mr Justice Arvind Savant, retired Chief Justice, as a mediator. Those mediation proceedings were successful and resulted into in an Memorandum of Understanding (“**MoU**”) dated 28th August 2017. Under this MoU, it was agreed that the present Respondent would pay an amount of Rs.5,75,00,000/- to the Applicant against the Applicant surrendering the tenancy and possession of the first floor premises on an as-is-where basis to the Respondent. The Respondent was required to make payment of this amount on or before 17th October 2017 and, in any event, no later than 31st December 2017. A copy of the MoU is at Exhibit ‘M’ to the Affidavit in Support.

2. Rule was issued on 28th September 2017 and ultimately made absolute by an order passed on that date. A copy of which is at Exhibit ‘N’ to the Affidavit in Support.

3. The Applicant has vacated the first floor premises pursuant to the Respondent’s Advocate’s letter. Despite this the Respondent has not made payment even till date of any part of the amount due. There is correspondence to indicate that the Respondent kept promising to make payment and said that he is arranging funds. Nothing has been paid.

4. The matter was listed before me on 19th April 2018 when Mr Bhandari then appearing for the Respondent said that the

Respondent was engaging another Advocate. I posted the matter to 25th April 2018. The Respondent was personally present in Court on that day. The injunction that I granted on 19th April 2018 was continued. I specifically directed that matter to be listed today and said in my order dated 25th April 2018 that should the Respondent be absent or without representation an order would be passed.

4. At this stage Mr Sarda appears on behalf of the Respondent and says that he has been engaged only this morning. That is singularly unfortunate. The Respondent had more than enough time to engage an Advocate and nothing in my order dated 25th April 2018 was even remotely ambiguous.

5. I am told that the Respondent is wheelchair bound. This Court is wheelchair accessible. He will be present in Court at 3.00 pm today and I will give him no longer than tomorrow morning to produce a Demand Draft or Banker's Cheque in the full amount of Rs.5,75,00,000/- in favour of the Applicant. If that is not done I will not only appoint a Receiver of the premises but will put the Applicant back in possession of the first floor premises as an agent of the Receiver without payment of royalty, security or rent until such time as the entire payment is made. In any case if there is continued default I may even consider making an order of further interest which will not be less than at the rate of 12% p.a.

(G. S. PATEL, J)