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CHAMBER SUMMONS NO. 471 OF 2018

IN

EXECUTION APPLICATION NO. 1022 OF 2018

WITH

COURT RECEIVER'S REPORT NO. 74 OF 2019

Advance Commercial Company Ltd.

**...Applicant
(original
Petitioner)**

In the matter between

Advance Commercial Company Ltd.

...Petitioner

Versus

Pravin Jain

...Respondent

Ms. Mamta Sadh, a/w Ms. Kainaz Irani, Mr. Narendra Devansh,
i/by Anju Mishra, for the Applicant.

Mr. Anoshak Daver, M. Deepa Bisht, i/by Tushar Goradia, for
the Defendant.

Mr. N.D. Kher, Court Receiver present.

CORAM : R.I. CHAGLA J.

DATE : 17 July 2019

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July 17, 2019

ORDER :

1. The Chamber Summons seeks execution of the decree which has been passed by this Court in terms of the Memorandum of Understanding cum Consent Terms which have been arrived at between the Petitioner and Respondent in Writ Petition No. 922 of 2015. As per the terms of the Memorandum of Understanding, the amount of Rs. 5.75 Crores have been agreed to be paid by the owner to the tenants and upon which the tenants had agreed to vacate the subject premises on receipt of payment. The Judgment-Creditor is a tenant in respect of the subject premises and had vacated occupation of the subject premises which is on the first floor of Sarosh Building, 251, D.N. Road, Fort, Mumbai – 400 001 in accordance with the Consent Terms dated 20th August 2017.

2. The Judgment-Debtor has not paid the sum of Rs. 5.75 Crores as agreed to be paid under the Consent Terms/Decree. By an order dated 4th October 2018, this Court

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July 17, 2019

had observed that no executable decree can be indefinitely delayed and it observed that the Decree-Holder is in possession of the subject premises as Court Receiver's agent, although the subject premises was locked. It was recorded that the Court Receiver will proceed with the sale of the subject premises, initially by public auction and will take necessary steps including obtaining a valuation, the cost of which will be borne by the Decree-Holder subject to adjustment of the sale price. It was thereafter, observed that the necessary orders may be passed, if necessary, for sale by private treaty.

3. There is a Court Receiver's Report which has been filed in which the Court Receiver has stated that the steps had been taken for auction of the subject premises and the Court Receiver had not received any offer pursuant to the notice issued and the auction fixed on 26th March 2019 had failed.

4. Accordingly, the Court Receiver has sought directions from this Court including the steps to be taken by the

Court Receiver viz. whether the subject premises should be sold by private treaty as directed in the said order dated 4th October 2018 passed by the learned Single Judge of this Court.

5. Considering that the auction of the subject premises has failed and that it would be necessary for the subject premises to be sold, as the Judgment-Debtor has not come forward to pay Rs. 5.75 Crores, as observed by this Court, it would be appropriate for the Court Receiver to sell the subject property by private treaty as had been directed in the said order dated 4th October 2018.

6. The Court Receiver is directed to conduct the sale of the subject premises by private treaty on 5th August 2019. The Judgment-Debtor is granted liberty to take part in the sale of the subject premises by private treaty. The costs of this report be awarded in the sum of Rs. 3,000/- (Rupees Three Thousand only) and shall come out from the funds in the hands of the Court Receiver of the subject premises. The valuation report

obtained by the Court Receiver shall be made available to the Judgment-Debtor. The Court Receiver's Report is accordingly, disposed of.

7. The learned Counsel for the Judgment-Debtor seeks permission to file Affidavit in Reply to the Chamber Summons which is kept ready. The Judgment-Debtor is granted permission to file Affidavit in Reply in the Registry within a period of one week.

8. All rights and contentions of the parties are kept open.

9. The Chamber Summons be placed on 7th August 2019.

[R.I. CHAGLA J.]