



Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
CHAMBER SUMMONS (L) NO. 990 OF 2018
IN
COMM EXECUTION APPLICATION (L) NO. 88 OF 2017**

Vistra ITCL (India) Ltd ...Petitioner
Versus
Mighty Construction Pvt Ltd & Anr ...Respondents
And
Sanjay Sushil Bhosale ...Prop.
Respondent

**CHAMBER SUMMONS NO. 222 OF 2017
IN
COMM EXECUTION APPLICATION (L) NO. 88 OF 2017**

Vistra ITCL (India) Ltd ...Petitioner
Versus
Mighty Construction Pvt Ltd & Anr ...Respondents

**Mr JP Sen, Senior Advocate, with Mr T Kakalia, & Raghavi
Sharma, i/b Mulla & Mulla & Craigie Blunt & Caroe, for the
Petitioner.**
**Mr Pesi Mody, Senior Advocate, with Kalpana Desai & Anuj
Jaiswal, I/b Little & Co., for Respondents Nos. 1 and 2.**
Mr Pradeep Thorat, i/b Rohit Jain, for Respondent No. 3.
Mr RY Sirsikar, with Sulakshana Kamble, for MCGM.
Mr Sinkar, AE (BP) M/East Ward, MCGM, is present.
Mrs Kavita Ambekar, Ist Assistant to the CR, is present.

CORAM: G.S. PATEL, J
DATED: 10th August 2018

PC:-

**RE: SANJAY BHOSALE, UNIT F2-B & PARKING
SPACE NO.18**

1. Mr Sirsikar for the MCGM has taken instructions. Mr. Sinkar, the Assistant Engineer (BP), M/East Ward of the MCGM is present in Court to instruct Mr Sirsikar and for further clarifications if required.

2. As regards Mr Sanjay Sushil Bhosale, he owns Unit No. F2-B on the first floor of the Universal Majestic at Lokhande Marg, Chembur. Associated with this unit is under-stilts Parking Space No.18 (“PS18”). Mr Bhosale presently uses PS18 as an office. The access to this is from an entrance on the south side, from a lobby or hallway around a stairwell. In this regard, Mr Sirsikar makes the following statements on instructions:

- (a) The conversion of this unit from a vehicle parking space to a commercial unit is unauthorized.
- (b) The access doors on the south and the west are both unauthorized.
- (c) The only authorized access door is off the driveway on the eastern side of the unit, and this is meant to access PS18 as a parking space and nothing else.

3. Mr Sirsikar states that, therefore, the only authorized access to PS18 is from the driveway of Universal Majestic.

4. Mr Thorat for Mr Bhosale has instructions to state that the access doors used on the south and the access door on the west will both be returned to their initial state as per the sanctioned plan. This means that the western side has a sealed wall with no entrance or doorway. The northern and southern sides have no walls, this being a parking space under stilts.

5. Mr Thorat's statement is without prejudice to the contentions of Respondents Nos. 1 and 2, represented by Mr Mody, as also to the contentions of the MCGM that the enclosing of PS18 by erecting walls on the southern and northern sides is entirely unauthorized. This order is limited to a single purpose, and that is to specify that the only access that Mr Bhosale can have to PS18 is from the east, i.e. off the Universal Majestic driveway and from no other place. Whether or not his use of that parking spot and any work that he has done in any of this is authorized or can be regularized are all contentions that are kept open. The MCGM is at liberty to take action in accordance with law if it finds that any use of PS18 or any work done therein is unauthorized or contrary to the applicable rules, regulations and bye-laws.

6. Mr Thorat submits that the western wall should be ordered to be completed to the end of the structure. I have understood this submission at least to imply, even if not explicitly so stated, that unless the western wall or brick masonry work is completed down

the length of the building, Mr Bhosale apprehends that he may be accused of trespass or encroachment beyond the area he owns; and, therefore, that under an order of this Court, the MCGM should be directed to command the completion of the wall. I cannot accept such a submission. Mr Thorat's client will remain within the confines of the premises he owns. Liberty to Mr Bhosale to adopt appropriate proceedings regarding his demand for completion of the wall alleged to be left unbuilt.

RE: SALE OF MORTGAGED PROPERTY

7. The mortgaged property has been valued pursuant to directions dated 8th June 2018. Mr Sen for the Decree Holder submits that the mortgaged property be sold in execution through the Court Receiver.

8. Mr Mody and Mr Sen together state that AR Agro and Land Developers Pvt Ltd (“**AR Agro**”), an entity that purchased Unit No. G-2A, is now interested in purchasing two car parking spaces on the ground floor. It is said (though I will not hold this against AR Agro since it is not before me today), that AR Agro offered Rs. 45 lakhs per parking space, aggregating to Rs. 90 lakhs. I will need a confirmation from AR Agro itself. If AR Agro is indeed interested in purchasing these two car parking spaces at an acceptable price, then the mortgaged property being put to sale through the Court Receiver will exclude those two parking spaces.

9. Mr Sen's clients and Mr Mody's clients will request a representative of AR Agro to be present in Court on the next date. That representative should have the necessary authorization and, preferably, a written confirmation of AR Agro's interest in these two units.
10. Mr Bhosale now says that he, too, is interested in these two units. He is welcome to return on the next date.
11. On the next occasion, I will appoint the Receiver as a Receiver in execution to sell the mortgaged property (less the property, if any, taken by AR Agro) by public auction or private treaty. A formal order to that effect and with the necessary directions will be passed on the next occasion.
12. List the matter on Tuesday, 14th August 2018 high on the supplementary board.
13. The MCGM's officer's presence is not required on that day.

(G. S. PATEL, J)