IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL APPEAL NO. 492 OF 2019
IN
SUMMONS FOR JUDGMENT NO. 67 OF 2018
ALONGWITH
INTERIM APPLICATION NO. 1026 OF 2022
IN
COMMERCIAL APPEAL NO. 492 OF 2019

Bonton Holidays Pvt. Ltd. ....Appellant

V/s.
European Gateway Sarl ...Respondent

Mr. Sunil Kumar a/w Mr. Rohit Upadhyay i/b M/s. Kumar & Associates for Appellant.
Mr. Karl Tamboly a/w Ms. Shruti Maniar and Mr. Advait Shukla i/b M/s. Solomon & Co. for Respondent.

CORAM : K.R. SHRIRAM &
KAMAL KHATA, JJ.
DATED : 5th DECEMBER 2022

P.C. :

1. On 29th November 2022 following order was passed :

1 Dr. Saraf, at the outset, raises a preliminary objection to even entertaining the appeal on the ground that appellant's Directors have filed false affidavits in the execution proceedings and the court even directed the Directors to remain present but on one ground or the other they did not remain present. After July 2022, the matter has not reached before the Learned Single Judge.

2 We have considered a copy of the affidavit of one Jalpa Dalal, affirmed on 8th March 2020 in which, there is an averment that there are no immovable properties in the name of judgment debtors. Dr. Saraf has placed on record a compilation in which, there is a copy of board resolution dated 1st June 2020 in which, a Director of the Judgment Debtor company has been authorised to deposit the title deeds of immovable property / fixed assets belonging to the company, i.e., appellant herein against facility to be given by *a financial institution. Dr. Saraf states, therefore, appellant having made false statement to their knowledge to this court, the court should not entertain the appeal.*

3 Dr. Chandrachud requested the matter be stood over so that he can take instructions on the statement made and documents tendered by Dr.Saraf.

4 Therefore, stand over to 5th December 2022.

2. Today Mr. Sunil Kumar for appellant states that three Directors of appellant namely Respondent Nos. 2, 3 and 4 in the Execution proceedings namely Purvi Piyush Parekh, Piyush Vinodrai Parkeh and Viren Narottamdas Adesara shall remain present in the court on the next date. Three Directors are directed to remain present in the court on 19th December 2022. Statement accepted as an undertaking and it is made clear that if anyone of them do not remain present, the appeal will be summarily dismissed.

3. As regards the properties mentioned in the resolution namely (i) Factory land & building at Plot No.1 and 2, RS No.156 and 157 Village Makhavad, Lodhika, Rajkot and (ii) Factory land & building at Plot 23, RS No.168 paikee, Kothariya, Rajkot (said property), Mr. Sunil Kumar states that these properties do not belong to appellant and they got referred by mistake. Mr.Sunil Kumar relies on a letter dated 14th June 2022 addressed by the Relationship Manager of The Federal Bank Limited, Rajkot Branch informing appellant that the said properties do not even belong to the

company. We hereby direct The Federal Bank Limited to revert within four days of receiving copy of this order giving details of the assets, mortgaged/hypothecated with The Federal Bank Limited by appellant. The Federal Bank Limited shall also confirm if the letter dated 14th June 2022 was issued by them. The Federal Bank Limited shall issue the letter signed by the Chief Manager of the Branch and the same shall be addressed to the Prothonotary and Senior Master of this court. The court may direct an affidavit to be filed it if is not satisfied with the letter. The Federal Bank Limited will respond promptly since the matter is directed to be listed for hearing on 19th December 2022. Mr. Tamboly states that copy of this order will be served within two days of this order getting uploaded.

4. Appellant is also directed to file alongwith affidavit of Respondent No.2, who we are told is the whole time Director/Managing Director, copies of balance sheet for F.Y. 2018-19, 2019-20, 2020-21 and 2021-022 together with a schedule of Assets fixed and movables, and bank accounts that would be referred to in the balance sheet. The balance sheet annexed shall be certified as true copy by the Chartered Accountant who has audited the accounts. This affidavit to be filed and copy served by 15th December 2022.

5. Stand over to 19th December 2022.

(KAMAL KHATA, J.) **(K.R. SHRIRAM, J.)**

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