

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****INTERIM APPLICATION NO. 3099/2025****IN****COMMERCIAL EXECUTION APPLICATION NO. 219/2020****SHARON SHETH****..... APPLICANT****IN THE MATTER BETWEEN****SUKHDEV SINGH BANSAL****..... PLAINTIFF****VS****K. T. GROUP & ORS.****..... DEFENDANTS**

Adv. Yash Momaya a/w. Adv. Kinjal Kakkad i/b. Adv. Jayesh R. Vyas for the Applicant.

CORAM : RAJESH S. PATIL, J.**DATE : 25 JUNE, 2026****P.C. :-**

1) This interim application has been preferred seeking following reliefs :-

(a) This Hon'ble Court be pleased to declare that the Judgment and Decree dated 18.03.2019 passed in Summons for Judgement No. 6 of 2019 in Commercial Summary Suit No. 216 of 2018 is not binding on Applicant and the same can not be executed as against premises being Residential Premises bearing Flat No. 705, situated in the building known as "Madhur Co-operative Housing Society Limited" at Hissa No.7, Survey No. 21, Plot No. 201, TPS Road, Borivali West, Mumbai 400 092.

(b) This Hon'ble Court be pleased to direct Plaintiff to add the Applicant herein as a Obstructionist/ party Respondent to the Commercial Execution Application No. 219 OF 2020 filed by Plaintiff.

B(1) This Hon'ble Court be pleased to quash and set aside a warrant of attachment has issued by the Prothonotary and Senior Master of this Court on 3.03.2021 in respect of

subject matter i.e Residential Premises bearing Flat No. 705, situated in building known as "Madhur Co-operative Housing Society Limited" at Hissa No. 7, Survey No.21, Plot No.201, TPS Road, Borvali West Mumbai 400 092

c) Pending hearing and final disposal of present Application the execution, implementation, effect and operation of Judgment and Decree dated 18.03.2019 passed in Summons for Judgement No. 6 of 2019 in Commercial Summary Suit No. 216 of 2018 be stayed to the extent of premises being Residential Premises bearing Flat No. 705, situated in the building known as "Madhur Co-operative Housing Society Limited" at Hissa No. 7, Survey No. 21, Plot No. 201, TPS Road, Borivali West, Mumbai 400 092.

C(1) Pending hearing and final disposal of present Application the execution, implementation, effect and operation of a warrant of attachment has issued by the Prothonotary and Senior Master of this Court on 3.03.2021 in respect of subject matter i.e Residential Premises bearing Flat No. 705, situated in building known as "Madhur Co-operative Housing Society Limited" at Hissa No. 7, Survey No.21, Plot No.201, TPS Road, Borvali West Mumbai 400 092 be stayed.

2) None appeared on behalf of the respondents (original plaintiffs and original defendants) when the matter is called out. The applicant has filed three affidavits of service (i) affidavit dated 27 March, 2026 of the Court Clerk, (ii) affidavit dated 27 March, 2026 of advocate Ms.Kinjal Kakkad and (iii) affidavit dated 30 March, 2026 of the Court Clerk. All these three affidavits submits that the respondents have been duly served. This fact was recorded in my earlier order dated 30 March, 2026. Thereafter, on 7 May, 2026 when the matter was called out, again nobody appeared on behalf of the respondents. As a matter

of last chance, in order to permit the respondents to appear in the matter and make their submissions, matter was adjourned to 12 June, 2026.

3) Again on 12 June, 2026, none appeared on behalf of the respondents. Hence, the matter was adjourned to today i.e. on 25 June, 2026.

4) Having considered the affidavits of service and the fact that repeated chances have been given to the respondents to attend the present proceedings, I am convinced that the respondents do not want to appear in the present proceedings. Hence, I am proceeding further with the hearing of the interim application.

5) It is the case of the applicant that she is the ex-wife of the original defendant no.5. He submits that there is a marital discord between the applicant and her husband – defendant no.5. The Defendant no.5 is a builder/developer by profession and by a registered gift deed dated 8 December, 2017 the subject flat No.705, situated in Madhur Co-operative Housing Society Ltd., 56 TPS Road, near Babhai Naka, Borivali (West), Mumbai, was gifted to her. Today, the subject flat is in her possession. She is staying with her parents at their home along with her 11 years old son who is suffering from certain ailments. There is a consent divorce decree passed in the

proceedings between the present applicant and defendant no.5, on 19 April, 2022 by the Family Court at Bandra, Mumbai. He submits that his client was not aware about the proceedings between the plaintiff and the defendants. She was neither a party to the said proceedings. He further submitted that in the present proceedings, though the respondents have been served on many occasions, learned counsel appearing for the plaintiff – decree holder is not appearing in the proceedings.

6) Learned counsel appearing for the applicant submits that the decree which is passed against the defendants' in summary suit is a money decree. Though before the decree was passed in the summary suit, there were orders passed by this Court with regard to the subject flat. However, the present applicant was not a party to the summary suit, hence, she was not heard while those orders were passed.

7) Having heard learned counsel appearing for the applicant and after going through in detail to the contents of the interim application, I am convinced that this interim application needs to be allowed.

8) **Interim application is allowed in terms of prayer clauses (a) and (B-1).**

[RAJESH S. PATIL, J.]