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

CHAMBER SUMMONS NO. 295 OF 2013
IN
EXECUTION APPLICATION NO. 345 OF 2010
IN
SUMMARY SUIT NO. 3049 OF 2004

UCO Bank Ltd. ...Applicants

In the matter between:

The Mahalaxmi Glass Works Pvt. Ltd. ...Plaintiffs
Vs.
M/s. Janta Glass Ltd & Ors. ...Defendants

Ms. Gauri Mestha i/b. MDP & Partners for Plaintiff No.1
Decree Holder
Mr. N.N. Amin i/b. N.N. Amin & Co., for Applicant
Mr. Ramakant Rao Gade for Defendant

CORAM : MRS. ROSHAN DALVI, J.
DATED :13TH FEBRUARY, 2015

P.C. :

1. Copy of this chamber summons is served upon the Advocates of the plaintiffs / judgment creditors as also the Advocate of the defendants / judgment debtors on 13th April, 2013.

2. The delay in taking out this application is condoned.

3. This chamber summons is taken out by UCO Bank Ltd., a nationalised bank which claims to have the properties which are sought to be attached by the judgment creditor / plaintiff in the suit as the mortgagee thereof. The applicant bank has shown notice issued under Section 13(2) of the SARFAESI Act in respect of free movable properties of the judgment debtor. They claim to have taken physical possession thereof and sold the said three properties by auction. These are properties at serial Nos. 1, 3 and 4 in paragraph No.2 of the affidavit-in-support of the bank's chamber summons.

4. Symbolic possession of the property at serial No.2 has also been taken by the applicant bank.

5. The applicant bank as the secured creditor would have priority over the sale proceeds. Once the claim of applicant bank is seen to have been under the SARFAESI Act this Court cannot interfere with the due legal process that has to be adopted by the applicant bank under the special legislation.

6. Movables in another property being premises No.2, 2nd floor in Parekh Market premises are also sought to be attached. Specific particulars of the movables are not shown in the warrant of attachment. That property has been stated to have been sold under the registered sale deed dated 15th February, 2006 to the applicant bank by the judgment debtor

itself. Counsel on behalf of the applicant bank makes a statement that there are no movables in the said premises.

7. Accordingly it is seen that there is no property which is available for execution by attachment and sale in favour of the judgment creditor in the above suit. If, however the applicant bank recovers its dues upon following due legal process by the auction sale of any of the attached properties, it shall deposit the surplus amount to the credit of the above execution application in this Court. Subject to the above, the attachment levied upon the movable properties as also the goodwill and tenancy rights in the immovable properties is raised.

8. Chamber Summons is disposed off accordingly.

(ROSHAN DALVI, J.)