

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

CHAMBER SUMMONS NO.254 OF 2015
IN
EXECUTION APPLICATION (L.) NO.640 OF 2014
IN
AWARD DATED 15th JUNE, 2013

Mrs. Sharda Harish Thakkar	...	Applicant
In the matter of Sarosh Soli Framroze	...	Applicant
Vs. Manish Thakkar	...	Respondent

Mr. Sushrut Desai, Adv. a/w. Mr. Anil Jarial, Adv. i/b. Legal Associates for original applicant.

Mr. V K Sharma, Adv. for applicant in CHS.

Mrs. Sharada Thakkar, applicant present in Court.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 11th March, 2015.

P.C. :

1. The applicant has applied for raising the attachment levied upon the property of the award debtor being Flat No.111-B, Kalpataru Residency CHS Ltd., Sion, Mumbai – 22. The applicant must show her title. The applicant must produce the original documents. The applicant failed to produce the document. The applicant has been directed to produce the original document a photocopy of which was annexed to her own application. The Chamber Summons has been adjourned to today for dismissal unless that document was produced.

2. The applicant has not produced the original document of which the photocopy has been annexed to the Chamber Summons.

The applicant has instead produced a certified copy of the said document.

3. The applicant has filed a unique and surprising affidavit today titled additional affidavit showing that the original document was taken away by two persons who are anti social elements from her residence on 5th February, 2010 after abducting her and her son and taking charge of the original document. The applicant has further claimed that the original agreement was taken away and she was forced to sign another document which is alleged to be an agreement for sale of the attached flat. Thereafter she was taken to the office of the Registrar of Assurances for the purpose of registration of that document. She reported the matter to the Commissioner of Police and thereafter sent reminder. She, however, not lodged any criminal complaint or prosecuted the same.

4. The applicant has not produced the document which was signed by her forcefully and which was registered. The applicant has also not produced the certified copy of such registered document.

5. The advocate of the applicant stated that the applicant did not know the registration number and hence could not apply for certified copy of the document.

6. However it was the applicant's case that the applicant has sued that party to set aside that document. The applicant has been called upon to produce her plaint. She has produced the copy of the plaint in Suit No.1263 of 2010 in which a photocopy of the certified

copy of the document dated 5th February, 2010 has been annexed. Hence the statement of the advocate that the plaintiff does not know the registration number and cannot apply for the certified copy of that order is seen to be incorrect. The applicant has challenged purported sale. Hence applicant would continue to be an owner of the property. That would be under the initial document relied upon by the applicant dated 17th January, 2008. That document stands in the name of the applicant and the JD.

7. It is the case of the Award holder / claimant that the JD owns 50% of the flat which has been attached and consequently only 50% of the flat has been attached. That is shown from the certified copy of the document relied upon by the applicant herself.

8. There is nothing shown by the applicant to prove that the attachment over 50% of the flat can be raised. That belongs to the JD as per the certified copy of the document produced by the applicant herself. The attachment on 50% of the Flat being Flat No.111-B, Kalpataru Residency CHS Ltd., Sion, Mumbai – 22 cannot be and is not raised. It is clarified that the applicant's right, title and interest is only to the extent of 50% of that attached flat premises which has not been attached.

9. Chamber Summons is accordingly dismissed.

(ROSHAN DALVI, J.)