

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

CHAMBER SUMMONS NO.704 OF 2010

Suresh Gyanchand Kumar	...	Plaintiff
Vs.		
M/s. Nitul Textiles & Ors.	...	Defendants
AND		
Shilesh Gangaram Palan	...	Purchaser
AND		
Commissioner for Taking Accounts and Bank of Baroda	...	Respondents

ALONGWITH
CHAMBER SUMMONS NO.129 OF 2012
IN
EXECUTION APPLICATION NO.325 OF 2003

Suresh Gyanchand Kumar	...	Plaintiff
Vs.		
M/s. Nitul Textiles & Ors.	...	Defendants
AND		
Bank of Baroda	...	Respondent

Mr. Rajendra Sorankar, Adv. for applicant.
Mr Sanjay Jain, Adv. a/w. Sarpka Mehra, Adv. i/b. L J Law for
original applicant in CHS No.129 of 2012.
Mr. A B Shinde, representative of Bank of Baroda.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 25th February, 2015.

P.C. :

1. This Chamber Summons has been taken out by the purchaser of the property of the judgment debtor in execution application taken out by the plaintiff who obtained the decree in above summary suit. The property of the judgment debtor being Flat

No.001, in Kamal Apartments, Mulund (W), Mumbai 400 080 has been sold. The purchaser who purchased the property has become the absolute owner in the place and instead of the judgment debtor. The purchaser is entitled to have the share certificate and the original registered agreement in respect of the property purchased by him. The purchaser has executed a tripartite agreement with the judgment debtor and the Commissioner for Taking Accounts. The purchaser is entitled to share certificate which has remained with the Commissioner for Taking Accounts.

2. The respondent bank claims to have the share certificate. The respondent bank claims that the purchaser should not be handed over the share certificate. The property of the judgment debtor is stated to have been mortgaged with the respondent bank. However, the property has now been sold, the Commissioner for Taking Accounts has paid off the respondent bank. Hence upon the respondent bank being paid off its dues from the sale proceeds the respondent bank would have no right to claim the share certificate which would rightly belong to the purchaser upon the payment of consideration by him.

3. Consequently the Chamber Summons is made absolute in terms of prayer 'a'. The share certificate is with the Commissioner for Taking Accounts. Hence Commissioner for Taking Accounts shall handover the share certificate of the Flat No.001, Kamal Apartments, Mulund (W), Mumbai-80 which has been sold in execution of the decree in the above summary suit to the applicant / purchaser. The Commissioner for Taking Accounts shall also execute No Objection

Certificate for transfer of the flat in the name of the purchaser.

4. Chamber Summons No.704 of 2010 is disposed of accordingly.

5. Chamber Summons No.129 of 2012 is adjourned to 9th March, 2015. FOB.

(ROSHAN DALVI, J.)