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

APPEAL (L) No. 815 OF 2015
IN
CHAMBER SUMMONS No. 975 OF 2014
IN
EXECUTION APPLICATION No. 83 OF 2012
WITH
NOTICE OF MOTION (L) No. 3019 OF 2015
WITH
NOTICE OF MOTION (L) No. 3021 OF 2015

Aditya Birla Finance Limited … Appellants
(Applicants in NMAL. 3019/2015
& Applicants in NMAL. 3021/2015)

Vs.

Vyomesh Trivedi & Anr. … Respondent

And

HDFC Bank Limited … Respondent No.2

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Mr. Naushad Engineer, M. Mehta i/b. KMC Legal Venture for Applicants / Appellants
Mr. S.N. Fadia for Respondent No.2.
Mr. Amod Ketkar, Dy. Sheriff of Mumbai.

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CORAM : V. M. KANADE, &
REVATI MOHITE DERE, JJ.

DATE : NOVEMBER 26, 2015

PC.

1. For the reasons stated in the affidavit filed in support of the notice of motion, the delay of 26 days in filing the appeal is condoned. Notice of Motion No. 3019 of 2015 is accordingly allowed

and disposed of in terms of prayer clause (a).

2. The grievance of the Appellants is that Sheriff of Mumbai has executed a decree passed in favour of the Appellants, and the flat was sold in auction and the sale proceeds thereof were deposited with Sheriff of Mumbai. When an application was made by the Applicants before the learned Single Judge to get the sale-proceeds of the flat sold in auction, an oral application was made by the HDFC bank to the learned Single Judge that the property was mortgaged with them and the title deeds of the said property were with them. It is submitted that the learned Single Judge by the impugned order has directed that the amount, which was allegedly payable to the HDFC bank to the extent of Rs. 65,25,000/- may be paid to the bank and the balance may be paid to the Appellants. It is submitted that the said order is patently illegal since no application was filed by the HDFC bank for being impleaded in the proceedings, and only on oral prayer the said direction has been given by the learned Single Judge. It is further submitted that after the award was passed in favour of the Appellants, advertisement was issued on more than one occasion and at no point of time the HDFC bank or any other party had come forward claiming to have any right over the suit property.

3. In our view, impugned order is patently illegal and the direction could not have been given to the Sheriff, Mumbai to pay Rs.65,25,000/- to the HDFC bank. The impugned order, more particularly, the direction in paragraph 2 is, therefore, set aside. However, liberty is granted to the HDFC bank to secure their claim. Matter is remitted to the learned Single Judge so that appropriate orders can be passed for the purpose of the disposal of the balance amount to the Appellants. The balance amount, i.e. the amount excluding Rs. 65,25,000/- shall be released to the Appellants within two weeks. So far as the original title deeds, which are deposited with the HDFC bank, are concerned, the learned Single Judge may give appropriate directions. It is clarified that sale is already confirmed by this Court, therefore, order to that extent is confirmed. All contentions of the Appellants and the HDFC bank are kept open. Appeal is disposed of in the aforesaid terms.

4. In view of disposal of the appeal, Notice of Motion (L) No. 3021 of 2015 does not survive and is accordingly disposed of.

Sd/- Sd/-
[REVATI MOHITE DERE, J.] [V. M. KANADE, J.]

Vinayak Halemath