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

CHAMBER SUMMONS NO.1461 OF 2015
IN
EXECUTION APPLICATION NO.539 OF 2012
IN
SUIT NO.3279 OF 1987

Smt. Shobha Anant Kajrolkar ….Applicant/Plaintiff

V/s.

Neeta Madhukar Kajrolkar & Ors. ….Defendants

And

Samra Estate Pvt. Ltd. ….Respondent

Mr. Mayur Khandeparkar a/w. Mr. Murari Madekar i/b. M/s. Madekar & Co. for the applicant/plaintiff.
Mr. Y.V. Divekar a/w. Ms. Ashwini Pawar i/b. M/s. Divekar & Co. for the defendants.
Mr. Anilkumar K. Patil for the respondent.
Ms. Shobha A. Kajrolkar, applicant present.
Ms. Swati Kajrolkar, defendant no.1(b) present.
Ms. Preeti Kajrolkar, defendant no.1(c) present.

CORAM : K.R.SHRIRAM,J
DATE : 22nd JULY, 2016

P.C.:-

1 This chamber summons has been taken out by the legal heir of the plaintiff, who was added as plaintiff, to accept an offer of Rs.14 crores that has been received from the respondent. Though initially the counsel for the defendants submitted that the Prothonotary and Senior Master could not have allowed amendment since he did not have powers under Rule 131 of the Bombay High Court (O.S.) Rules and such an amendment, in any event, cannot be

permitted because the legal heir of the deceased plaintiff should take out fresh execution application, the counsel for the defendants after considering the judgment of the Apex Court in ***V. Uthirapathi vs. Ashrab Ali & Ors.***[1] submitted that the legal heirs can come on record at any time and prosecute the execution proceedings and it is upto them whether to come on record and prosecute the execution proceedings or to file a fresh execution petition.

2 After the parties were heard for some time, Mr. Khandeparkar and Mr. Divekar, counsels took instructions from their respective clients and in unison suggested that the suit property can be put to auction.

3 In 2014 this court had appointed a Valuer to value the property. The Valuer – Hitendra Mehta & Associates has submitted valuation report dated 22nd January, 2014 which is kept in sealed envelope. I need to also place on record that Mr. Divekar and Mr. Khandeparkar have been informed about the market value of the suit property as indicated in the said report. The said report is kept in sealed envelope with the Commissioner for Taking Accounts. In 2014, when an attempt to sell the property was made by auction, the

1. 1998 (3) SCC 148

auction did not go through because the price received was way below the valuation.

4 Therefore, the Commissioner for Taking Accounts is directed to issue fresh notice for auction as per the same terms and conditions, which were fixed earlier and without indicating the reserve price. The notice to be published within two weeks from today.

Once the bids are received, the Commissioner for Taking Accounts to submit a report within one week. The Commissioner for Taking Accounts to ensure that whoever bids, to provide a copy of the Pan Card alongwith the bid.

5 The undertaking of the defendants to the suit that they will, within 30 days of confirmation of sale, vacate the suit premises alongwith their personal belongings and hand over possession to the successful bidder is accepted.

6 It is also clarified that even the respondent, who has bid today is free to bid. Even the parties to the execution proceedings are also free to bid for the said property.

7 In view of the above, the chamber summons stands disposed.

(K.R.SHRIRAM,J)