

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 456 OF 2016
WITH
CHAMBER SUMMONS NO. 282 OF 2017
IN
EXECUTION APPLICATION NO. 2350 OF 2015
IN
ARBITRATION NO. 5 OF 2014

Sundarsons & Ors	...Applicant
In the matter between	
Visible Chits (Maharashtra) Pvt Ltd	...Disputent
<i>Versus</i>	
Harjeet Singh Chhokra & Anr	...Respondents

Mr T N Subramaniam, Senior Advocate, with Paritosh Jaismal,
Kishore V, Rubin Vakil i/b Kanga & Co., for the Applicant

CORAM: G.S. PATEL, J
DATED: 5th April 2017

PC:-

1. The Applicant has given fresh notice. An Affidavit of service is tendered. It is taken on file.

2. For reasons that are obvious, this Chamber Summons will have to be allowed at once. The five Applicants are all purchasers at a SARFAESI private treaty sale conducted by an assignee of Indian Overseas Bank. The property in question is Bungalow No.37, Green Land Society, near Jai Shastri Nagar, Mulund (W), Mumbai-400 082 with the plot area of 344.80 Square Metres and a bungalow thereon with a built up area of 2940 Square Feet. This property originally stood in the name of one Bhagat Singh Chhokra. It is this property that has been attached by the present Decree Holder or Disputant in execution.

3. The property was mortgaged to the Indian Overseas Bank (“IOB”) by the owner to secure the loan of the borrower, M/s Simran Enterprises. The borrower defaulted. IOB proceeded under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), 2002. IOB took physical possession on 2nd November 2012. It then filed proceedings under Section 14 of that Act. It obtained an order on 14th December 2012 from the Chief Metropolitan Magistrate. Thereafter one Invent Assets Securitisation and Reconstruction Private Ltd (“**Invent Assets**”) acquired IOB’s rights under an assignment agreement dated 28th July 2014.

4. Ultimately, Simran Enterprises (the borrower), Bhagat Singh Chhokra (the mortgagor) and Invent Assets agreed to sell the plot and bungalow by private treaty to the Applicants for an amount of Rs.3,90,50,000/-. Invent Assets issued a sale certificate dated 22nd August 2014. This was followed by Sale Deed of the same date. This

is registered. The Applicants were put into vacant possession of the property. There were no other encumbrances on that property.

5. Clearly, the property has been wrongly attached in execution. The Judgment Debtors do not have any title to this property. Full and proper title has passed to the Applicants. The Chamber Summons seeks raising of this attachment. The warrant of attachments is dated 11th December 2015 and it is in execution of an Award obtained by the Decree Holder on 11th December 2014. In the prayer the Applicants have also offered to deposit the amount of the award. That is entirely unnecessary. The Applicants have no liability whatsoever to the Decree Holder. It is for the Decree Holder to find an encumbered property belonging to the Judgment Debtors and proceed against it. Certainly the purchaser of the property in a SARFAESI sale cannot be expected to pay twice over for the same property. There is no reason why the Applicants should be expected to do so. No further or better title can be passed to them either by the Decree Holder or by the Judgment Debtor.

6. The attachment levied in respect of the property is raised and set aside. There will be no execution proceedings against this particular property by this Judgment Debtor in execution of this Award dated 11th December 2014. The Execution Application will be amended to delete this property. The Decree Holder will do so within two weeks from today, failing which the Applicants will apply by precipe to the registry to effect that amendment. The Registry will act on an authenticated copy of this order.

7. The Chamber Summons is disposed of in these terms with no order as to costs.

8. The other Chamber Summons No. 282 of 2017 does not survive in view of this order.

(G. S. PATEL, J.)