

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CHAMBER SUMMONS NO.161 OF 2012
IN
EXECUTION NO.957 OF 2011
IN
ARBITRATION NO.478 OF 2010**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Ilteja Siddiqui for the applicant.

**CORAM : K. K. TATED, J.
DATED : 17/11/2017**

P.C.:

1. Heard learned counsel for the applicant.

2. Though the claimant is duly served, no one appeared on behalf of them when the matter is called out. To that effect, advocate for the applicant has filed affidavit of service dated 14th November, 2017. Same is taken on record.

3. Learned advocate for the applicant submits that by this chamber summons they are seeking order for setting aside warrant of attachment issued

by this Court on 13th September, 2017 in execution application no.957 of 2011 in respect of Flat no.13/B, Ground Floor, Ekta Co-operative Housing Society, Janata Colony, Gilbert Hill Road, Near Green Tower, Andheri (W), Mumbai 400 058.

4. Learned advocate for the applicant submits that by execution application no.957 of 2011, the claimant is seeking to execute an award dated 30th July, 2010 against the judgment debtor. He submits that in the said execution application, the claimant preferred application for attachment. Pursuant to order dated 30th September, 2011, the applicant's flat was attached. He submits that neither the applicant was party before arbitrator nor there is decree / award against the applicant. He further submits that the applicant is owner of the suit property. He submits that the said property was allotted to her in SRS scheme as per agreement dated 6th September, 2002 Exh.-A-1 (at page no.19). He further submits that thereafter Laksharia Construction Private Limited / Developer issued possession letter dated 18th June, 2005 (Exh.B at page 29). He submits that since then applicant is in possession of suit property as owner. He also relies on the other several documents viz. photo copy of electricity bill as (Exh.-C to the chamber summons).

He submits that the applicant is not liable to pay any amount to the claimant. He submits that the claimant in execution application in column 'J' described that flat no.13B is owned by judgment debtor/original respondent which is not correct. Hence, this Hon'ble Court be pleased to set aside the attachment warrant dated 30th September, 2011 in respect of the suit property/flat. He submits that if attachment order is not set aside irreparable loss will cause to him.

5. Though the claimant is duly served no one appeared on behalf of them when the matter is called out. Considering agreement dated 6th February, 2002 and possession letter dated 18th June, 2005, it is crystal clear that the applicant is the owner of the suit property and in possession of the same. Even in execution application claimant has not shown as debtor or guarantor.

6. Considering this fact, I am of the opinion that the applicant has made out case for allowing this chamber summons in terms of prayer clause (b). Hence following order;

:: ORDER ::

(i) Chamber summons is allowed in terms of prayer clause (b) which reads as;

“(b) that warrant of attachment issued in

Execution Application No.957 of 2011 in Arbitration Proceedings No.L-3/478 of 2010 for attachment of immovable property i.e. Flat No.13/B, Ground Floor, Ekta CHS, Janata Colony, Gilbert Hill Road, Near Green Tower, Andheri (W) , Mumbai – 400 058 and the moveable properties lying in the aforesaid flat be recalled and set aside.”

(ii) Chamber summons No.161 of 2012 is disposed of accordingly.

(K.K.TATED, J.)