

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

**CHAMBER SUMMONS NO.926 OF 2017
IN
EXECUTION APPLICATION NO.213 OF 2016**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Prothonotary's orders	Court's or Judge's orders
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Mr.Nikhil Rajani i/b Mr.V. Deshpande and Co. for the claimant

Ms.Sneha Phene i/b Mr.Jatin J. Sheth for the applicant

**CORAM : K. K. TATED, J.
DATE : SEPTEMBER 22, 2017**

P.C.:

1. Heard the learned counsel for the parties.
2. This Chamber Summons is preferred by third party for raising the attachment levied on flat no.5, 1st floor, Happy Haven Co-op.Housing Society, Plot No.603, L.J.Cross Road No.1, Mahim (W), Mumbai 400 016.
3. The learned counsel for the applicant submits that neither the applicant was a party in arbitration proceeding no.L-002 of 2014 nor there is any decree against her. She further submits that the suit property is self acquired property of the applicant. She is the owner of the suit property.

She further submits that even share certificate stands in the name of applicant only. In spite of that, Claimant filed application before this court for attachment of her property though she is not concerned as the dispute is between the claimant and respondent. In support of this contention the learned counsel for the applicant relies on the indenture of agreement dated 19.10.1977, maintenance bills issued by the Society, photocopy of 1st page of bank pass book of Bank of Baroda, electricity bill and photocopy of ration card.

4. On the basis of these documents, the learned counsel for the applicant submits that this Hon'ble Court be pleased to allow the present Chamber Summons.

5. On the other hand, the learned counsel for the Claimant submits that initially they filed arbitration proceeding against applicant's son who is respondent in the present proceeding for recovery of their dues. He submits that in that Arbitration Proceeding, award was passed on 30.12.2014 awarding sum of Rs.5 lacs. As the respondent failed and neglected to pay the said amount, they filed Execution Application before this court for sum of Rs.7,28,397.3. In that Execution Application, they preferred application for issuing warrant of attachment under Order 21 Rule 43 and 54 of the Code of Civil Procedure, 1908. He submits that at the time of taking loan

respondent in loan application specifically stated that the said flat is belonging to him. Hence, they filed application before this court for attachment. He submits that as the respondent disclosed in the loan application about the suit flat, there is no question of raising attachment. He submits that considering the documents on record filed by the applicant, claimants are satisfied that they were under wrong impression that respondent is owner of flat. Hence, court may pass appropriate order to that effect.

6. Considering the submissions made by the learned counsel for the applicant and the documents placed on record showing that the suit flat is belonging to her, she is not concerned with the award dated 30.12.2014, in Arbitration Proceeding No.L-002 of 2014, I am satisfied that the applicant has made out a case for allowing this Chamber Summons. Hence, following order is passed:

(A) Chamber Summons is allowed in terms of prayer clause (a) and (b) which reads thus:

“(a) This Hon'ble Court be pleased to raise the attachment levied on Flat No.5, 1st Floor, Happy Haven Co-op. Housing Society, Plot No.603, L.J.Cross Road No.1, Mahim (West), Mumbai 400 016.

(b) This Hon'ble Court be pleased to cancel the warrant of attachment dated 26th February, 2016 issued in respect of Flat No.5, 1st Floor,

Happy Haven Co-op.Housing Society, Plot
No.603, L.J.Cross Road No.1, Mahim (West),
Mumbai 400 016.

(B) Chamber Summons stands disposed of
accordingly.

(C) No order as to costs.

(K.K.TATED, J.)