

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.665 OF 2017
IN
EXECUTION APPLICATION NO.842 OF 2014
IN
ARBITRATION CASE NO. LOT-41/1343 OF 2013**

Parveen Rizwan Shaikh

...Applicant.

In the matter between:

Kotak Mahindra Bank Limited

...Claimant

Vs.

Tabrez Abdul Razak Pandrowala

..Respondents.

Mr. Darshit Jain and Ms. Anisha Balse i/b Mr. Jatin Sheth for the Applicant.

Mr. M. B. Kale i/b O. M. Gujar Law Chambers for Claimant.

CORAM : K. K. TATED, J.

DATE : OCTOBER 12, 2017

P.C.:

1. Heard the learned Counsel for the parties.
2. Chamber Summons is preferred by third party for raising the attachment levied on Flat No.B-205, Second Floor, Kailash Apt., 293, Bellasis Road, Mumbai Central, Mumbai 400 008, pursuant to the attachment warrant dated 12th August 2014.
3. In the present proceedings there was dispute between Claimant and Respondent. Hence, Claimant filed Arbitration case LOT-41/1343 of 2013. In that proceeding award was passed on 29th May 2013 for sum of Rs.98,177/- with interest at the rate of 16.5% per annum. As the Respondent failed and neglected to pay the award amount to the Claimant, claimant preferred Execution Application

No.842/2014 and applied for attachment of Respondent's property. In that proceedings the Claimant attached the Applicant's suit property i.e. Flat No.B-205. Hence the Applicant preferred the present Chamber Summons.

4. Learned Counsel Mr. Darshit Jain appearing on behalf of Applicant submits that the Applicant is neither party in the Arbitration proceedings nor in the Execution Application filed by the Claimant. He submits that they are not concerned with the transaction between the Claimant and Respondent. He further submits that even in Arbitration proceeding, by award dated 29th May 2013 Applicant was not held liable to pay any amount to the Claimant.

5. The learned Counsel for the Applicant submits that Applicant acquired the suit flat by registered sale deed dated 26th April 2013 from Mrs. Shehnaz Abdul Razak Pandrowala. He submits that thereafter they apply to the Mount Kailash Co-operative Housing Society Ltd. for membership. The society after verifying a transaction between the Applicant and seller, transferred the share certificate No.174 in favour of Applicant (Exh.C). He submits that thereafter, the society started issuing the maintenance bills in the name of Applicant as a owner of the said property (Exh.L). He further submit that even, the electricity bills stand in the name of Applicant (Exh.K). He submits that as soon as their flat was attached by the Claimant, as per attachment order dated 12th August 2014, they immediately informed to the claimants the true fact by their letter dated 27th March 2015. He submits that they specifically explained in their letter dated 27th March 2015 that they are bonafide purchaser of the Suit property. The share certificate also transferred in their name. He submits that though the said letter was duly served/delivered to the

Claimant, they failed and neglected to move before this Court for recalling the attachment of warrant dated 12th August 2014 in respect of suit flat. Hence, the Applicant preferred the present Chamber Summons on 4th July 2017.

6. The learned Counsel for the Applicant submits that as the Applicant is not concerned for the transaction between the Claimant and Respondent, the Applicant is not liable to pay any amount to the Claimant, hence, in the interest of justice this Hon'ble Court be pleased to raise attachment made by Claimant as per attachment warrant dated 12th August, 2014 in respect of the Suit property. He submits that if the present Chamber Summons is not allowed, irreparable loss will be caused to the Applicant without any fault on their part.

7. On the other hand, the learned Counsel Mr. M. B. Kale appearing for the claimant vehemently opposed the present Chamber Summons. He submits that they have to recover more than 1,83,270/- with interest from the Respondent. He submits that as per the disclosure made by the Respondent, they filed Application for issuing attachment warrant in respect of Suit premises. He submits that after filing the present Chamber Summons they learnt that suit flat is belongs to the Applicant and not to the Respondent. He submits that actually the suit flat was belonging to the Mother of the Respondent Mrs. Shehnaz Abdul Razak Pandrowala, hence, on the basis of statement made by the Respondent, by consent of earlier owner, they preferred an Application for issuing attachment warrant. He submits that as they have to recover more than 1,83,270/-, hence this Hon'ble Court be pleased to dismiss the present Chamber Summons.

8. I heard both the parties at length. It is to be noted that pursuant to the Arbitration proceeding, the award was passed on 29th May 2015 by the arbitrator against the Respondent. As the Respondent failed to pay awarded amount to the claimant, claimant preferred Execution Application. In that Execution Application suit flat was attached by warrant dated 12th August 2014. Actually the Applicant was neither the party before the Arbitral Tribunal nor in the Execution Application. The Applicant is a bonafide purchaser of the suit flat by registered document dated 26th April 2013. Even, the society has transferred share certificate in the name of Applicant. The Respondent in the present proceeding is neither owner and/or concerned with the suit flat.

9. Considering these facts, I am of the opinion that the Applicant has made out case for allowing this Chamber Summons. It is to be noted that in the present proceeding the Applicant by the letter dated 27th March, 2015, informed to the Claimant all the true facts. In spite of that Claimant failed and neglected to move before this Court for appropriate order for raising attachment, hence they have to pay cost of Rs.10,000/- to the Applicant. Hence, the following order:-

ORDER

(i) Chamber Summons allowed in terms of prayer Clauses 'A' and 'B' which reads thus:-

(a) This Hon'ble Court be pleased to raise the attachment levied on flat No.B-205, 2nd floor, Kailash Apt., 293, Bellasis Road, Mumbai Central, Mumbai 400 008;

(b) This Hon'ble Court be pleased to cancel the warrant of attachment dated 12th August 2014 issued in respect of Flat No.B-205, 2nd Floor, Kailash Apt., 293, Bellasis Road, Mumbai Central, Mumbai 400 008;

- (ii) Claimant have to bear all the expenses of Sheriff's office, if any.
- (iii) Claimant have to pay a cost of Rs.10,000/- to the Applicant on or before 10th November 2017 and file acknowledgment to that effect in the Registry, filing which Execution Application shall stands dismissed.
- (iv) Chamber Summons stands allowed accordingly.

(K.K.TATED, J.)