

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

CHAMBER SUMMONS NO.662/2011
IN
EXECUTION APPLICATION NO.125/2011
IN
ARBITRATION NO. LOT. 035/2009

GE Money Housing Finance ... Claimants

V/s.

Ankit R. Mehta Anr. ... Respondents

And

Ramesh C. Patel & Ors. ... Applicants

Mr. Manish Gaikwad i/b. E. A. Sasi for the Applicant
None for the Respondent/ decree holder claimant.

CORAM: K.K. TATED, J.
DATED : AUGUST 22, 2017

PC. :

1. Heard the learned counsel for the parties. Though the respondents / claimants are duly served, none appeared for them.

2. The learned counsel for the applicant submits that they have already filed Affidavit of service dated 29.07.2011. Same is on record. He further submits that when the Chamber Summons No.777/2014 was on board before this court (Coram : A. K. Menon, J.) on 14.08.2015, the learned counsel Ms. Sonali Ghanekar i/b. M/s. O.M.Gujar Law Chambers for the claimant was present.

3. As the service is completed on all the parties and as there is no Affidavit-in-Reply filed by the respondent, the matter is being heard as it is.

4. By the Chamber Summons, the applicant seeks an order to lift the attachment of property being Flat No.8, 3rd Floor, Om Niwas Cooperative Housing (Prop) Society Ltd., Borivali (W), Mumbai – 400092 pursuant to the warrant of attachment dated 05.03.2011.

5. The learned counsel for the applicant submits that in the present proceedings, the claimant has filed Execution Application No.125/2011 for executing the award dated 30.06.2010. He submits that in the said Execution Application the claimant shown Flat No.8 as respondent's property and thereafter they obtained attachment order from this court.

6. The learned counsel for the applicant submits that he purchased the suit flat by agreement for sale dated 20.01.2008 from Mr. Jayesh J. Jhaveri and Heena J. Jhaveri. He submits that the said agreement for sale was duly registered on the same day. He submits that before purchasing the suit property, he obtained letter from the State Bank of India dated 12.12.2007 stating that they have no objection if their loan is cleared. He further submits that for purchasing the suit property, the applicant approached the ICICI Bank Ltd., Borivali West, Mumbai for loan purpose. At that time, the developer Ambika Enterprises issued a letter dated 30.01.2008 in favour of the ICICI Bank Ltd. stating that the suit flat has marketable title and they have no objection if the loan is

granted to the applicant on the basis of the suit flat. He submits that the said builder has also specifically stated in his letter dated 30.01.2008 that they will register the aforesaid charge in their books in respect of the said flat. He relies on the portion of paragraph 5 which reads thus:

“.....AND notwithstanding anything to the contrary contained in the said agreement for sale, we confirm to register the aforesaid charge in our books in respect of the said flat on completion of the sale formalities as aforesaid and the said purchaser will not be permitted to transfer/cancel, assign, sell off or in any other way/manner deal with the said flat prejudicial to the interest of your company/your security trustee without the prior written consent of your company/your security trustee.”

7. The learned counsel for the applicant submits that the applicant has already paid the entire consideration to his vendor. He submits that his vendor has also issued letter of possession dated 01.04.2008 (Exhibit-K). He submits that since then the applicant is in possession of the suit flat as owner. On the basis of this submission, the learned counsel for the applicant submits that the attachment order issued by this court dated 05.03.2011 be lifted. He submits that if attachment is not lifted, irreparable loss and injury will be caused to the applicant.

8. Heard the learned counsel for the applicant at length. It is to be noted that in the present proceedings the claimant has filed Execution Application No.125/2011 for execution of award dated 30.06.2011 wherein the claimant has shown suit flat belonging to the respondent. In the present proceedings, the applicant has purchased the suit flat by registered agreement dated 20.01.2008 after taking no-objection from the State Bank of India as well as the Developer. The suit flat was

attached on 05.03.2011 i.e. after execution of the registered agreement of sale dated 20.01.2008. This itself shows that on the day of attachment and/or passing of the award dated 30.06.2010, the respondents were not owner of the suit flat. Considering these facts, I am satisfied that the applicant has made out a case for allowing the Chamber Summons.

9. Hence, following order is passed:

A. The Chamber Summons is allowed in terms of prayer clause (a), which reads thus:

“(a) that this Hon'ble Court be pleased to lift the attachment levied on property bearing Flat No.8, 3rd Floor, Om Niwas Cooperative Housing (Prop) Society Ltd., Borivali (W), Mumbai – 400092, pursuant to the warrant of attachment dated 05.03.2011.”

(b) The Chamber Summons stands disposed off accordingly.

(K.K. TATED, J.)