

ATUL

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1489 OF 2016
IN
EXECUTION APPLICATION NO. 421 OF 2011
IN
SUIT NO. 279 OF 2005

Pushp Holdings Ltd	...Plaintiff
<i>Versus</i>	
Rhea Arts & Ors	...Defendants
<i>And</i>	
Rekha Manik Bedi	...Applicant

Mr Rakesh Reddy, with Pavan S Patil, for the Applicant .
Ms Mamta Sadh, i/b Sudhakar Lakhani, for the Plaintiff/Decree
Holder.

CORAM: G.S. PATEL, J
DATED: 6th March 2017

PC:-

1. Heard. The Chamber Summons is by Rekha Manik Bedi, the wife of the 2nd Defendant, to raise the attachment levied on Flat No. 52, 5th Floor "C" Wing, Ruia Park, Juhu, Mumbai 400 059 in this suit.

2. The decree is joint and several. The Plaintiff attached this flat in execution. Rekha Bedi's Affidavit in Support of the Chamber Summons says this in paragraph 14:

"14. I say that, the flat belongs to me as well as husband jointly. **I say that, I am earning member and that the flat is purchased out of the joint proceeds of myself and my husband.** I say that, at no point of time my husband had taken my consent for taking the loan. **My husband and I are not one and the same as far as our assets are concerned and that the Plaintiff has no locus standi to attach my flat.** The flat stands in my name as far the records are concerned and that, right from the beginning my name is entered in the name of share certificate dated 11th July 1993 of society. A copy of share Certificate dated 11th July 1993 and photocopy of Memorandum of Transfers of share dated 07.08.2015 is herewith annexed and marked as **Annexure "C"**. I say that in any event notice was never given while executing the said decree. The Flat is on my name. It is my own property and that neither the Plaintiff nor my husband has any right to upon the said property. **The Plaintiff can very well go and file appropriate proceedings against my husband by attaching his property in case decree is not satisfied.**"

3. Thereafter, in paragraph 16, the Applicant says this:

"16. **I say that attach flat belong to the Applicant jointly with the Defendant No. 2. I say that my husband is residing with me in the said flat. I say that flat is mortgaged with Standard Chartered Bank.**"

4. The submissions on behalf of the Applicant cannot be accepted. If the Applicant has a 50% undivided interest in that flat, then the Plaintiff can obviously proceed against the rest. However, the fact that the Applicant has a one-half share in the flat does not mean that the attachment should be raised or that execution should not proceed against the rest. The statements made in paragraph 14 are obviously limited to the Applicant's one-half share in the property. Execution can clearly proceed against the other one-half share that admittedly belongs to the 2nd Defendant, even on the Applicant's own showing. If this is a joint dwelling unit, the well-settled legal principles in regard to such properties will undoubtedly operate, and I need not dilate on these here.

5. The Chamber Summons is disposed of with these observations with no order as to costs.

(G. S. PATEL, J.)