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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1081 OF 2014
IN
EXECUTION APPLICATION (L) NO. 361 OF 2006
IN
SUIT NO. 3259 OF 2001**

J.N. Shah	...Plaintiff
<i>Versus</i>	
H.S. Nagashwaran & Ors	...Defendants
<i>And</i>	
Gaurav Rajeev Upalekar	...Applicant

**Mr. Rohaan Cama, with Ms. E. Qurashi, i/b M/s. Kartikeya &
Associates, for the Plaintiff.
Mr. V.P. Vaze, for the Applicant.**

**CORAM: G.S. PATEL, J
DATED: 13th January 2017**

PC:-

1. The Chamber Summons is entirely infructuous. The prayers are as follows:

“(a) That the Hon’ble Court may be pleased to declare that the Defendants are estopped from challenging the e-auction sale of the Flat No.2B,

situated at Ameyanand CHS, Kashinath Dhuru Rad, Dadar (W), Mumbai 400 028, held on 19th March 2014 and confirmed on 2nd May 2014 in favour of the Applicant, Shri Gaurav Rajeev Upalekar.;

(b) The Hon'ble Court may be pleased to direct Shri R.A. Kuvadia, the Private Receiver appointed by the parties to this Suit, to participate in every hearing of the proceedings before the Presiding Officer, Debt Recovery Tribunal – 1 Mumbai and the Recovery Officer, DRT-1, Mumbai relating to the proceedings of Sale of the said Flat and maintain separate record of the same, for submission to this Hon'ble Court, if required.;

(c) That the Hon'ble Court may be pleased to direct the Recovery Officer, DRT 1, Mumbai to hand over to the Private Receiver appointed in this Suit the entire record and proceedings of the Recovery Proceeding No.25 of 2005 pending before the Recovery Officer, DRT 1, Mumbai together with the sale proceeds of Rs.3,00,50,000/- (Rupees Three Crore Fifty Thousand only) and the poundage fees paid by the Applicant on 2nd April 2014 together with interest accrued thereon, for seeking suitable directions from this Hon'ble Court, in the event of the Respondent Bank settling their dispute with the Defendant No.1, whereby the auction sale confirmed in favour of the Applicant is cancelled by them; or in the event of the Ld. Presiding Officer, DRT-I or the Hon'ble Chair Person, Debt Recovery Appellate Tribunal, Mumbai issuing any Judgment / Order

cancelling / varying to the Applicant's detriment, the auction sale confirmed in favour of the Applicant.;"

2. It is not possible to grant prayer (a) for obvious reasons. Similarly, prayer (b) which seeks direction that a Private Receiver Mr. R.A. Kuvadia to participate in hearing before the Debts Recovery Tribunal no longer survives being the subject matter a the previous order.

3. This leaves prayer (c). It is not disputed that the Applicant, Mr. Gaurav Rajeev Upalekar, is the auction purchaser of Flat No. 2B, Ameyanand Cooperative Housing Society, Kashinath Dhuru Road, Dadar (West), Mumbai 400 028, confirmed in his favour on 2nd May 2014 in the amount of Rs. 3,00,50,000/-, or that the present Suit has been decreed and that it was in execution of that decree that this flat was put to sale. In the meantime, Canara Bank, the Respondent to this Chamber Summons filed recovery proceedings *inter alia* against the present Defendant No. 1 in his capacity as a guarantor before the Debts Recovery Tribunal. The auction purchase price was deposited in the Debts Recovery Tribunal.

4. The first part, therefore, of prayer (c) does not survive. What Mr. Vaze for the Applicant seeks is the latter part, i.e., directions in the event that Canara Bank settles its disputes with the 1st Defendant cancelling the auction sale or in the event that the Debts Recovery Tribunal passes any order that affects the auction sale in the Applicant's favour. On the face of it, no such order is possible.

The auction sale was not, as the name suggests, privately done but was a sale through, and confirmed by, the Debts Recovery Tribunal. I do not see how in anticipation of some arrangement or in anticipation of an order of a Court, this kind of pre-emptive relief can be granted. Prayer (c) is rejected.

5. Nothing survives in the Chamber Summons. The Chamber Summons is disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)