

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

**CHAMBER SUMMONS NO.21 OF 2017  
IN  
EXECUTION APPLICATION NO.2482 OF 2015**

Mr.Sanjay Vaidh .. Applicant

IN THE MATTER BETWEEN

M/s.S.E.Investments Ltd. .. Claimant

vs.

M/s.Crema India Ltd. & Ors. .. Respondents

Mr.PRanjan i/b M/s.Halai and Co. for the applicant

Ms.Vaishali D. Padale for the claimant

**CORAM : K. K. TATED, J.  
DATE : SEPTEMBER 19, 2017**

**PC.:**

1. Heard the learned counsel for the parties.
2. This Chamber Summons is preferred by third party for setting aside the Warrant of Attachment dated 29.12.2015 in respect of his residential premises namely Flat No.302, 3rd floor, A wing Versova Aditya Co-operative Housing Society Ltd., MHADA Layout, SVP Nagar, Andheri (West), Mumbai 400 053 and also for setting aside Warrant of Attachment dated 29.12.2015 so far as the same relates to the furniture, fixture, fittings and all other movable articles belonging to

and in possession of the applicant lying in the said premises.

3. The learned counsel for the applicant submits that in the present proceedings, there was dispute between claimant and respondents. Hence, Claimant filed Arbitration before the Arbitral Tribunal. He submits that though the claimant called upon the respondent to suggest the name of the Arbitrator, they failed and neglected to do so. Hence, claimant appointed Mrs.Prateechi Agarwal, Sole Arbitrator for dissolving the dispute with the respondents. He submits that the Arbitrator passed award to the extent of Rs.2,06,92,640/- as due and payable on 25.11.2013 with the pre-award interest. Total sum of Rs.4,51,09,955/- with further interest. He submits that as the respondent failed and neglected to make the payment as per the award, claimant filed Execution Application No.2482 of 2015. He submits that in the said Execution Application this Hon'ble Court issued warrant of attachment dated 29.12.2015 under Order XXI Rule 43, 54 and 64 of the Code of Civil Procedure, 1908. Pursuant to the said attachment order, applicants flat bearing No.302, 3rd floor, A wing Versova Aditya Co-operative Housing Society Ltd., MHADA Layout, SVP Nagar, Andheri (West), Mumbai 400 053 (hereinabove referred to said suit property) was attached. He submits that thereafter the Commissioner for taking accounts issued warrant of sale of immovable property on 14.7.2016. He submits that at that time they learnt that their property is attached in the present proceedings.

4. The learned counsel for the applicant submits that he being a bonafide purchaser, purchased the suit property by registered sale deed dated 15.4.2015 for sum of Rs.1,75,00,000/-. He submits that before purchasing the suit property, he obtained search report in respect of the

suit property. He submits that Pankaj Kumar and Co. Advocates and Legal Consultants issued title report of property bearing Flat No.302, 3rd floor, A wing Versova Aditya Co-operative Housing Society Ltd., MHADA Layout, SVP Nagar, Andheri (West), Mumbai 400 053 dated 22.4.2015. He submits that after considering all documents and taking search from the Registrar's office, the said legal consultants issued certificate dated 22.4.2015 in respect of the suit property. He submits that the valuer in his report specifically made a statement that he carried out the search of the Societies document and also in the office of the Sub Registrar. He submits that he specifically stated in the said search report that respondent have clear marketable title of the suit flat. In support of this contention, the learned counsel for the applicant relies on the following portion of the search report submitted by Pankaj Kumar and Co. Advocates and Legal Consultants.

*“By an Agreement for Sale dtd.30.10.2000, executed between Mr. Jatindar Singh Aujla and Mrs. Gurinder Kaur Aujla, as 'Vendors' and Mr. Vijay Moza and Mrs. Rita Moza, as 'Purchasers' whereby said Vendors sold transferred said Flat to said Purchasers and said Agreement with Deed of Declaration dtd.21.04.2006, registered under Regn. No. BDR9-03608-2006 on 21.04.2006, at office of Sub-Registrar, Andheri-1.*

*We have caused search at office of Sub-Registrar, Andheri for 30 years from (1986 to 2015), and have not observed any adverse/Cross transaction etc.*

*We are of opinion that Purchaser-Mr. Sanjay Vaidh, acquire/s valid, clear, legal, equitable marketable title to said Flat, and is entitled to create valid and enforceable mortgage in favour of Bank.”*

5. The learned Counsel for the applicant further submits that it is specifically stated in the said report that suit property have marketable

title. The learned counsel for the applicant submits that even he obtained loan from the financial institution for purchase of the suit property. He submits that financial institution before sanctioning loan always taken search of the property. Same thing happened in the present proceedings, also. He submits that after satisfying the marketable title of the suit property, financial institutions granted him loan to the extent of 1,00,00,000/-. He submits that sanctioning loan and marketable title certificate itself shows that applicant is bonafide purchaser of the suit property.

6. The learned counsel for the applicant submits that in the present proceedings, Claimant moved before Delhi High Court by preferring O.M.P. 319 of 2014 under section 9 of the Arbitration and Conciliation Act, 1996. He submits that Delhi High Court granted restraining order against the predecessors of the applicant i.e. the original owner of the suit property from creating any third party right, title and interest till the hearing and final disposal of the award u/s 9 of the Arbitration and Conciliation Act, 1996 (said Act). He submits that thereafter matter was referred to the Arbitrator and Arbitrator passed order on 7<sup>th</sup> July, 2015 confirming the order under section 9 of the said Act.

7. The learned Counsel for the applicant submits that though Delhi High Court passed order under section 9 of the Arbitration and Conciliation Act, 1996 in favour of the claimant, claimant failed and neglected to inform the Society where the suit flat is situated. He further submits that even the claimant failed and neglected to file lease pendency as provided under section 52 of the Transfer of Property Act. He submits that on the basis of the personal enquiry and search report of the property, applicant purchased the same by registered sale deed

dated 15.4.2015.

8. The learned Counsel for the applicant submits that suit property was purchased by the applicant after award was passed by the Arbitrator on 7.7.2015. Applicant being a bonafide purchaser has right to protect his interest. He submits that the claimant have failed to disclose any cogent evidence to show that applicant had knowledge about the order dated 10.2.2015 passed by Delhi High Court. He submits that for want of knowledge about the injunction order passed by the Hon'ble Court, applicant purchased the suit property by registered sale deed. Hence, claimant has no right, title and interest to take any action for recovery of their dues as per the Execution Application by selling suit Flat. In support of this contention, the learned counsel for the applicant relies on the judgment of the Gujarat High court in the matter of ***Premchand J. Panchal vs. Shahjahabanu Liyakatkhan Pathan and Ors, (2011) 2 GLR 1121***. He submits that in this authority, the Gujarat High Court held that litigant to protect their interest in respect of injunction order passed against any immovable property, they should register the lease pendency under section 52 of the Transfer of Property Act, 1882. In support of this contention, the learned counsel for the applicant relies on paragraph 24 and 26 of the said judgment which reads thus:

*“24. Moreover, the Transfer of Property and the Indian Registration (Bombay Amendment) Act, 1939 has reference to the necessity for registration as it has been stated in the Object, “Section 52 of the Transfer of Property Act, 1882, provides that during the pendency in a Court of a suit and proceeding in which a right to immovable property is in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other parties thereto.*

*There is no provision, however, in that Act providing for compulsory registration or giving notice of the pending suit or action by the party claiming benefit under this section. The result is that many bona fide purchasers for valuable consideration suffer loss for want of notice that the properties purchased by them had been included in a pending action. The Bill is intended to supplement the provisions of section 52 and make the registration of lis pendens a condition precedent to the operation of the provisions thereof. It is intended that the law should in the first instance extend to the City of Bombay only. The amendment of the Registration Act is only consequential.”*

26. It is also required to be noted at this stage that in a judgment in the case of *Dipakbhai Manilal Patel & anr. (supra)*, this Court had an occasion to deal with similar issue with regard to registration and notice and the applicability of the State Amendment to the T.P. Act to the State of Gujarat and in Para 5 it has been specifically observed,

*“if the notice of lis pendens is registered under the Registration Act and as per the provisions of the amendment, the notice of pendency of the suit should contain all the details as per sub-sec. (2) of the Amendment in Sec. 52 which is applicable to the State of Gujarat. The essential purpose of the aforesaid amendment is to see that any person who may be interested to purchase the property when undertakes the title search of the property with the Sub-Registrar, the person concerned would be put to the notice that a particular suit is pending before the competent Court and therefore he may not be misguided or if with conscious knowledge the person concerned has purchased the property, the purchaser may not be in a position to contend that he was not aware about the pendency of the litigation, and consequently, the suit may not be frustrated or the principles of lis pendens can have its full effect as per the provisions of Transfer of Property Act.”*

9. On the basis of these submissions, the learned counsel for the applicant submits that being a bonafide purchaser, this Hon'ble Court

be pleased to allow the present Chamber Summons with costs.

10. On the other hand, the learned counsel for the claimant submits that there is no substance in the present Chamber Summons and same is required to be dismissed with costs. She submits that applicant failed and neglected to take appropriate steps before purchasing the suit property. She submits that the applicant ought to have contacted either the claimant or to the respondent before completion of their transaction. She submits that in the present proceedings the claimant have to recover more than Rs.4,77,82,837/- with further interest @ 18 % p.a. She submits that if the present Chamber Summons is allowed in terms of prayer clause (a) it will be very difficult for the claimant to recover their dues from the respondents' property. Hence, there is no substance in the present matter and same be dismissed with costs.

11. I have heard both the sides. It is to be noted in the present proceedings, the issue involved is “whether applicant is bonafide purchaser of the suit property i.e. Flat No.302, 3rd floor, A wing Versova Aditya Co-operative Housing Society Ltd., MHADA Layout, SVP Nagar, Andheri (West), Mumbai 400 053”. It is to be noted that though the claimant filed application under section 9 of the Arbitration and Conciliation Act, 1996 before the Delhi High Court for an order of injunction restraining the respondents from creating any third party right, title and interest in respect in the suit property, they failed and neglected to inform the said order to the Society. Not only that they failed and neglected to prefer lease pendency as provided under section 52 of the Transfer of Property Act. Before purchasing the suit property, applicant took search of several documents. Not only that he obtained the certificate of title from Pankaj Kumar and Co. Advocates and Legal

Consultants. The said Advocate issued certificate in favour of the applicant which reads thus:

“We hereby certify that We have taken search in the Registrar's Office for last 30 years from 1986 to 2015) by facing necessary Search fee of Rs.750/-. Original Search Receipt is enclosed herewith.”

12. This itself shows that the applicant being a bonafide purchaser has taken all precautions whereas the claimant failed and neglected, even to inform the office of the Society about the injunction order granted by Delhi High Court in OMP 319 of 2014.

13. Considering these facts, I am of the opinion that applicant being a bonafide purchaser of the suit property 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) that this Hon'ble Court be pleased to set aside/ vacate:

(i) The Warrant of Attachment dated 29/12/2015 so the same relates to residential premises viz., Flat No.302, 3<sup>rd</sup> Floor, A wing. Versova Aditya Cooperative Housing Society Ltd., MHADA Layout, SVP Nagar, Andheri (West), Mumbai- 400 053.

(ii) The Warrant of Attachment dated 29/12/2015 so far as the same relates to the furniture, Fixture, fittings and all other movable articles belonging and in possession of the Applicant lying in the premises referred to in prayer above.

b) That this Hon' ble Court be pleased to set aside/ vacate the Warrant of Sale of Immovable Property dated 14<sup>th</sup> July, 2016

in so far as the same relates to residential premises viz., Flat No. 302, 3rd Floor, A Wing Versova Aditya Cooperative Housing Society Ltd., MHADA Layout, SVP Nagar, Andheri (West), Mumbai-400053.

(B) No order as to costs.

**(K.K.TATED, J.)**