

Sharayu Khot.

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

CHAMBER SUMMONS NO. 402 OF 2013

IN

EXECUTION APPLICATION NO. N/1526/2011

IN

ARBITRATION NO. AR/ARB/609 OF 2008

Kotak Mahindra Bank Ltd.

...Applicant

**Citi Financial Consumer Finance India
Ltd.**

**...Claimant-Ori
Decree Holder**

Versus

Mr. Zaheer Rehmatullah Kasmani & Ors.

...Defendants

Ms. Juhi Bogle, i/by Mr. O.M. Gujar Law Chamber, for the
Applicant.

CORAM : RIYAZ I. CHAGLA J.

DATE : 5 April 2018

ORDER :

1. The learned Counsel appearing for the Applicant has

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April 5, 2018

by this Chamber Summons applied for removal of the name of the original Decree-Holder and to be substituted by the Applicant by way of the amendment as per the Schedule to the Chamber Summons. She points out by the Deed of Assignment dated 18 July 2012, the receivables along with the underlying security have been assigned by the original Decree-Holder to the Applicant. Clause 2 of the agreement provides for assignment of the receivables. She points out that in the Schedule I to the agreement at Sr.No. 943, the name of the Judgment-Debtor has been mentioned and accordingly, receivables from him have been assigned to the Applicant. She therefore, applies for the necessary amendment to be carried out in the execution application.

2. I have perused the Deed of Assignment of receivables with underlying security executed between the Applicant and the Decree-Holder as well as Schedule I to the said Deed. I am satisfied that the receivables from the Judgment-Debtor which forms part of the Schedule I at

Sr.No.943 has been assigned to the Applicant by the Decree-Holder. Clause 2 of the Deed provides for the assignment of receivables. Clause 2.1 of the Deed reads thus:-

2.1 Assignment

2.1.1 As per the terms of these presents and in consideration of the Assignee having made payment of the Purchase Consideration to the Assignor on the Effective Date and upon the terms and conditions set forth herein and in the relevant Transaction Documents, the Assignor as the true, legal and beneficial owner of the Receivables, hereby unconditionally and irrevocably sells, assigns, transfers, conveys and releases on an 'as is where is and as is what is' basis.

(i) all rights, title, interests and benefits of the Assignor in the Receivables;

- (ii) *all rights, title, interests and benefits of the Assignor over the Security Interests;*
- (iii) *all corresponding rights, title, interests and benefits of the Assignor under the Underlying Documents; and*
- (iv) *all risks, liabilities and obligations relating to the Receivables and the Underlying Documents;*

(hereinafter collectively referred to as the “Assets”) to and unto the Assignee forever, to the end and intent that the Assignee shall hereafter be deemed to be the full, true and absolute owner and the only Person legally and beneficially entitled to the Assets and the Assignee shall hereinafter be vested with all the rights, duties, obligations and remedies of the Assignor against the Borrowers in respect of the Assets, including the right to recover

and receive all Receivables, the right to file a suit or institute such other recovery proceedings and take such other actions, as may be required for the purpose of recovery and/or realization of the Assets, in its own name and right and as a legal acquirer and not as a representative or agent of the Assignor.”

3. I am accordingly, satisfied that the Applicant has made out the case for substitution of the original Decree-Holder with the Applicant.

4. I accordingly, make the Chamber Summons absolute in terms of prayer clause (a). The Applicant shall carried out the amendment within a period of two weeks from the order being uploaded.

[RIYAZ I. CHAGLA J.]