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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMON NO. 942 OF 2011
IN
EXECUTION APPLICATION NO. 209 OF 2011
IN
SUIT NO. 2998 OF 2009**

Deepak Y Sampat	...Plaintiff
<i>Versus</i>	
Rajendra Danthi & Ors	...Defendants
<i>And</i>	
Sandhya R Danthi _____	...Applicant

Mr CK Tripathi, for the Plaintiff.

**Mr R Narula, i/b Ramesh Jain, for Applicant in Chamber Summons
No.942 of 2011.**

**Mr Anirudh Hariani, with Sukhada Wagle Kamat, i/b Hariani &
Company, for Applicant in Chamber Summons No.1177 of 2011.**

**CORAM: G.S. PATEL, J
DATED: 27th February 2018**

PC:-

1. The Chamber Summons is filed by one Sandhya R Danthi. She is the husband of the 1st Defendant, Rajendra Danthi. She seeks to raise attachments of movables and immovables levied on Danti Resident, Shankar Niwas, Dr Dalvi Road, Kandivali (West), Mumbai 400 067.

2. In the Affidavit in Support she says that she is not concerned with the Suit and that the Sheriff has attached the property despite it being pointed out that she is the absolute owner of the property.

3. Apart from anything else, the entire attachment proceeding is itself not maintainable. In fact, the continuance of the attachment is a gross abuse of the process of the Court. This is why: the Suit is of 2009. There was a Consent Decree of 22nd March 2010. It seems that Defendants Nos. 1, 2 and 4 i.e. Sandhya's husband, Rajendra, one Asha Matani, and the 4th Defendant partnership firm filed a Chamber Summons seeking that they may be permitted to pay an amount of Rs.17,50,000/- to the Plaintiff in full and final settlement of the Consent Decree and, further, that the Consent Decree be marked fully satisfied. Here are the prayer clauses (a), (b) and (c) of the Chamber Summons No.768 of 2011.

(a) That the Defendants Nos. 1, 2 and 4 be allowed to pay to the Plaintiff an amount of Rs.17,50,000/- and/or permitted to deposit with this Hon'ble Court towards full and final payment pursuant to Consent Decree dated 22nd March 2010 Annexure "A" to the Affidavit in Support.

(b) Prothonotary and Senior Master to record the Decree marked fully satisfied against Defendants Nos. 1, 2 and 4 in the above Suit.

(c) That the attachment levied on the property i.e. Plot No. 109 (Part) Village Erangle, Malad (West), Mumbai, be raised, revoked/rescinded/set aside and be declared to be null and void and of no consequence whatsoever.

4. This Chamber Summons was made absolute on 5th May 2011, specifically in terms of prayer clauses (b) and (c). Liberty was reserved to proceed in terms of clauses 5 and 6 of the Consent Terms. The order of SJ Kathawalla J of 5th May 2011 reads thus :

1. **The learned advocate appearing for the Defendant nos. 1, 2 and 4 has handed over a pay order of Rs.17,15,000/- towards principal amount and a cheque of Rs.2,07,123/- towards interest @ 15% p.a. On the delayed instalments aggregating to Rs.17,15,000/- to the learned advocate for the Plaintiff.** The learned advocate for the Plaintiff tenders original documents to the learned advocate for Defendant nos. 1, 2 and 4. **In view thereof, the Chamber Summons is allowed in terms of prayer clauses (b) and (c).** However, it is clarified that this *order shall not preclude the Plaintiff from taking out any proceedings for implementation of clauses (5) and (6) of the consent terms which if taken out shall be decided on its own merits.* The Chamber Summons is accordingly disposed of.

(Emphasis added)

5. Thereafter, on 11th July 2011, the Prothonotary and Senior Master marked the decree fully satisfied in terms of Kathawalla J's order.

6. Clauses (5) and (6) of the Consent Terms do not affect Defendants Nos. 1, 2 and 4. They are separate undertakings by other Defendants referencing letters of 15th February 2010 and 15th March 2010 to pay certain amounts in four instalments. Clause (6) speaks of receipt of an amount of Rs.17,50,000/-.

7. As far as Defendants Nos. 1, 2 and 4 are concerned, therefore, the Consent Decree against them was fully satisfied upon the order being made by Kathawalla J on 5th May 2011. No attachment in execution could possibly continued in execution of that Consent Decree.

8. I find from Exhibit A to the Affidavit in Support of the present Chamber Summons that the execution that is sought to be continued is specifically with reference to the Consent Decree dated 22nd March 2010 (pages 10-11 and 14-15 of the Affidavit in Support of the Chamber Summons). This means that the Plaintiff is illicitly purporting to continue in execution of a Decree that has been marked full satisfied. Not only that, but what is sought to be taken in purported execution is the property of a person who is not a Judgment Debtor at all.

9. The Chamber Summons will have to be allowed. It is made absolute in terms of prayer clause (a).

10. In addition, all attachments levied pursuant to the Consent Decree dated 22nd March 2010 on any property or assets of the Defendants Nos. 1, 2 and 4 will have to be raised and are hereby raised and set aside.

(G. S. PATEL, J)