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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
CHAMBER SUMMONS NO. 801 OF 2018
IN
EXECUTION APPLICATION NO. 34 OF 2018**

Parthasarathy V Krishna & Anr	...Applicants
<i>In the matter between</i>	
Janata Sahakari Bank Ltd, Pune	...Claimant
<i>Versus</i>	
Bharati Automobiles Pvt Ltd & Ors	...Respondents

Mr Jay Vora, i/b V Rama Rao & Associates, for the Applicants.
Mr Aniruddha Lad, i/b BJ Law Officers LLP, for the Claimant.
Mr SL Mhatre, for Respondent No.3.

CORAM: G.S. PATEL, J
DATED: 23rd July 2018

PC:-

1. The Chamber Summons seeks to raise attachment on a Flat No. 502, 5th floor, Tulsi Meadows, Ghatla, Chembur. The Applicants say that they purchased this flat under a registered Agreement for Sale dated 12th December 2014. A copy of that Agreement is annexed from page 26 onwards. The Decree Holder bank obtained an award dated 15th March 2016. Prior to that award

there was no Receiver nor any restraint against sale of this particular flat. Title has thus validly passed to the Applicants.

2. An Application is made for an adjournment to file Affidavit in Reply. This is refused. Every matter does not automatically deserve a merit or reply. Indeed, from the contents of the application it appears that the Decree Holder specifically permitted the Judgment Debtor Nos. 2 and 3 to sell this very flat. This is *inter alia* evident from the Decree Holder's own letter of 22nd September 2015 at page 109 of the paper book. The complaint of the Decree Holder was that the applicants had not deposited the sale proceeds with it. Despite knowledge of the sale, the Decree Holder did nothing to impeach or stop that transaction. It is also pointed out that in proceedings under the SARFAESI Act before the Chief Metropolitan Magistrate this particular flat has been excluded and has not been proceeded against. It is difficult to see how this flat continues to be available to the Decree Holder in execution. It certainly cannot be that the present Applicants should be left without recourse having paid valuable consideration for the flat or that, on account of this laxity on the part of the Decree Holder, the Applicant should now be driven to filing a suit for recovery of the claim.

3. A further letter of 7th July 2017 (Exhibits "K" and "K1", pages 111 and 112) also shows that there was an NOC granted by the Decree Holder. It is contended that this NOC was conditional and that the Applicant was required to deposit the consideration with the Bank. The difficulty in accepting this submission is that the transaction in question is of 12th December 2014, while all this

correspondence at pages 111 and 112 is of July 2017. Thus, it would seem that the decree holder did nothing to prevent the 12th December 2014 transaction from being completed, and there is now a registered title document that is nowhere impeached by the Decree Holder.

4. There are other properties that are available to the Decree Holder and which have been attached. The Decree Holder is at liberty to move against those.

5. The present Chamber Summons will have to be made absolute in terms of prayer clause (b). The attachment of the flat in question is raised.

6. The Chamber Summons is disposed of in these terms.

(G. S. PATEL, J)