

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 823 OF 2017
IN
EXECUTION APPLICATION NO. 1874 OF 2016**

Volkswagen Finance Pvt Ltd	...Plaintiff
<i>Versus</i>	
Siddharth Prakash Mandavia & Anr	...Respondents

Mr Sandeep Rankhambe, *for the Plaintiff.*
Mr AV Suryawanshi, *for the Applicants/Respondents.*

CORAM: G.S. PATEL, J
DATED: 22nd January 2018

PC:-

1. The Chamber Summons seeks to raise an attachment levied in respect of Flat No. 201, Pooja Apartments, Croft Lane, SV Road, Santacruz (West), Mumbai 400 054. The Applicants are Asha Prakash Mandavia and Prakash Prabhudas Mandavia, the parents of the Respondent, Siddharth Prakash Mandavia. It seems that Siddharth took a loan from the Claimant, Volkswagen Finance Pvt Ltd. Prakash was a co-borrower. Arbitration proceedings were initiated only against Siddharth and resulted in a decree against him. There is no Arbitral Award, and consequently no decree against Prakash.

2. Once the award became a decree of the Court, the Claimant then proceeded to attach subject flat and it did so on the basis that in the loan agreement this is the address that Siddharth gave as his own. This is the only basis of the attachment, and it is entirely immaterial for it was for the Claimant to satisfy itself on the title before disbursing loan. Only because the borrower gave an address does not mean that the borrower owned the premises at that address. The Claimant is unable to show a single document of title in Sidharth's name in respect of the subject property. On the other hand the Affidavit in support of the Chamber Summons makes it abundantly clear *inter alia* from the share certificate that the flat is the name of Asha and Prakash both. Their son may or may not be living there (the Applicants say he is not, and lives elsewhere) but it is clear that he owns no part of the property attached.

3. The Chamber Summons will have to be made absolute, and it is, in terms of prayer clauses (a) and (b), which read thus:

"a) That this Hon'ble Court may be pleased to order/direct to stay the execution proceedings initiated above and to raise the warrant of attachment and sale in respect of:

1) Flat No. 201, Pooja Apartments, Croft Lane, SV Road, Santacruz (West), Mumbai 400 054.

b) That this Hon'ble Court may be pleased to cancel the warrant of attachment issued in the above proceedings fro the said immovable property mentioned in prayer clause (a) above."

4. The Chamber Summons is disposed of in these terms. No order as to costs.

(G. S. PATEL, J)