

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

**APPEAL (L) NO.369 OF 2018
IN
CHAMBER SUMMONS NO.658 OF 2011
IN
EXECUTION APPLICATION NO.488 OF 2010**

**Shabnam Abdul Majid Chaudhary ..Appellant
Versus
Abdul Rashid @ Lalla and another ..Respondents**

**WITH
NOTICE OF MOTION NO.694 of 2018
IN
APPEAL (L) NO.369 OF 2018
IN
CHAMBER SUMMONS NO.658 OF 2011
IN
EXECUTION APPLICATION NO.488 OF 2010**

Shabnam Abdul Majid Chaudhary ..Applicant

IN THE MATTER BETWEEN

**Shabnam Abdul Majid Chaudhary ..Appellant
Versus
Abdul Rashid @ Lalla and another ..Respondents**

**WITH
APPEAL (L) NO.371 OF 2018
IN
NOTICE OF MOTION NO.2256 OF 2016
IN
EXECUTION APPLICATION NO.488 OF 2010**

**Shabnam Abdul Majid Chaudhary ..Appellant
Versus
Abdul Rashid @ Lalla and another ..Respondents**

**WITH
NOTICE OF MOTION (L) NO.896 OF 2018
IN
APPEAL (L) NO.371 OF 2018
IN
NOTICE OF MOTION NO.2256 OF 2016
IN
EXECUTION APPLICATION NO.488 OF 2010**

Shabnam Abdul Majid Chaudhary **..Applicant**

IN THE MATTER BETWEEN

Shabnam Abdul Majid Chaudhary **..Appellant**

Versus

Abdul Rashid @ Lalla and another **..Respondents**

Mr. Jayesh Bhatt, Advocate for the Appellant/Applicant in both Appeals.

Ms. Shyamli Hajela a/w Mr. Fraser M. Alexander, Advocate for Respondent No.1 in both Appeals.

**CORAM : B. R. GAVAI &
RIYAZ I. CHAGLA, JJ.
DATE : 19th NOVEMBER, 2018**

P.C.

1] The Appellant has approached this Court challenging the order passed by the learned Single Judge, thereby making the Chamber Summons filed by the Respondent No.1 absolute, vide which the Respondent No.1 had prayed for setting aside the attachment in respect of Gala No.5, Galli No.4, Mustafa Market,

Saki Naka, Mumbai-400 072.

2] Undisputedly, Summary Suit was filed by the present Appellant against the Respondent Nos.1 and 2 for recovery of sum of Rs.1,12,910/- with interest thereon. The learned Single Judge of this Court vide judgment and decree dated 21st January 2009 dismissed the suit against the Defendant No.1, however, decreed the same against the Defendant No.2. The decree was put into execution by the Appellant. In the execution proceedings, vide order dated 14th December 2012, Gala No.5, Galli No.4 came to be attached. It further appears that Respondent No.1 therefore filed an application for lifting the attachment. In the meantime, the execution proceedings came to be dismissed for default and as such, the Notice of Motion also came to be filed before the learned Single Judge of this Court. Vide the impugned order, the Chamber Summons filed by the Respondent No.1 came to be allowed, however, the Notice of Motion filed by the present Appellant came to be rejected. Being aggrieved thereby, the present Appeals. Appeal No.371 of 2018 is against the order passed by the learned Single Judge dismissing the Notice of Motion. Appeal No.369 of 2018 is

against the order vide which the Chamber Summons came to be allowed.

3] Mr. Jayesh Bhat learned counsel appearing on behalf of the Appellant submits that the learned Single Judge has grossly erred in passing the impugned orders. He submits that the attachment which was operating for a period of almost eight years has been lifted by the learned Single Judge without there being any valid reason. He submits that the question as to whether the property was fraudulently transferred in the name of Defendant No.1 is the matter which is required to be gone into under Order XXI Rule 58 of the CPC and the learned Single Judge on the basis of the affidavit could not have decided the said issue. It is submitted that merely on the asking of the Defendant No.1 attachment has been lifted.

4] Perusal of the material placed on record would reveal that the attachment order which is passed by the learned Single Judge on 14th December 2010 is in respect of Shop No.5. The documents which are placed on record by the learned counsel for the Appellant are with regard to Shop No.4, which show ownership

in the name of the Defendant No.2. Since the Appellant has not been in a position to show that the ownership of the Shop No.5 was vested with the Defendant No.2 at any point of time, we do not find that any error has been committed by the learned Single Judge in lifting attachment. Undisputedly, the suit against the Defendant No.1 has been dismissed and decreed only against the Defendant No.2. The onus is on the Plaintiff/Decree holder to prima-facie show that the property which is sought to be attached is owned by the Defendant No.2. In that view of the matter, we are not inclined to interfere with the order passed in Chamber Summons No.658 of 2011.

5] However, in so far as the Notice of Motion No.2256 of 2016 is concerned, it was only for restoration of execution proceedings. We find that the litigants should not be made to suffer on the hyper technical grounds. The Applicant is very much entitled to proceed for execution against the Defendant No.2. In that view of the matter, we find that the Notice of Motion No.2256 of 2016 needs to be allowed by restoring execution proceedings on the file.

6] In the result, Appeal No.369 of 2018 is dismissed. The

Appeal No.371 of 2018 is allowed. The Notice of Motion No.2256 of 2016 is made absolute. The Execution Application No.488 of 2018 is restored to file.

[RIYAZ I. CHAGLA, J.]

[B. R. GAVAI, J.]