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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1633 OF 2016
IN
EXECUTION APPLICATION NO. 193 OF 2016

Tata Capital Financial Services Ltd …Petitioner
Versus
Option Oxides & Anr …Respondents
And
Mahesh Hansubhai Engineer & Anr ...Applicant

Mr Rohan Cama, *with Krithika Anand, i/b Dhruve Liladhar & Co., for the Applicant.*
Mr Nilesh Gala, *i/b AB Gaikwad, for the Petitioner.*

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

PC:-

1. The Decree Holder obtained an Award on 16th May 2015. In execution on 9th February 2016 it sought to attach Office No. 408, 4th Floor, Sanjar Enclave, Opposite Milap Cinema, Corner of Khajura, Tank Road, SV Road, Kandivali (West), Mumbai 400 067. The present Application is by third party purchasers. They say that they acquired title on 30th October 2015 from one Assura Den 32 Pvt Ltd, a company in the control of one or some of the Judgment Debtors ("**JDs**") but not itself a JD. That company had mortgaged

the property with one Capri Global Capital Ltd, a non-banking financial institution. The present Applicants, Mahesh and Bina Engineer, paid off the debt of Assura Den 32 Pvt Ltd and the mortgagee then conveyed title to the Applicants. This was at least four months before the warrant of attachment.

2. I do not believe it is possible for the Decree Holder to say that the transaction between Capri Global and Mrs & Mr Engineer should be impeached or even denied because no public notice was given. The Decree Holder is an unsecured creditor. Its subsequent attachment cannot operate to efface a validly acquired title to a property against which there was no injunction, restraint, receivership or attachment.

3. The Chamber Summons is made absolute in terms of prayer clause (a). The warrant of attachment is raised forthwith.

4. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J)