

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 3026 OF 2016

IN

CHAMBER SUMMONS NO. 8 OF 2017

IN

EXECUTION APPLICATION NO. 2198 OF 2016

WITH

COURT RECEIVER'S REPORT NO. 349 OF 2016

Punjab and Maharashtra Coop Bank Ltd

...Petitioners

Versus

Gurtarsh Enterprises & Ors

...Defendants

AND

NOTICE OF MOTION NO. 3025 OF 2016

IN

CHAMBER SUMMONS NO. 5 OF 2017

IN

EXECUTION APPLICATION NO. 2199 OF 2016

AND

IN ITS COMMERCIAL DIVISION

NOTICE OF MOTION NO. 5 OF 2017

IN

CHAMBER SUMMONS NO. 5 OF 2017

IN

COMM EXECUTION APPLICATION NO. 1 OF 2017

**Mr Kuber Wagle, i/b Purnanand & Co., for the Applicants in
NMS/3026/2016.**

Mr Bipin Joshi, for the Respondents.

Mr DR Shetty, Court Receiver, is present.

Mr Mohammed Shah Ahmed Sheriff, present.

CORAM: G.S. PATEL, J

DATED: 9th July 2018

PC:-

1. Heard. Mr Joshi is present on behalf of one Jinesh Seth who along with another person is the owner and holder of Gala No. B-132, Ghatkopar Industrial Estate, Lal Bahadur Shastri Marg, Ghatkopar (East), Mumbai 400 086. These persons purchased the gala from a third party unconnected with these proceedings, who in turn acquired title from another person, and so on to the stage of the Judgment Debtor No.2, who disposed of that property either as a proprietor of or as a partner of one M/s Deekay Enterprises. There is no dispute that at no point of time was this property mortgaged to the Decree Holder. There is also no dispute that the Mr Joshi's client purchased the property on 17th October 2017. The property was under no attachment at that time.

2. The Decree Holder has taken no steps to impeach any of these documents. Merely because the Judgment Debtor No.2 disposed of the property before the award in question dated 26th April 2014, does not mean that the property continues to belong to Judgment Debtor No. 2 or that it can be proceeded against in

execution. Consequently, the title of Mr Joshi's client is saved from execution. The Receiver was appointed and was directed to take symbolic possession of this Unit. That Receiver will obviously now have to stand discharged. The Receiver will stand discharged in respect of Unit/Gala No. B-132, Ghatkopar Industrial Estate, Lal Bahadur Shastri Marg, Ghatkopar (East), Mumbai 400 086.

3. I come now to the second property of which the Receiver has taken symbolic possession. This is described as 39/B-1, first floor, Sindhi Society, Chembur, Mumbai 400 071. This is a description in the Execution Application. It appears to be entirely wrong. Mr Mohamed Shah Ahmed Sheriff is present. He says the flat of which Receiver has taken symbolic possession is owned by his parents. This is Flat No.2, first floor, Plot No.39/B, Sindhi Society, Chembur. There is no flat no.1 on the first floor of this structure. That is on the ground floor. The plot description 39/B-1 is also incorrect.

4. It is not open for a Decree Holder to proceed in this fashion. At a minimum the Decree Holder must carry out at least minimal investigation since these documents of title are all registered. Mr Sheriff has with him copies of the necessary documents including a sale deed which is registered. This indicates that Mr KS Khanna and Smt Davinder Kaur Khanna, Judgment Debtors Nos. 2 and 3 sold the flat to one Umesh Malkhansingh Chauhan and Mrs Rashmi Singh Chauhan on 8th June 2007. That document was registered. The property was then sold in a Recovery Proceeding No. 450 of 2004 in OA No. 301 of 2001 under orders of the DRT-III, Mumbai. The auction purchaser was one Malkhansingh Chauhan.

Subsequently on 13th January 2011, Rehana Mohammed Shah and Mohammed Shah purchased the property from Malkhansingh Chauhan. This sale deed is also registered and it is also before the arbitral award in question.

5. Thus not only is there a prior title but there is also a material mis-description of the property. The Court Receiver will thus stand discharged in respect of the second property as well.

6. To clarify, there is no longer any receivership whether symbolic or otherwise of prayer clause (c) (ii) and (iii) reproduced in the order of 22nd September 2006 of SJ Kathawala J.

7. The Court Receiver will remove his signboards forthwith.

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

(G. S. PATEL, J)