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

**COMMERCIAL CHAMBER SUMMONS NO.106 OF 2019
IN
COMMERCIAL EXECUTION APPLICATION NO.37 OF 2018**

Piramal Finance Ltd. ... Applicant
Vs.
Saraswati Education Society and 8 Ors. ... Respondents

Mr. Gaurav Mehta, Mr. Tejas Gokhale and Ms. Sonam Mhatre, Ms. Shalakra Mehta I/b Dhaval Vassonji & Associates for the Original Applicant / Plaintiff.

Mr. S.D. Chitgopikar, Deputy Sheriff present in Court.

Mr. Vishal Kanade, with Mr. M.B. Kale, I/b. GNP Legal for Applicant.

CORAM: R. I. CHAGLA, J.
DATE: 23RD JULY, 2019.

PC:-

1. The learned Counsel appearing for the Applicant in Chamber Summons No.106 of 2019 submits that the Applicant / Intervener has prior mortgage in respect of the property viz. Residential flat No.601, B Wing, Deccan CHS Ltd., Union Park Carter Road, Khar (West), Mumbai – 400 052 admeasuring 1080 Sq.ft carpet area (“subject property”). He submits that in view of the prior mortgage of the subject property which is not disputed by the Judgment Creditor / Decree Holder, the auction sale which is being conducted in respect of the subject property should not be

permitted to go ahead as the Applicant has sought raising and removing the warrant of attachment issued in Commercial Suit No.37 of 20218 levied on the subject property. He submits that in view of the Applicant having a prior mortgage over the subject property, the charge which has been created in favour of the Applicant by the Judgment Debtor is a subsisting charge and that the account of the Judgment Debtor has still not be declared as NPA and hence the charge cannot be defeated by the auction sale conducted by this Court. He submits that till the account of the Judgment Debtor is declared as NPA, the sale proceeds upon sale of the subject property cannot be appropriated by the Applicant as a mortgagee and hence it would be necessary to defer this auction sale of the subject property.

2. By order dated 13th August, 2018, this Court had considered the position of the subject properties being charged to the Applicant Bank and had held that the sale of any property that is previously charged to a financial institution will necessary be subject to satisfaction of the claim of the secured creditors on priority. Accordingly this Court had directed that while the subject property be put up for sale by auction by the Sheriff, the sale proceeds are not to be handed over to the Decree Holder without an order of this Court. Any secured creditor will be entitled to bid

at such an auction and entitled to set off its claim against the bid, if found successful. This Court had clarified that so far as the subject property which is encumbered, no payment shall be made to the Judgment Creditor without an order of the Court. The intention is to ensure that the claim of the secured creditors is first met since they have a prior claim. In view of the order of this Court dated 13th August, 2018, it would not be appropriate to consider the application of the Applicant in this Chamber Summons to defer the sale by public auction conducted in this Court by the Sheriff of Mumbai in respect of the subject property. In view thereof, the Chamber Summons is rejected.

(R I. CHAGLA, J.)