

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

**CHAMBER SUMMONS NO. 427 OF 2017
IN
EXECUTION APPLICATION NO. 129 OF 2012**

The Shamrao Vithal Co-Operative Bank Ltd. ... Applicant
Versus
Apeksha Enterprises & Ors. ... Opponents

Mr. Vishal Narkar for the Applicant.

CORAM : R.I. CHAGLA, J.

DATED : 12th JUNE, 2019.

P.C. :

1 None appears for the Opponents although having been served and an affidavit of service evidencing service upon the Opponents dated 21.09.2012 has been filed in this Court.

2 The learned Counsel for the Applicant states that by an order dated 05.04.2016 passed by the Hon'ble Commissioner for taking Accounts, High Court, Bombay, under Rule 498 of the High Court, Original Side Rules in the Execution Application, had dismissed the Execution Application on account of non-appearance of the Applicant on the given date fixed by the Commissioner for taking Accounts. In the affidavit in

support of the Chamber Summons for restoration it is stated that the Applicant Bank had been approached by the Opponent with a request that he was in financial difficulty and hence would not be able to pay the amount at one go but would pay in monthly installments. The Applicant Bank agreed to the request and did not proceed further in the Execution. However, since the Opponents have failed to pay the monthly installments, the Applicant Bank thereafter proceeded with the Execution. It was during the period when the matter was being settled, the Decree Holder was unable to be present before the Commissioner for taking accounts and the Execution Application came to be dismissed. Accordingly, the Chamber Summons is taken out for restoration of the Execution Application which came to be rejected.

3 I have perused the affidavit in support of the Chamber Summons and I am satisfied with the reasons given for non appearance before the Commissioner for taking accounts on 05.04.2016. The delay in taking out Chamber Summons is condoned. Accordingly, the Chamber Summons is made absolute in terms of prayer clauses (a) and (b).

(R.I. CHAGLA, J.)