

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

**CHAMBER SUMMONS NO. 718 OF 2015
IN
EXECUTION APPLICATION NO. 180 OF 2013**

Swarna Brijmohan Kapoor	...	Applicant
In the matter between		
The Saraswat Co-Operative Bank Ltd.	...	Decree Holder
Versus		
Khosla Vivek Rajpal & Ors.	...	Judgment Debtors

Mr. Mehul A. Shah for the Applicant.

CORAM : R.I. CHAGLA, J.

DATED : 12th JUNE, 2019.

P.C. :

1 None appears for the Decree Holder despite having been served. An affidavit of service dated 11.06.2015 has been filed evidencing service on the Decree Holder who has been served the Chamber Summons and affidavit in support thereof.

2 Heard the learned Counsel for the Applicant. This Chamber Summons is taken out for setting aside warrant of attachment of immovable property under Order XXI Rule 54 of the Code of Civil Procedure, 1908, which attachment is dated 28.02.2013 and to raise the

attachment levied on Flat No.4 situated at Gerrene, St. Francis Road, Off St. Andrews Road, Bandra (W), Mumbai 400 050 (“the subject premises”). It is stated that the subject premises was purchased by the Applicant from one M/s. Diamond Builders under agreement dated 02.12.1986. The Judgment Debtor Nos.2 and 3 are related to the Applicant, Judgment Debtor No.2 being the son of the Applicant and Judgment Debtor No.3 being the daughter-in-law of the Applicant.

3 The learned Counsel for the Applicant has further pointed out that in the Execution Application the Judgment Debtor Nos.2 and 3 have incorrectly been shown as residing at the subject premises. Further in the schedule to the Execution Application once again the Judgment Debtors are incorrectly shown as residing in the subject premises. He has referred to an order of the Commissioner of taking accounts in the Execution Application dated 06.10.2015. In the said order it is clearly mentioned that the Applicant owns the subject premises and the subject premises does not belong to Respondent Nos.1 to 3. This has been admitted by the Advocate appearing for the Decree Holder. Copy of the agreement dated 02.12.1986 and copy of electricity bill showing the Applicant as owner and occupier of the subject premises have been produced. Further, one Abhyudaya Co-operative Bank Ltd. who has filed a claim that the Judgment Debtors have no right, title and interest on the attached property and that the Applicant

had deposited the title deeds of the subject premises and the said premises is mortgaged with them. Accordingly, learned Counsel for the Applicant has stated that the subject premises have been wrongly attached and has applied for raising of attachment levied on the subject premises.

4 I have considered the submissions of the learned Counsel for the Applicant. I also notice that the Decree Holder has remain absent in this proceeding despite having been served with notice of the Chamber Summons and affidavit in support thereof. It is clear from the agreement dated 02.12.1986 that the Applicant have purchased the subject premises from M/s. Diamond builders. This appears to be an admitted fact as recorded by the Commissioner of taking accounts in the Execution Application in order dated 06.10.2015 wherein it is recorded that the Advocate appearing for the Applicant Bank admits that the subject premises belongs to the Applicant and does not belong to the Judgment Debtor. Further, one Abhyudaya Co-operative Bank Ltd. has also filed a claim that the Judgment Debtors have no right, title and interest on the attached subject premises and that the Applicant had deposited title deeds of the subject premises and the subject premises was mortgaged at that point of time with them. It is stated by the learned Counsel for the Applicant that now the original title deeds are lying with the Applicant.

5 In view of the above facts and given that the Applicant Bank has admitted the fact that the subject premises belongs to the Applicant, the subject premises have been wrongly attached and accordingly the Applicant is entitled to be granted prayer clauses (a) and (b) of the Chamber Summons. The office is directed to lift the attachment in respect of the subject premises. Chamber Summons is accordingly disposed of on the above terms.

(R.I. CHAGLA, J.)