

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

**CHAMBER SUMMONS NO. 590 OF 2018
IN
EXECUTION APPLICATION NO. 1269 OF 2011**

Kotak Mahindra Bank Ltd.	...	Applicant
 In the matter between		
Magma Fincorp Ltd.	...	Applicant (Decree Holder/Claimant)
Versus		
Mr. Mahesh Hasmukhari Mehta & Anr.	...	Respondents (Judgment Debtors)

Mr. Nikhil Rajani i/b V. Deshpande & Co. for the Applicant.
None for the Respondents.

CORAM : R.I. CHAGLA, J.

DATED : 26th July, 2019.

P.C. :

1 Heard the learned Counsel for the Applicant. The Chamber Summons seeks addition of the name of the Applicant/Assignee of the Claimant/Decree Holder to be added and/or substituted as a party Decree Holder under the award dated 30.12.2010 passed by the Sole Arbitrator, in the pleadings and proceedings of Execution Application No.1269 of 2011 and for permission to the Applicant/Assignee to pursue with the said Execution Proceedings against the Judgment

Debtors/Respondents. The learned Counsel for the Applicant has referred to the deed of Assignment of the Receivables between the Applicant and the Decree Holder/Claimant whereby under Clause 2.1.1 the Assignment of Receivables have been provided and which reads thus :

2.1.1 As per the terms of these presents and in consideration of the Assignee having made payment of the Purchase Consideration to the Assignor on the Effective Date and upon the terms and conditions set forth herein and in the relevant Transaction Documents, the assignor as the true, legal and beneficial owner of the Receivables, hereby unconditionally and irrevocably sells, assigns, and releases on an 'as is where is and as is what is' basis;

(i) all rights, title, interests, risks and benefits of the Assignor in the Receivables;

(ii) all corresponding rights, title, interests, risks and benefits of the Assignor under the Underlying Documents; and

(hereinafter collectively referred to as the "Assets") to and unto the Assignee forever, to the end and intent that the Assignee shall hereafter be deemed to be the full, true and absolute owner and the only Person legally and beneficially entitled to the Assets and the assignee shall hereinafter be vested with all the rights and duties, of the Assignor against the Borrowers in respect of the Assets, including the right to recover and receive all Receivable, the right to file a suit or institute such other recovery proceedings and take such other actions, as may be required for the purpose of recovery, in its own name and right and as a legal acquirer and not as a representative or agent of the Assignor.

jsn

2 He has also pointed out the details of the Borrowers which are provided in Schedule I to the deed of Assignment of Receivables and at Sr. No.69 the name of the Judgment Debtor No.1 is shown. He, therefore, states that in view of the Assignment of Receivables, the Chamber Summons be allowed.

3 I have perused the deed of Assignment of Receivables as well as the Assignment of Receivables provided in clause 2 and the assignment in clause 2.1.1 as well as the Schedule I of the details of Borrowers which includes the Judgment Debtor No.1. I am, therefore, satisfied that the Applicant has made out a case for being granted prayer clauses (a) and (b) in the Chamber Summons. Accordingly, Chamber Summons is made absolute in terms of prayer clauses (a) and (b).

4 Necessary amendment will be carried out in the Execution Application within a period of two weeks from the date of this order.

(R.I. CHAGLA, J.)