

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Amk

NOTICE OF MOTION (L) NO. 658 OF 2019
IN
APPEAL (L) NO. 323 OF 2019
IN
CHAMBER SUMMONS NO. 805 OF 2017
IN
EXECUTION APPLICATION NO. 208 OF 2011

Arvind Kumar .. Applicant
In the matter between
Arvind Kumar .. Appellant
Vs.
VIP Movies, Mumbai & Anr. .. Respondents

Mr. Amogh Singh i/b D. P. Singh for the Applicant.
Mr. K. P. Jain i/b Mamta Shah for Respondent No.1.

CORAM : PRADEEP NANDRAJOG, C.J. &
N. M. JAMDAR, J.
DATE : 8th JULY, 2019.

P. C. :

1. The Appellant is not the Judgment-debtor. The Respondent No.1 is Decree-holder and the Judgment-debtor is Respondent No.2.
2. In an Execution Application an order attaching a flat at 3rd floor, Vikas Building, Peddar Road, Mumbai was passed on 04.07.2011. The order was executed on 20.07.2011. It was served upon the Judgment-debtor and affixed at a prominent place in the building where the flat is situated.
3. The Judgment-debtor executed a sale-deed on 05.07.2014 i.e. after the attachment.

4. Section 64 of the Code of Civil Procedure, 1908 is relied upon by the 1st Respondent. The mandate of which is that a transfer post attachment shall be void. The Appellant relies upon Order 21 Rule 54 of the Code of Civil Procedure, as amended, and applicable to the city of Mumbai; stipulating therein that where consideration for transfer is paid by the purchaser without knowledge of the attachment the sale would be protected.
5. The conflict of the two provisions has to be resolved in the instant case with reference to the fact: whether the order of attachment was forwarded to the office where the city survey records are maintained. The reasons being that the intentment under the Rule appears to be that since bonafide purchaser of immovable properties are protected if the sale is post attachment, attachment order should be communicated to such offices where public record of title to properties is maintained. This would be a constructive notice to the intending purchaser.
6. The impugned order throws no light on the fact as to whether the attachment order was forwarded to the authorities referred to in Sub-clause 2 of Order 21 Rule 54 of the Code of Civil Procedure.
7. Accordingly, we stay the operation of the impugned order dated 14.06.2019 while injuncting the Appellant from transferring, parting with possession, encumber or alienate the property which has been attached.
8. Notice of Motion is disposed of.

[N. M. JAMDAR, J.]

[CHIEF JUSTICE]