

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.1482 OF 2016
IN
EXECUTION APPLICATION NO.1607 OF 2015**

Indiabulls Housing Finance Ltd.	..Claimant
Vs.	
Pharma Healthcare Products & Ors	..Defendants
And	
Varsha Shishir Shah	..Applicant

Ms Priya Rita I/b Disha Karambar Associates for Claimant
Ms Lopa Munim I/b Rajesh Kothari and Co. for Applicant/Intervener

**CORAM : K.R.SHRIRAM, J.
DATE : 7th MARCH, 2019**

P.C.:

1 Ms Rita states that prayer clause (a) of the chamber summons can be granted because claimant wrongly attached the property. Ms Munim for applicant states that flat that was attached, was purchased by applicant on 3rd September 2010, in auction sale carried out by Union Bank of India and it was registered sale agreement.

2 Warrant of attachment has been levied on 14th September 2015. It was the bounden duty of the claimant to have made proper inquiries before levying the attachment. In chamber summons (I) No.5 of 2019, in which I vacated the order of attachment by an order dated 17th January 2019, I observed in paragraph paragraph 3 as under:

7. It seems to be a regular problem in execution where decree holders particularly banks add properties without even disclosing the basis on which they state that these properties belong to the judgment debtor. What is happening is attachments are levied of many properties just because the address appears in some document without ascertaining whether the property actually belonged to the judgment debtor. Paragraph-18 in ¹**Aditya Birla Finance Ltd. Vs. Vyomesh J Trivedi & HDFC** reads as under :-

“18. This is actually a recurring problem in execution. I should have thought with registries online, it is now actually simpler for a decree holder than it once used to be to check that if there are pre-existing claims. I believe it is now necessary to direct the Original Side Registry in execution to amend its check list for execution applications under Order 21 Rule 11. The registry must include a column ascertaining whether the decree holder moving in execution has checked the available online databases and registries for registered charges, or has been able to ascertain independently that the property belongs to the judgment debtor and is capable of being put into execution. What is otherwise happening is this : attachments are levied willy-nilly of any property against which the judgment debtor's name is shown, be it a tenancy, a license or even a mere use of a registered office. Then the true owner has to spend time and money to try and get the attachment raised. Nobody has bothered to account for the incredible amount of loss caused to an innocent owner when a property is thus wrongly attached or the colossal waste of judicial time in setting aside such wrongful attachment.”

3 Lawyers are bound by instructions from clients. Before giving instructions to the lawyers to file the execution application and giving list of properties to be attached, allegedly to be of the judgment debtor, it is incumbent upon and bounden duty of claimant to investigate and satisfy

¹ Order dated 26.9.2018 in Chamber Summons No.1094 of 2017

itself that the property attached actually and in fact, belongs to judgment debtor. Claimant have absolutely failed because the sale of the flat has been done through registered documents, certificate issued by the concerned authority for sale under the SARAFESI taken out by Union Bank of India and this sale also would have been after public notice.

4 Therefore, claimant ought to have made proper enquiries before attaching the property of applicant. Applicant had to undergo great hardship and also incurred costs for making this application and due to circumstances beyond the control of applicant and this court, the application had to wait for almost 2 ½ years, to be listed. Added to this in the waste of judicial time and efforts put in by the court staff. Therefore, claimant has to be put to substantial costs.

5 Chamber summons allowed in terms of prayer clause (a).

 Claimant to pay Rs.5,00,000/- (Rupees Five Lakhs only) as costs to applicant and this amount shall be paid within four weeks from today. If not paid, the execution application will stand dismissed without further reference to the court. If this costs is not paid, applicant may also recover this amount as arrears of land revenue from claimant.

6 Chamber Summons accordingly disposed.

(K.R. SHRIRAM, J.)