

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**CHAMBER SUMMONS NO. 805 OF 2017
IN
EXECUTION APPLICATION NO. 208 OF 2011**

M/s V.I.P. Movies, Mumbai	... Complainant
V/s.	
M/s V. R. Pictures, Mumbai	... Respondent

Mr. Atul G. Damle, Advocate with Mr. Rajesh Datar and Mr. Dushyant Pagare for applicant.

Mr. Kishore Jain with Ms. Mamta A. Shah with Ms. Menon for respondent/Original Decree Holder.

CORAM:	R. I. CHAGLA, J.
DATE:	14TH JUNE, 2019

PC:-

1. Heard the learned counsel for the applicant and the learned counsel for the decree holder/complainant. The applicant seeks lifting of attachment of suit premises flat at 3rd Floor, Vikas Building, Peddar Road, Mumbai-400 026. He further seeks vacation of order dated 19th July 2017 passed by this court in Execution Application No. 208/11 appointing court receiver in respect of suit premises and disposal of the said execution application initiated by the complainant.
2. The learned Senior counsel for the applicant has relied on sale deed dated 5th July 2017 by which the applicant claims to have purchased the suit premises. It is an admitted fact that the sale deed has been executed after the order of attachment passed by this court on 4th July 2011.

3. The Learned Senior Counsel for the applicant has referred to the Bombay Amendment of Order 21 Rule 54 (I) which reads thus:-

“54(1) Attachment of immovable property – Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge, such order shall take effect, where there is no consideration for such transfer or charge, from the date of such order, and where there is consideration for such transfer or charge, from the date when such order came to the knowledge of the person to whom or in whose favour the property was transferred or charged”.

4. He has submitted that the applicant did not have knowledge of the attachment order prior to the execution of the sale deed. He has submitted that in order to determine as to whether the applicant has knowledge, evidence would have to be lead in the chamber summons.

5. The learned counsel for the decree holder/ complainant has submitted that under Section 64 of the Code of Civil Procedure it is clear that after an attachment has been made, any private transfer or delivery of the property attached or of any interest therein shall be void as against all claims enforceable under the attachment. He has also referred to sub clause 2 of Clause 64 which was inserted vide amendment w.e.f. 1st February 1977 and provides that nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered

into and registered before the attachment. He has also submitted that in the present case the property has been attached and there is an attachment warrant which has been issued prior to the sale deed and which has been referred to in the affidavit in reply of the complaint at paragraph-10 which evidence that the suit premises has been attached on 20th July 2011. He has referred to certain judgements of Hon'ble Supreme Court as well as this court which include **Salem Advocate Bar Association, Tamil Nadi Vs. Union of India, AIR 205 SC 3353 at paragraph 26, Sumikin Bussan International Vs. Manharlal T. Mody 2004 (4) Bom. C.R. 860 at paragraph 12 and Vibra Fibre P. Ltd Vs. Aryaman Financial Services Ltd. 2005(3) Bom. C.R. 537**, in support of his contention that under Section 64(1) of the Code of Civil Procedure (for short 'CPC') any private transfer or delivery of the property attached or of any interest therein subsequent and contrary to such attachment shall be void. Sub-section (2) of Section 64 makes an exception to Section 64(1) of the CPC where the private transfer or delivery of the property is prior to the attachment. However, the above authorities also make it clear that registration of such document of transfer before attachment order is a must to claim right over the property under attachment. According to his interpretation of Order 21 Rule 54 (1), the provision will apply only to an order of attachment and the transfer or charging of the property being subsequent to that order, the order did not come to the knowledge of the person to whom or in whose favour the property was transferred or charged. It is only in that event that the transfer or charger can take the benefit of order and Order 21 Rule 54 (1) of the CPC s per Bombay amendment.

6. He has submitted that in the present case attachment warrant has been issued and the subject premises has been attached and upon attachment, the applicant would have notice of the attachment from the public record as well as from a search conducted prior to purchase of the property. He has therefore stated that the application is without any merit and that the attachment effected of the subject premises will render the subsequent sale deed as void.

7. I have considered the submissions of the parties. Order 21 Rule 54 (1) (Bombay amendment) makes it clear that the order of attachment which prohibits the judgment debtor from transferring or charging the property in any way shall take effect from the date on which the person to whom or in whose favour the property was transferred or charged, had knowledge of the order.

8. Further, Order 21 Rule 54 (2) makes it clear that the order of attachment is to be forwarded to the Collector with a request that appropriate entries showing the attachment levied on the property may be caused to be made in the revenue records, city survey records, or village panchayat records as may be required. In the present case, there is an attachment warrant which has been issued and the property stands attached on 20th July 2011. Since, the sale deed having has been entered into after a period of nearly three years i.e. on 5th July 2014 after the attachment of the suit premises the applicant would have had knowledge of the suit premises having being attached and the attachment warrant being issued from the public documents and accordingly the provision under Order 21 Rule 54(1) of the CPC would not come to the aid of the applicant. The judgment relied upon by the complainant further makes it clear that Section 64(1) of the CPC which applies

in the present case would make the sale deed executed subsequent to the attachment void. The only exception being in sub-section 2 of section 64 of the CPC where the transfer or charge is effected prior to the attachment, but that is provided the registration of such document of transfer or charge has been done prior to the attachment order to claim right over the property under attachment. In the present case, Section 64(2) of the CPC, as such has no application and from Section 64(1) of the CPC it is clear that the sale deed executed after the attachment levied in respect of the suit premises would be rendered void. This is further made clear by the judgment of the Hon'ble Supreme Court in case of **Salem (Supra)** which expressly holds in paragraph 26 as under :-

“26. Section 64 (2) in the Code has been inserted by Amendment Act, 22 of 2002. Section 64, as it originally stood, has been renumbered as Section 64(1). Section 64(1), inter alia, provides that where an attachment has been made, any private transfer or delivery of property attached or of any interest therein contrary to such attachment shall be void as against all claims enforceable under the attachment. Sub-section (2) protects the aforesaid acts if made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment. The concept of registration has been introduced to prevent false and frivolous cases of contracts being set up with a view to defeat the attachments. If the contract is registered and there is subsequent attachment, any sale deed executed after attachment will be valid, if it is unregistered, the subsequent sale after attachment would

not be valid. Such sale would not be protected. There is no ambiguity in sub-section (2) of Section 64”.

9. Thus, it is clear that under Section 64(1) of the CPC, the subsequent private transfer or delivery of the property attached is void.

10. Accordingly, I find no merit in the chamber summons taken out by the applicant and accordingly the chamber summons stands dismissed with no order as to costs.

11. Learned senior counsel for the applicant seeks stay of this order for three weeks on the ground that Division Bench of this Court by order dated 5th March 2019 had protected the interest of the applicant pending the hearing of the chamber summons. Considering that order of the Division Bench dated 5th March 2019 has continued till today, the stay of this order is granted for a period of two weeks.

(R I. CHAGLA, J.)