

psv

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

**CHAMBER SUMMONS NO.1482 OF 2015
IN
EXECUTION APPLICATION NO.1819 OF 2015**

Mrs.Pista Sohanlal Parmar & Ors.	Applicants/Intervener
In the matter between	
M/s.S.E. Investments Ltd.	Claimant
V/s.	
M/s.Arham Exims Pvt. Ltd. & Ors.	Respondents

Mr.Dharmesh Jain with Mr.Harshit Panchal for Applicants.
Mr.Harsh Pandey i/b. AVS Legal for Respondent Nos.1 to 3.

CORAM : G.S. KULKARNI, J.

DATE : 5th FEBRUARY, 2020

P.C.:

Heard learned Counsel for the applicants/intervener. None appears for the original applicant/claimant in the execution application (claimant in the arbitration case No.57 of 2013). Respondent No.1/judgment debtor is represented by Mr.Darshan Shah.

2. This is a chamber summons filed by Mrs.Pista Sohanlal Parmar, Mr.Rajkumar Sohanlal Parmar and Mr.Sohanlal Bansilal Parmar who are third party/interveners praying that their property being Flat No.8, Shiv Ishwar Bhuvan Co-op. Hsg. Soc. Ltd. be deleted from the schedule of the properties to the execution application. It is their contention that it is wholly illegal and untenable for the claimant to include the property as neither these applicants nor their said property is in any manner concerned with their arbitration proceedings held between the claimant and the respondents. Accordingly the applicants have prayed for the following reliefs:-

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Vartak

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“(a) this Hon’ble Court be please to direct the Claimant to delete the property mentioned in Schedule at Sr. No.C more particularly being Flat no.8, Shiv Ishwar Bhuvan Co-op. Hsg. Soc. Ltd, Plot No.183, Road No.28/A, Sion – Matunga (East), Mumbai 400 022 from the Execution Application.

(b) That pending the hearing and final disposal of this Chamber Summons, this Hon’ble Court may be pleased to stay the Execution Application No.1819 of 2015 and Warrant of Attachment dated 9/10/15 with respect to Flat No.8, Shiv Ishwar Bhuvan Co-op. Hsg. Soc. Ltd, Plot No.183, Road No.28/A, Sion – Matunga (East), Mumbai 400 022 filed by the Claimant.

(c) That pending the hearing and final disposal of this Chamber Summons, this Hon’ble Court may be pleased to pass an injunction order, restraining the Claimant, or persons, servants and agents, from taking any action and/or interfering with possession of Applicants in respect of property mentioned in Schedule at Sr. no. B more particularly being Flat No.8, Shiv Ishwar Bhuvan Co-op. Hsg. Soc. Ltd, Plot No.183, Road No.28/A, Sion – Matunga (East), Mumbai 400 022.”

3. Learned Counsel for the applicants would submit that one Mr. Hasmukhrai Maneklal Mehta & (2) Mr.Navinchandra Maneklal Mehta were the joint owners of flat being Flat No.8, on third floor in the building known as “Shiv Ishwar Bhuvan Co-op. Hsg. Soc. Ltd”, admeasuring about 780 sq. ft [carpet area] situated at Plot No.183, Road No.28/A, Sion – Matunga (East), Mumbai 400 022 (for short, “the said flat”). The society had issued five fully paid-up shares of face value of Rs.50/- each, bearing Share Certificate No. 7 having distinctive Nos. 36 to 40 [both inclusive] dated 1st August 1984 in the joint name of (1) Mr. Hamukhrai Maneklal Mehta & (2) Mr. Navinchandra Maneklal Mehta.

4. It is submitted that on 9 January 2006 Mr. Hamukhrai Maneklal Mehta and Mr.Navinchandra Maneklal Mehta sold premises to Shri.Pradip Rajnikant Shah HUF and Shri Darshan Pradip Shah the respondents. Thereafter respondent No.1-M/s. Arham Exhims Private Ltd obtained loan from the Bank of Baroda, for which the respondents Shri. Pradip Rajnikant

Shah HUF & Shri Darshan Pradip Shah mortgaged the said flat to Bank of Baroda.

5. It is submitted that on 22 August 2012 respondent No.1-M/s. Arham Exhims Private Ltd defaulted in repayment of loan to Bank of Baroda. Therefore public notice was issued for auction of said flat and flat No.8 by Bank of Baroda. On 17 December 2012 Bank of Baroda auctioned/sold the said flat and said shares and also another flat no. 7 to one M/s. Enrich Real Estates Private Limited, by private treaty under the SARFAESI Act, 2002, for recovery of outstanding loan amount after following due process of law and issued Sale Certificate. Thereafter in or about February 2013 at the request of the said M/s. Enrich Real Estates Private Limited the said Certificate of Sale dated 17.12.2013 was modified and was split in two Certificate of Sale dated 27.02.2013 in respect of said flat .i.e. flat no.8 and another Certificate of Sale dated 27.02.2013 in respect of flat no.7. Thereafter on 4 March 2013 Bank of Baroda by executed DEED OF SALE CERTIFICATE dated 4th March 2013 in favour M/s.Enrich Real Estates Private Limited duly registered before the Sub-Registrar of Assurance at Mumbai City – 4 under Serial No. BBE-4/987/2013 on 31.01.2006, thereby confirmed the issuance of Certificate of Sale dated 27.02.2013 and transferred the right, title and interest of the said flat in favour of M/s. Enrich Real Estates Private Limited.

6. It is thus submitted that on 10 March 2013 Share Certificate was transferred in favor of M/s.Enrich Real Estates Private Limited. Thereafter on 21 March 2013 M/s. Enrich Real Estates Private Limited under a registered Transfer Deed dated 21.03.2013 bearing Serial No.BBE-2/1667/2013 sold, transferred and assigned all their right, title and interest in respect of said flat and said shares in favour of the applicants.

7. The applicants also obtained a Housing Loan of Rs.74.50 lac from Bank of India, Dadar (East) Branch, Mumbai and the said flat is mortgaged to the said bank, this was for making payment of the balance consideration to M/s. Enrich Real Estates Private Limited. On 25 March 2013 Society also issued a letter to Bank of India confirming that Shiv Ishwar Bhawan Co-op. Hsg. Soc. Ltd. is the owner of the property and share certificate was yet to be transferred. On 5 April 2013 M/s. Enrich Real Estates Private Limited issued a letter confirming receipt of balance consideration from Bank of India. On 8 June 2014 the Share Certificate in respect of the said flat was transferred in favor of the applicants.

8. In the intervening period, on 9 November 2013 the claimant had issued a notice invoking arbitration against the respondents. The arbitral tribunal entered reference and on 12 September 2014 an award was passed in favour of the claimant for an amount of Rs.3,25,11,498/- against the respondents. Thereafter the claimant instituted the present execution proceedings to execute the award. On 9 October 2018 this Court issued warrant of attachment in respect of the said flat. Symbolic possession of the flat in question was taken on 28 October 2018.

9. It is on the above background, the present chamber summons has been filed. A Reply affidavit has been filed on behalf of the claimant.

10. The claimant has not denied the case of the applicants as pleaded in the chamber summons. The claimants have failed to show in the reply that the respondents/award debtors had any right, title and interest in respect of the flat in question, so that the said flat can be subject matter of attachment to recover the award amounts. The respondents are before the Court who also do not dispute the contentions as urged on behalf of the applicant. Thus the position on record is that the contentions of the applicants/intervener have remained undisputed even by the respondents.

In the absence of any tangible and cogent material for the claimant to proceed against the premises of the applicants/intervener, certainly this is a case of an absolute unwarranted inclusion of the property of the applicant in the present execution proceedings. The said flat neither belongs to the respondents nor the respondents are in any manner concerned with this flat so that it can be utilized for the purposes of satisfying the award dues of the claimant.

11. In the above circumstances, it would be required to be held that the inclusion of the applicant's property is totally illegal. Such inclusion is required to be deleted. Warrant of attachment issued in respect of the said property is also required to be quashed and set aside. Chamber summons is accordingly allowed in terms of prayer clause (a). Ordered accordingly.

12. It is clarified that in view of the above reliefs being granted, the flat in question of the applicant is absolutely free from any attachment in the present proceedings.

13. No costs.

[G.S. KULKARNI, J.]