

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

EXECUTION APPLICATION NO.353 OF 2008

Kotak Mahindra Bank Ltd. .. Applicant

v/s.

Himesh H. Dave & Anr. .. Respondents

WITH

CHAMBER SUMMONS NO.599 OF 2009

Kotak Mahindra Bank Ltd. .. Decree Holder /Org.Claimant

v/s.

Himesh H. Dave & Anr. ..Respondents/Judgment Debtors

And

Ripul Dilip Shah & Ors. .. Applicants

Mr. M.B. Kale for the applicant.

Mr. Omar Shaikh for the judgment debtor.

Mr. Chandrakant Chavan for the applicants in CHS/599/2009.

CORAM : A. K. MENON, J.

DATED : 19TH JULY, 2021.

(THROUGH VIDEO CONFERENCE)

P.C. :

1. The applicant seeks to withdraw this Execution Application. It is the case of the applicant that all dues have been paid and that the

applicant has no claim against the flat presently claimed by Ripul Dilip Shah and others who are applicants in Chamber Summons no.599 of 2009 in the above Execution Application.

2. Mr. Chavan representing the applicants in the Chamber Summons states that his clients have purchased the mortgaged property over which the bank had a claim. The judgment debtor had obtained other loans on the same property and pursuant to various earlier orders the original documents are now deposited in this court.
3. Mr. Kale on behalf of the applicant-bank seeks to withdraw this Execution Application since the bank has received its dues. He states that the bank has issued a No Dues Certificate to the judgment debtors. Mr. Chavan has confirms this fact and he states that as the purchaser of the property, his clients are now entitled to receive all original documents of title which were lying with the bank and which are deposited in this court. He confirms that having taken inspection and verified the original documents on behalf of his clients and he submits that since the Execution Application is being withdrawn, the applicants in Chamber Summons no.599 of 2009 may be permitted to collect and retain all documents of title pertaining to the flat in question viz. 105,

Wing 'F' 1st floor, Kamla Vihar E & F CHS Ltd. Mahavir Nagar, Kandivali (W), Mumbai-67, along with the share certificate issued by the society. This he submits that will ensure that his clients are protected.

4. Mr. Shaikh on behalf of the judgment debtors has no objection of this course of action. He waives rights of his clients to receive the original documents from the bank. He submits that the original title deeds may be handed over by the Prothonotary and Senior Master to Mr. Chavan's clients and that as far as the bank is concerned, he has no objection in not having received the original documents back from the bank. Mr. Kale on behalf of the applicant has no objection to this course of action.

5. Accordingly I pass the following order;

- (i) The applicants in chamber summons no.599 of 2009 will be entitled to collect the original documents of title deposited with the Prothonotary and Senior Master by Kotak Mahindra Bank pursuant to order dated 2nd August, 2011.
- (ii) The Prothonotary and Senior Master shall accordingly handover all the documents to the applicants in Chamber

Summons no.599 of 2009.

- (iii) The applicant bank is directed to issue a letter to the Kamla Vihar Co-operative Housing Society confirming that the bank has no claim against the subject flat or the shares. Let this be done within two weeks from today.
- (iv) Subject to the above, the judgment debtors statement made through their counsel that they have no claim against the subject flat or Mr. Chavan's client, is accepted.
- (v) Subject to the above, Execution Application no.353 of 2008 is disposed.
- (vi) In view of the disposal of the Execution Application, Chamber Summons will not survive. Chamber Summons is also disposed in the above terms.
- (vii) Interim Applications and Notices of Motion pending, if any, shall also stand disposed.

(A. K. MENON, J.)