



Arb.Appln.Nos.161, 164 of 2022

Arb.Appln.Nos.161, 164 of 2022
and A.Nos.3969, 3970 of 2022

WEB CO **SENTHILKUMAR RAMAMOORTHY, J.**

A third party / financial institution has presented these applications.

By these applications, the third party seeks to advance the hearing, be impleaded in A.No.3777 of 2019 and raise the order of attachment issued in favour of the original applicant under order dated 10.09.2020 in A.No.3777 of 2019.

2. The applicant asserts that it provided credit facilities to the second respondent herein pursuant to a loan agreement dated 25.11.2017. In connection therewith, it is stated that an equitable mortgage was created over the property described below (item No.2 in the schedule of the Judge's summons in A.No.3777 of 2019):

"Item No.2: All that piece and parcel of immovable property house situated at B-502, Orchid Platina Vena, Opp Ram Shikhar, Village - Vadodara, Taluka - Vadodara, District - Vadodara, together with electricity connection bearing Consumer No.15626/10113/6 & Fittings and share in land and other usual rights."



WEB COPY

3. By referring to the registered memorandum confirming deposit of title deeds, learned counsel points out that the equitable mortgage was created on 12.01.2018. Consequently, he contends that the mortgage in favour of the applicant is prior to the order of attachment issued on 10.09.2020. In exercise of rights as a secured creditor, he also states that steps were taken to bring the mortgaged asset for sale and that the applicant discovered the order of attachment while attempting to execute a certificate of sale in favour of the purchaser.

4. Learned counsel for the first respondent is present. He submits that the first respondent is protected by the order of attachment but does not have a charge or mortgage over item no.2 in the schedule to the Judge's summons in A.No.3777 of 2019.

5. In view of the admitted position that the first respondent did not have a charge over the property, it is evident that the mortgage in favour of the applicant was subsisting when the order of attachment was obtained



Arb.Appln.Nos.161, 164 of 2022

from this Court. Therefore, the said order of attachment warrants modification as regards item no.2 of the schedule. Although the borrower is arrayed as the second respondent in these applications, the raising of the attachment does not prejudice the second respondent in any manner. Therefore, these applications are disposed of without notice to the second respondent.

6. Accordingly, all these applications are allowed by issuing the following orders / directions:

- (i) The applications to advance the hearings are allowed.
- (ii) The applicant / third party is impleaded as the second respondent in A.No.3777 of 2019.
- (iii) The order of attachment issued on 10.09.2020 is raised only in respect of item no.2 of the schedule specified in the Judge's summons of A.No.3777 of 2019, i.e., the property described in paragraph 2 of this order.
- (iv) Copy of this order shall be transmitted through the District Court, Vadodara, Gujarat to the Sub Registrar Office, Vadodara - 7 Chani, Vadodara District, Gujarat.

13.09.2022

rna

3/4



WEB COPY



Arb.Appln.Nos.161, 164 of 2022

SENTHILKUMAR RAMAMOORTHY, J.

rna

Arb.Appln.Nos.161, 164 of 2022
and A.Nos.3969, 3970 of 2022

13.09.2022