

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.16269 OF 2023
IN
FIRST APPEAL NO.998 OF 2023**

Namita Shankarlal Agarwal ... Applicant
Versus
Freny F. Bhadha & Anr. ... Respondents

**WITH
INTERIM APPLICATION NO.16272 OF 2023
IN
FIRST APPEAL NO.999 OF 2023**

Namita Shankarlal Agarwal ... Applicant
Versus
Sabina A. Khan & Anr. ... Respondents

**WITH
INTERIM APPLICATION NO.16325 OF 2023
IN
FIRST APPEAL NO.1002 OF 2023**

Namita Shankarlal Agarwal ... Applicant
Versus
Freddy K. Bhadha & Anr. ... Respondents

Mr. Omar K. Shaikh a/w. Adv. Anari S. for Applicant.
Mr. V. S. Kapse for the Respondents

CORAM : NITIN B. SURYAWANSHI, J.

DATED : 30TH NOVEMBER, 2023

P.C.:

1. Applicant is owner of Flat No. 7, "B" Wing, Building No. 51, Sea Glimpse Co-operative Housing Society, Manish Nagar, 4 Bungalows, Andheri (W), Mumbai - 400053 (for short "*Suit Flat*"). Applicant was

Director of M/s. Allied Computers International Asia Limited from 27/08/2008 to 15/01/2009. Applicant then resigned from the said post. Suit flat was purchased by Applicant from Hirji Kanji Patel for consideration of Rs.49,00,000/- by a registered sale deed dated 28/12/2013 vide registration no. BDR-17/1490/2014 dated 24/02/2014. After purchase of flat, Sea Glimpse Co-operative Housing Society transferred share certificates dated 01/08/1981 for five fully paid up shares bearing nos. 31 to 35 in the name of Applicant. Hirji Kanji Patel is the Managing Director of Second Respondent/ Original Defendant Company-M/s. Allied Computers International Asia Limited.

2. It is the case of Applicant that suit flat was never owned by Second Respondent/Original Defendant Company. In execution of decree passed by City Civil Court against Second Respondent/ Original Defendant Company, suit flat is attached at the instance of First Respondent/Original Plaintiff. According to Applicant said order is obtained by misrepresentation and playing fraud. Applicant therefore seeks stay to the attachment order of Suit Flat.

3. Heard, Mr. Omar Shaikh, learned Advocate for Applicant and Mr. V. S. Kapse for the Respondents.

4. Admittedly Applicant was not the party to suit and ex-parte

decree is passed against Second Respondent/Original Defendant Company. *Prima facie*, it appears from record that suit flat was never shown as property of Second Respondent Company. Executing Court has held that Hirji Kanji Patel has given personal guarantee and the suit flat is sold by him, after the judgment and decree impugned in First Appeal is passed and therefore same is liable to be attached. Executing Court has further held that no consideration is passed to Hirji Kanji Patel at the time of execution of sale deed. It is for Hirji Kanji Patel to say so. *Prima facie* sale of flat appears to be a personal transaction of Hirji Kanji Patel and Second Respondent/Original Defendant Company has no role to play in the same. Admittedly, First Respondent/Decree Holder has attached other properties of company of Hirji Kanji Patel in execution proceedings.

5. In light of aforestated facts, in my opinion Applications deserve to be allowed, subject to Applicant showing bonafides. In the result, following order:

(a) Interim Applications are allowed in terms of prayer clause (a) subject to condition that Applicant shall deposit 50% of principal amount in this Court within a period of three months from today.

(b) The amount so deposited by the Applicant shall be

invested in fix deposit to be renewed from time to time.

(c) It is clarified that in case Applicant fails to deposit the amount within stipulated time, this order shall stand automatically vacated.

(NITIN B. SURYAWANSHI, J.)