

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

(14) APPEAL NO. 577 OF 2019

IN

CHAMBER SUMMONS NO. 765 OF 2013

The Saraswat Co-op. Bank Ltd. ...Appellant

Versus

Mine Stone (deleted) ...Respondent

WITH

INTERIM APPLICATION (L) NO. 3890 OF 2023

IN

APPEAL NO. 577 OF 2019

The Saraswat Co-op. Bank Ltd. ...Applicant

Versus

Mine Stone (deleted) ...Respondent

WITH

INTERIM APPLICATION (L) NO. 3887 OF 2023

IN

APPEAL NO. 577 OF 2019

The Saraswat Co-op. Bank Ltd. ...Applicant

Versus

Urvashi Nilesh Mehta ...Respondent

AND

(15) APPEAL NO. 579 OF 2019

IN

CHAMBER SUMMONS NO. 617 OF 2018

The Saraswat Co-op. Bank Ltd. ...Appellant

Versus

M/s Mine Stone (deleted) ...Respondent

AND

(16) APPEAL NO. 580 OF 2019

IN

CHAMBER SUMMONS NO. 845 OF 2013

The Saraswat Co-op. Bank Ltd. ...Appellant

Versus

M/s Mine Stone (deleted)

...Respondent

**WITH
INTERIM APPLICATION (L) NO. 3888 OF 2023
IN
APPEAL NO. 580 OF 2019**

The Saraswat Co-op. Bank Ltd.

...Applicant

Versus

Subhodh Journal Mehta

...Respondent

Mr. B. V. Sawant for appellant.

Dr. Abhinav Chandrachud a/w. Mr. Vishal Raman i/b. Gajria and Co., for respondent in APP/577/2019.

Mr. Karl Tamboly a/w. Ms. Naira Jejeebhoy, Adv. Anshul Singh and Mr. Yash Arora i/b. Bharucha and Partners for respondent in APP/577/2019.

Mr. Sumit Raghani i/b. Argud Partners for respondent in CHS/845/2013.

**CORAM: K.R. SHRIRAM &
RAJESH S. PATIL, JJ**

DATED: 28th March, 2023

PC:-

1. On 23rd January 2023 we passed the following order :-

“1 After Mr. Samant made certain submissions and after Dr. Chandrachud raised a preliminary objection on the maintainability of the appeal itself and pursuant to certain queries that fell from the Court as to how the property in question, which belongs to respondent, came to be attached when admittedly respondent was not a judgment debtor, Mr.

Samant requested the matter be stood over to enable him to take instructions.

2 *We also noticed, when we perused the execution application, copy whereof is annexed to the appeal, that statement has been made that the judgment debtors have a share or interest in the property in question, whereas there is nothing to indicate how this statement has been made in the verification annexed to the execution application.*

3 *Mr. Samant states that the transfer in the name of respondent by her husband and husband's brother, who are judgment debtors, was fraudulent transfer. Mr. Samant in fairness agreed that they came to know about the same only when respondent approached the Court after the said flat was attached. But the moot question is what was the basis on which the said flat itself came to be attached because admittedly the flat stands in the name of respondent pursuant to a registered document.*

4 *At the request of Mr. Samant, stand over to 7th February 2023."*

(Emphasis supplied)

2. Subsequent to that, interim application (L) No. 3887 of 2023 has been lodged by appellant, in which appellant candidly accepts that the properties, viz. Flat No. 5, Krishna Kunja, 2nd Floor, Behind Wilson College, Mumbai-400 007 (in Appeal No. 577 of 2019), Flat No. 7, Krishna Kunja, 2nd Floor, Behind Wilson College, Mumbai-400 007 (in Appeal No. 579 of 2019), and Flat No. B 52, Acropolis, Little Gibbs Road No.3, Malabar Hills, Mumbai- 400 006 (in Appeal No. 580 of 2019) were attached on the basis of general information that appellant received, about residence and properties of judgment debtors.

and no due diligence was done at the time of execution attachment of the properties.

3. Mr. Samant, therefore, submits that appellant be allowed to withdraw the appeal and since, the learned Single Judge has observed that the contentions of appellant that the transfer relied upon by respondents were fraudulent in nature and not binding on appellant could be taken only by way of separate suit, appellant should be permitted to withdraw this appeal with liberty to take such steps, as advised in law.

4. The appeals are dismissed as withdrawn with the liberty as prayed for. All rights and contentions of the parties, including limitation are kept open.

5. All interim applications also stand disposed.

(RAJESH S. PATIL,J.)

(K.R. SHRIRAM,J.)