

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

**INTERIM APPLICATION (LODGING) NO. 26618 OF 2021
IN
EXECUTION APPLICATION NO. 456 OF 2013**

Chirag Rajesh Thakar alias
Chirag Rajesh Chaker ...Applicant

In the matter between

Mahendra B. Sangani ...Judgment-Creditor

vs.

Vipul B. Sangani and Ors. ...Judgment-Debtors

And

Asset Reconstruction Company
(India) Limited ...Secured Creditor

**WITH
CHAMBER SUMMONS NO. 913 OF 2016
IN
EXECUTION APPLICATION NO. 456 OF 2013**

Asset Reconstruction Company (I)
Limited ...Intervenor

In the matter between

Mahendra B. Sangani ...Applicant

vs.

Vipul B. Sangani and Ors. ...Respondents

And

Asset Reconstruction Company
(India) Limited ...Secured Creditor

**WITH
CHAMBER SUMMONS NO. 1496 OF 2016
IN
EXECUTION APPLICATION NO. 456 OF 2013**

Mahendra B. Sangani ...Applicant

In the matter between

Mahendra B. Sangani ...Judgment-Creditor

vs.

Vipul B. Sangani and Ors. ...Respondents

And

Asset Reconstruction Company
(India) Limited

...Proposed Respondents

Mr.Sidharth Samantarya a/w Ms.Kalyani Wagle i/b. T. N. Tripathi and Company – Advocates for Applicant in Interim Application (L) No. 26618 of 2021.

Ms.Asha Mishra i/b. Mr.Akbar Rizvi of AKS Legal Consultants – Advocates for Secured Creditor.

CORAM : S. M. MODAK, J.

DATE : 26th OCTOBER 2023

P. C. :-

1. Heard learned Advocate for the Financial Institution and learned Advocate for the Auction Purchaser.

2. The Interim Application (L) No.26618 of 2021 is filed by the Auction Purchaser. Whereas, Chamber Summons No.913 of 2016 is filed by the Financial Institution. Though the Judgment-Creditor is served, today no one has appeared.

3. In the order dated 1st December, 2022 passed in Interim Application (L) No.26618 of 2021, this Court has taken note of affidavit of service. But, the matter was adjourned for giving

one opportunity to the Decree-Holder. Both of them are requesting for lifting of attachment as per the warrant dated 25th June, 2013 passed in respect of a Flat No.53 described in the Application.

Execution of an Award

4. This Execution is filed for implementation of an Award dated 15th December, 2012 declared by the sole Arbitrator. Respondents were directed to pay Rs.2,27,97,583/- (Rupees Two Crores Twenty Seven Lakhs Ninety Seven Thousand Five Hundred Eighty Three Only). This Execution is filed by the Claimant - Mahendra Sangani.

5. When he moved Chamber Summons, it was dismissed by the learned Single Judge. However, Division Bench of this Court vide order dated 10th June, 2015 passed in Appeal (Lodging) No. 424 of 2015 was pleased to appoint Court Receiver in respect of two flats. Out of them, Flat No.53 is the relevant flat.

6. Both of them made following submissions :-

- (a) Judgment-Debtor No.1 - Vipul has mortgaged Flat No.53 in favour of Asset Reconstruction Company (India) Limited i.e. Applicant. And this was prior to warrant of attachment.
- (b) Prior to warrant of attachment, physical possession of the flat was taken by the Financial Institution.

- (c) It was sold by way of public auction. After warrant of attachment, the Applicant has purchased it and also deposited the sale proceeds.
- (d) Debts Recovery Tribunal - III as per the order dated 10th December, 2015 (Page No.140 of Chamber Summons No.913 of 2016) was pleased to direct the Bank / Financial Institution not to appropriate the sale proceeds till disposal of Securitisation Application.
- (e) This Securitisation Application was filed by the Judgment-Creditor Mahendra for issuing directions not to take measures as per the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [**"SARFAESI Act"**].
- (f) In view of order dated 10th June, 2015, Court Receiver has taken symbolic possession.
- (g) However, that Security Application was dismissed in default as per the order dated 1st April, 2016.
- (h) The sale proceeds are already disbursed to the Financial Institution.
- (i) My attention is invited to an order dated 4th May, 2016 passed in Chamber Summons No. 802 of 2016 wherein the Court Receiver is discharged and warrant of attachment is set aside. It is in respect of another Flat No.A-1101. The said order was passed in Chamber Summons moved by another Financial Institution Citibank N.A.

7. Considering the fact that the DRT has directed to keep the sale proceeds till disposal of the Securitisation Application filed

by the Judgment-Creditor No.1 and considering the fact that it was already disposed of in respect of present flat also, the appointment of Court Receiver needs to be vacated. This order is passed considering the fact that physical possession of the flat in question was taken by the Financial Institution prior to the order of appointment of Court Receiver. Even, the Judgment-Debtor has not appeared despite service.

8. Prayer clauses (a) and (b) read thus :-

- “(a) That the Warrant of Attachment dated 25th June 2013 issued in execution of Award dated 15th December 2012 in respect of residential premises being flat No.53, 5th floor, Dinanath Co-operative Housing Society Limited, M.G. Road, Opp- UCO Bank, Dahanukar Wadi, Kandivili (West), Mumbai - 400 067 be raised ;
- (b) That the Court Receiver, High Court, Bombay appointed as receiver in respect of residential premises being flat No.53, 5th floor, Dinanath Co-operative Housing Society Limited, M.G. Road, Opp- UCO Bank, Dahanukar Wadi, Kandivili (West), Mumbai - 400 067 in execution of the Award dated 15th December 2012 pursuant to the order dated 10th June 2015 may kindly be discharged.

9. In view of that, following order is passed :-

O R D E R

- (i) It is allowed in terms of prayer clauses (a) and (b).

- (ii) The Court Receiver is discharged without taking accounts.
- (iii) The Applicant in Interim Application (L) No.26618 of 2021 to pay poundage and other necessary charges to the Court Receiver.
- (iv) Chamber Summons is disposed of in view of the above directions. (it mentions about intervention and the similar reliefs).

[S. M. MODAK, J.]