Sharayu Khot.

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

INTERIM APPLICATION NO. 3827 OF 2022

IN

COURT RECEIVER'S REPORT NO. 51 OF 2020

IN

SUIT NO. 634 OF 2017

Caparo Financial Solutions Limited …**Applicant/Org. Intervenor**

In the matter of

Robin Karamchandani …**Plaintiff**

Versus

M/s. Jem Associates & Ors. …**Defendants**

Mr. Ashish Kamat, Mr. Mohit Khanna, Mr. Venkat Rao and Mr. Akash Gaonkar i/by Legalserve and Associates for the Applicant.

Mr. Shrey Fatterpekar a/w Mr. Ameet Mehta, Mr. Nirav Marjadi, Mr. Vinay Shirgada, Ms. Nikita Deora i/by M/s. Solicis Lex for the Plaintiff.

Mr. Deepak Shukla i/by Mr. Vinod Mistry & Co. for the Defendant Nos. 1 to 4.

Mrs. Rekha Rane, 2nd Asstt. to C.R. present.

CORAM : R.I. CHAGLA J
DATE : 27 February 2023

ORDER :

1. By this Interim Application, the Applicant has sought to

be added as a party in the captioned proceedings.

2. The Applicant is a non banking financial company who had lent monies to the Respondents and entered into loan transactions with them. The Respondents created a registered mortgage in favour of the Applicant with respect of the immovable property being Unit No. 001 on the ground floor, admeasuring 1409 sq.feet carpet area plus car parking space 2900 sq.feet in basement in the building known as 'Harshvardhan Chambers' formerly known as "Platinum Court" of Oshiwara Tulsi Cooperative Housing Society Limited, now changed to Oshiwara Tulso Commercial Premises Co-operative Society situated at Plot No. R-16, Survey No. 41(Part), Oshiwara at MHADA Layout, Jogeshwari (West), Mumbai – 400 102.

3. The Applicant has taken recourse to proceedings under SARFAESI Act in respect of the default committed in the repayment of the sums lent by the Applicant and for enforcement of the security. This is in addition to arbitration proceedings. The mortgaged property has been recognised by this Court by order dated 12th March 2020.

4. Interim Application has referred to the particulars of the facility granted to the Respondent as well as reference to the Deed of Personal Guarantee and Deed of Hypothecation in paragraph 5 of the Interim Application.

5. The Applicant has stated in paragraph 5.6 of the Interim Application that for the first time it became aware of the proceedings pending in the captioned Suit and contempt proceedings and appointment of the Court Receiver upon receiving the letter dated 16th March 2020 on 13th May 2020 from the Court Receiver pursuant to the order dated 12th March 2020 passed by this Court. The order proceeds on the basis of the suit properties have been mortgaged *inter alia* to the Applicant and has directed the Court Receiver to address the letters to the Applicant to enquire whether it is agreeable to the sale and has no objection to the sale of the suit property by making it clear that mortgage dues will be cleared from the sale proceeds first.

6. The Applicant has responded to the letter dated 16th March 2020 received from the Court Receiver by letter dated 10th June 2020 providing consent/no objection to the sale of the

mortgaged property without prejudice to its rights under law and under the loan agreement which have been detailed.

7. The Applicant has not received a response to its letter dated 10th June 2020 and accordingly, as on date it may be treated as if there is no consent to the sale of the mortgaged property. It is further stated that the Court Receiver is in the process of selling the mortgaged property on the strength of the purported consent given by the Applicant vide letter dated 10th June 2020 which is without prejudice to the rights of the Applicant.

8. The Applicant has stated that being a secured creditor under the SARFAESI Act, the mortgaged property/secured asset and the status of the asset have been recognised by this Court vide order dated 12th March 2020. Accordingly, the Applicant is a necessary party to the captioned proceedings.

9. The Applicant has also referred to the consent order passed by this Court dated 3rd November 2018 in the captioned Suit under which the Court Receiver had been appointed. The Applicant being a mortgagee has been mentioned in clause 4 of the Consent

Terms.

10. The Applicant has stated that noticing that prior mortgage rights have been created in favour of the Applicant, there was no right or reason for the Plaintiff and Defendant by the consent minutes to agree for appointment of the Court Receiver to sell the mortgage property. The Applicant has initiated the process of taking of possession of the mortgaged property under Section 14 of the SARFAESI Act and thus, would be vitally effected, if any order is passed in the captioned proceedings with regard to the Court Receiver taking possession.

11. Accordingly, the present Interim Application is taken out for impleading the Applicant as party Defendant in the captioned proceedings.

12. The Respondent has filed Affidavit in Reply to the Interim Application giving formal objection to the relief sought for in the Interim Application being granted.

13. Having considered the averments in the Interim

Application, in my view, the Applicant would be a necessary party in the captioned proceedings. Considering that the mortgaged property in respect of which the Court Receiver had been appointed is the secured asset of the Applicant in respect of which SARFAESI proceedings had been initiated and thus, any order passed in the captioned proceedings would affect the rights of the Applicant as mortgagee in respect of the subject property. Accordingly, relief sought for in the Interim Application is granted. Hence, the following order is passed. :-

(i) The Plaintiff shall intimate the Applicant by giving one week's prior notice of any proceedings being taken out in relation to the mortgaged property.

(ii) In that event, the Applicant shall be made a party to the proceedings concerning the mortgage property.

(iii) Interim Application is accordingly, disposed of.

[R.I. CHAGLA J.]