

Sharayu Khot.

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

COMMERCIAL CHAMBER SUMMONS NO. 1353 OF 2018
IN
COMMERCIAL EXECUTION APPLICATION NO. 79 OF 2017

Raxa Deepak Dagli & Anr.

...Applicants

In the matter of

The Saraswat Co-operative Bank Ltd.

...Original Disputant

Versus

Dr. Aggarwal Prem Sitaram & Ors.

...Judgment Debtors
(Original Opponents)

Mr. Aseem Naphade a/w Mr. Sauradh Utangale i/by Chetan Mhatre
and Vinay Bhorge for the Applicants.

Mr. Girish Utangale a/w Mr. Rohan Savant for the Respondent No. 1/
Judgment Debtor.

CORAM : R.I. CHAGLA J

DATE : 14 March 2023

ORDER :

1. By this Chamber Summons, the Applicants have sought
raising of attachment levied on Flat No. 401/C, Vastu Apartment,
Military Road, Juhu, Vile Parle (E), Mumbai 400 049 (“**subject Flat**”)

pursuant to warrant of attachment dated 18th August 2017 issued.

2. The Applicants state that they are the owners of the subject Flat having purchased the subject Flat vide Registered Sale Deed dated 16th October 2015. Thereafter, the Award was passed on 4th August 2016 in respect of which present execution proceedings have been filed on 24th May 2017. The Applicants further state that by Leave and Licence Agreement dated 11th December 2017, the Applicants have granted licence to the Judgment Debtors for a period of 12 months commencing on 1st January 2018 and ending on 31st December 2018, which had been thereafter, renewed. Warrant of attachment was levied on the subject Flat on 18th August 2017.

3. Mr. Naphade, the learned Counsel appearing for the Applicants state that the Applicants are the owners of the subject Flat having purchased the subject Flat by the Registered Sale Deed which is prior to the Award in respect of which the present execution proceedings have been filed. Accordingly, attachment levied of the subject Flat be raised.

4. Mr. Utangale, learned Counsel appearing for the

Judgment Debtor does not dispute this position. He has submitted to the orders of this Court.

5. Judgment Creditor though represented by the learned Advocate Mr. Vishal Narkar on earlier date, has failed to make appearance, despite of Chamber Summons having been filed on 21st August 2018.

6. In view thereof, there is no dispute that the Applicants are the owners of the subject Flat and that the warrant of attachment could not have been levied on the subject Flat in the present execution proceedings.

7. Relief sought for in the Chamber Summons is accordingly granted. Hence, the following order is passed. :-

(i) Attachment levied on the Flat No. 401/C, Vastu Apartment, Military Road, Juhu, Vile Parle (E), Mumbai 400 049 is lifted.

(ii) The Applicants in the above Execution Application

shall exclude the subject Flat from the execution proceedings.

- (iii) The above Commercial Chamber Summons No. 1353 of 2018 is accordingly, disposed of.

[R.I. CHAGLA J.]