



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

INTERIM APPLICATION NO. 5243/2025

IN

COMMERCIAL EXECUTION APPLICATION NO. 45/2022

KASH FOODS PVT. LTD.

..APPLICANT

VS.

**OMKAR REALTORS AND DEVELOPERS
PVT. LTD.**

..RESPONDENT

Adv. Nirman Sharma a/w. Adv. Siddharth Joshi i/b. Adv. Jahnavi Vora
for the applicant.

Adv. Rehan H. Ghoshia a/w. Adv. Noorain Patel i/b. Diamondwala &
Co. for judgment debtor.

Adv. S. L. Shah i/b. Sneh Legal for third party claimant.

Mrs. C. J. Bhatt, Official Assignee/In-charge Commissioner for Taking
Accounts.

CORAM : RAJESH S. PATIL, J.

DATE : 16 APRIL 2026.

P.C. :

1) By the present interim application, the claimant is challenging
the order dated 17/10/2024 passed by the In-charge Commissioner
for Taking Accounts, High Court, Bombay.

2) I have heard learned counsel appearing for both the parties and with their help, I have gone through the documents on record.

3) It is the case of the applicants that they are the judgment creditors in commercial execution application. There was development agreement between the applicants and the judgment debtor. As dispute arose between them, an application u/s. 9 of the Arbitration and Conciliation Act was filed. In the said proceeding, this Court appointed a sole arbitrator to hear and decide the dispute.

3.1) Before the sole arbitrator, the parties entered into the consent terms and the consent award was passed in terms of the consent terms. However, as parties did not comply with the directions given in the consent terms, the present commercial execution application was filed by the applicants.

4) In the commercial execution application, the warrant of attachment of immovable properties was filed under the provisions of Order XXI of the Code of Civil Procedure. Further, an application was filed for warrant of sale of the immovable properties being Flat Nos.B-3702, B-1801, B-1702, B-1703, B-2203 and B-2302. Before the In-charge Commissioner for Taking Accounts, a Notice was issued as per Rule 581 of the Bombay High Court (Original Side) Rules. The

Co-operative Housing Society of the building in which subject flats are situated filed their affidavit of claim to the Notice issued by the In-charge Commissioner for Taking Accounts under Rule 581 of the Bombay High Court (Original Side) Rules. To the said affidavit of claim the present applicants have filed their reply.

5) The matter was thereafter heard by the In-charge Commissioner for Taking Accounts on the claim made by the Co-operative Housing Society.

6) It was the claim of the Co-operative Housing Society that as far as these subject flats are concerned, the societies dues have not being paid, therefore, if the flats are put for auction, the willing purchasers should know that the societies dues are pending in respect to the subject flats, and the same needs to be paid. The In-charge Commissioner for Taking Accounts by her order dated 17/10/2024 allowed the objection raised by the Co-operative Housing Society thereby directing that the claim of the Co-operative Housing Society in respect of the subject flats be included in the “list of claims” to be annexed to the proclamation of sale.

7) Form No.78 of the Bombay High Court (Original Side) Rules reads as under:-

No. 78

Sheriff's proclamation of sale. (Rule 585)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO OF 19

..... PLAINTIFF

versus

..... DEFENDANT

Whereas by a decree made in the above suit it was ordered that
.....

And whereas by a warrant of sale dated the
..... day of 19, the Sheriff of
Bombay was directed to sell the right, title and interest of the
judgment debtor in the following lands and premises namely:-

(Description of the property)

(Include the revenue assessment if the property to be sold is an interest is
an estate or a part of an estate paying revenue to Government).

Now it is hereby proclaimed and notified that on the day of
..... 19, at O'clock in the
..... noon, the Sheriff of Bombay will under and by virtue of
the said warrant of sale put up for sale, by public auction (on the premises
or at) to the highest bidder in the said and without reserve
the right, title and interest of the said in the said
lands and premises or in so much thereof as may be necessary for the
satisfaction of the said decree, costs of execution and the Sheriff's
poundage, provided that it shall be in the discretion of the Sheriff to
decline acceptance of the highest bid when the price offered appears so
clearly inadequate as to make it advisable to decline acceptance.

The following is a list of the rights, interests, charge and claims to
which the said lands and premises are supposed to be liable.

(List of claims)

Intimation is given that the Court does not warrant the correctness of
the above description of the premises nor the title of the
said..... to the same or any interest therein.

Should the said have no saleable interest whatever
in any lot to be sold in accordance with this proclamation any sum paid by
the purchaser by way of full or part payment for the same will be
repayable to the purchaser.

The abovementioned..... execution creditor has (or has
not, as the case may be) permission to bid at the sale.

The person declared to be the purchaser shall pay immediately after

such, declaration a deposit of twenty five per cent on the amount of the purchase money the Sheriff and in default of such deposit, the property shall forthwith be put up again for sale. The balance of the purchase-money together with the amount of stamp-duty payable on the sale certificate to be issued by the Court shall be paid by the purchaser to the Sheriff on or before the thirtieth day after the sale. In default of payment of the balance of the purchase-money and the amount of stamp-duty within such period, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to Government and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold. The sale will not become absolute confirmed by the Court.

For further information and conditions of sale application should be made to the office of the Sheriff.

Dated this day of19 .

Sheriff

8) The argument of the applicant is that to insert word “claims are disputed and not being adjudicated as of now” should be included as a caveat after the “List of claims” as mentioned in Form No.78. In Form No.78 of the Bombay High Court (Original Side) Rules before “List of claims” it has been mentioned, that the following is a list of the rights, interests, charge and claims to which the said lands and premises are supposed to be liable. The applicant’s advocate is in fact is trying to make an amendment in the Form No.78 itself, which according to me cannot be done. All that the Form No.78 does is, it is making a prospective purchaser aware of claims against the property to be sold in auction.

9) The society’s advocate has also furnished a copy of the order passed in *Writ Petition No.8631 of 2025 (Tanvi’s Diamoda*

Cooperative Housing Society Ltd. V/s. State of Maharashtra & ors.).

In the said order, it seems that the society has not filed proceedings for recovery of the society's dues before the Co-operative Registrar. However, in paragraph nos. 23, 24, 25 and 26, the Court has come to a finding that though the quantum of arrears has not been challenged, however, it cannot happen that the society's dues would not be cleared.

10) By the present "List of claims" being mentioned in Form No.78 all that is done is prospective purchaser is put to notice, that there are society's dues pending, however, it cannot happen that the society's dues would not be cleared. Though it has been pointed out to me that the matter before the Registrar of the Co-operative Society u/s. 154-B 29 of the MCS Act has been heard and closed for orders on 9/2/2023 and till date an order has not been passed.

11) I need not go into details of Section 154-B 29 proceedings because in Form No.78, it has been mentioned that the following is a list of the rights, interests, charge and claims to which the said lands and premises are supposed to be liable before the "List of claims". Hence, I do not find any perversity in the of the Commissioner for Taking Accounts. In my view, there are no merits in the present

interim application and the same stands **dismissed**.

12) It is made clear that I have not gone into the merits of the claim application filed u/s. 154-B 29 of the MCS Act.

(Rajesh S. Patil, J.)