

(2013) 04 BOM CK 0049

Bombay High Court

Case No: Chamber Summons No. 1476 of 2008 in Execution Application No. 164 of 2008 in
Secunderabad O. Suit No. 110 of 1998

T.C.I. Finance Limited
and Dr. Mahalaxmi
Srinivasan

APPELLANT

Vs

Shaan Interwell (I) Ltd.
and Others

RESPONDENT

Date of Decision: April 22, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 11(2), Order 21 Rule 46, 60

Citation: (2013) 4 ALLMR 202 : (2014) 3 BomCR 766 : (2013) 4 MhLj 582

Hon'ble Judges: Anoop V. Mohta, J

Bench: Single Bench

Advocate: Kamal Khata alongwith Mr. Manish Bohra instructed by M/s. A.S. Khan and
Associates, for the Appellant; Shilpa Kapil, for the Respondent

Final Decision: Allowed

Judgement

Anoop V. Mohta, J.

The applicant, is wife of defendant/judgment debtor-respondent no. 3, who along with other respondent's took loan/finance from the plaintiff sometime in 1994. There were defaults, therefore the suit came to be filed to recover the amount. By the judgment dated 1st August 2006, decree was passed against all. Plaintiff filed this Execution Application at Mumbai based upon the decree at Secunderabad (Andhra Pradesh) under Order 21, Rule 11(2) CPC (C.P.C.). The requirements of Rule 1 to 14 which need to be ascertained by the Court before taking any action as prayed. The sufficient reason and detail must be provided for attachment of movable or immovable property, specially when it is not in judgment debtor's possession. For attachment of immovable property, more caution and care must be taken. The decree-holder can not attach immovable property without providing

documents and details of ownership. An execution application should be clear and with details as required. Any order passed, thereon in most of the time without notice and as its affecting rights will have serious consequences specially on the third party/person. To claim damages for such illegal or unauthorised action or attachment is long drawn process specially for the third person, apart from delay in getting order of attachment or such order released or withdrawn. There is a procedure under C.P.C. to ask for details of the property, apart from security of the decretal amount. If the case is made out, for withdrawal or release of such order/attachment, the Court may not go in for the trial. The requirement is early determination of the issue or objections, in the execution application itself, not by a separate suit.

2. By affidavit, they averred that the flat in question i.e. 3/45, Gokul Swastik Park, Chembur, Mumbai 400 071 is ownership residence of respondent no. 3. There is no further averments in the affidavits and/or supporting documents to show that the flat is owned by respondent no. 3 and/or has power to dispose off it u/s 60 of C.P.C. The flat was not even mortgaged with the plaintiff.

3. The office, based upon the averments so made, issued warrant of attachment under Order 21, Rule 46 C.P.C. based upon the property in question, which has been attached sometime in April, 2008.

4. The applicant has taken out this Chamber Summons and prayed to raise the attachment levied on the premises and the movable property therein supported by the documents to show ownership and title for the same.

5. The plaintiffs, opposed by filing reply. Applicant has filed rejoinder to show and reiterate the title/ownership of the premises. The compilation of documents so filed on record is sought to be challenged by the learned counsel appearing for the plaintiff on the grounds including the capacity of the applicants to purchase the property at the relevant time.

6. The immovable property of any person can only be attached even though there is ex-parte decree or decree, subject to affirmative averments with supporting documents to show the ownership/title. Admittedly, the property in question was not mortgaged and/or no charge whatsoever created over it.

7. The applicant has placed on record the documents to show the title/ownership and other supporting share certificates and demonstrated that the properties have been owned by her. Respondent No. 3's residence address as shown itself, cannot be the reason for decree-holder to attach it. All these things are missing in the present case. The averments and the submissions are based upon the information available or collected at the relevant time by the plaintiffs.

8. There are ample documents on record to show that the property / premises are in the name of the applicant since 30th June, 1985. There is agreement of sale of the

year 1991 also. The supporting letters and the receipt issued by the society apart from income tax returns of the year 1993 ranges from the year 1984-1993 supports her case. The finance even if any advanced by the plaintiff to the respondents, including respondent no. 3, in the year 1994, cannot be the foundation to say that the decree so passed in the year 2008 based upon the suit of the year 2006 itself is sufficient to attach the immovable or movable property as it is shown in the name of respondent no. 3. I am inclined to observe that the residential address shown by itself cannot be a reason and or foundation for the judgment debtor decree holder to attach the immovable property or the movable, without positive averments and the documents. The title and/or ownership of any person thus cannot be objected by a third person like the plaintiff by making just allegations and/or denying the ownership of the parties. There is contra material placed on record by the plaintiff. There is no case that the documents and/or transaction and/or ownership so referred by the applicant was created after and/or pending litigation between the parties.

9. Therefore, the submissions by the learned counsel appearing for the plaintiff that the applicant was not even in a position to earn income and was not in a position to purchase this property; respondent No. 3 purchased the property, in the name of applicant; and thereby they are entitled to attach such properties are unacceptable, firstly when the plaintiffs themselves failed to make positive averments on record and/or bring any supporting material to attach the immovable property owned by the applicant. The documents as placed on record including originals clearly show, the ownership/title of the applicant since 1985 itself. It remained undisturbed till date. The supporting documents so filed by the applicant therefore, just cannot be overlooked at the instance of the applicant in the facts and circumstances of the case, basically when there is no contra material placed on record by the plaintiff.

10. Therefore, taking overall view of the matter, I am inclined to observe that there is no question of even sending the matter for early trial, for verification of documents and/or transaction. The case is made out by the applicant to grant the prayers so sought.

11. Resultantly, I am inclined to observe that the warrant of attachment so issued at the instance of plaintiff based upon the vague averments, is illegal, impermissible and liable to be withdrawn/vacated. Therefore, following order.

12. Resultantly the Chamber Summons is allowed in terms of prayer clause (a). No costs. It is made clear that execution so filed by the plaintiffs to proceed in accordance with law.