

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
COMM. EXECUTION APPLICATION NO. 266 OF 2020  
IN THE MATTER OF REF. NO. ARB/COS/05/2013  
(Against Respondent Nos. 5 to 7)**

The Cosmos Co-op. Bank Ltd. .... Plaintiff /  
Decree Holder

V/s.

Krishna Structural Steel (I.) Ltd. & Ors. .... Defendant /  
Judgment Debtor

And

Mr. Dhiraj Popatlal Nandu  
Mrs. Jyoti Dhiraj Nandu  
Mr. Jintendra Popatlal Nandu  
Mrs. Hetal Jitendra Nandu .... Third Party Claimant

Mr. Jayant Gaikwad a/w. Ms. Pushpa Prajapati, Advocate for Decree Holder.

None present for Defendant / Judgment Debtor.

**Before : Mrs. Shonali K. Dighe**  
Commissioner for Taking Accounts  
Date : 03<sup>rd</sup> October, 2023

**CALLED FOR DECIDING CLAIM :**

- Sr.no.9
1. Heard Advocate appearing on behalf of Decree Holder. Today matter is listed for Deciding Claim.
  2. In the present matter, Warrant for Sale

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dated 01<sup>st</sup> December, 2021 and lodged in this office on 07<sup>th</sup> December, 2021 by Advocate for Decree Holder for settling Proclamation of Sale against the properties mentioned therein viz.

(i) right, title and interest of Bhartiben Hasmukhlal Doshi i.e. Judgment Debtor No. 5 in respect of property situated at Flat No. 13, First Floor, "B" Wing, Surekh CHS Ltd., 24, Dadabhai Road, Vile Parle (West), Mumbai – 400 056;

(ii) right, title and interest of Popatlal Bachubhai Nandu i.e. Judgment Debtor No. 6 herein in respect of property situated at Flat No. 52, 5<sup>th</sup> Floor, Chandraprabha, Nehru Road, Vile Parle (East), Mumbai – 400 057 and

(iii) right, title and interest of Dhiraj Popatlal Nandu i.e. Judgment Debtor No. 7 herein in respect of property situated at Flat No. 41, 4<sup>th</sup> Floor, Chandraprabha Nehru Road, Vile Parle (East), Mumbai – 400 057.

3. It appears that Notice to Judgment Debtors under Rule 579 and Notice to Claimants under Rule 581 of the Bombay High Court (Original Side) Rules were issued. An Affidavit of Service, proving the service of both Notices, is on record.

4. Pursuant to the Notice to Claimants, time for filing claims by Third Party Claimants was 05<sup>th</sup> February, 2022. Accordingly, this office

received an Affidavit dated 03<sup>rd</sup> February, 2022, recording the objections of Mr. Jitendra Popatlal Nandu and Mrs. Hetal Jitendra Nandu, which was filed within prescribed time limit.

5. The Third Party Claimant have stated that Flat No. 52 was purchased by Mr. Jitendra Popatlal Nandu through an agreement dated 24<sup>th</sup> December, 1991, which is duly registered with the Sub-Registrar of Assurances, Mumbai Suburban. It has been further stated that the society has issued a share certificate in the name of Mr. Jitendra Popatlal Nandu. It is further stated that, vide registered gift deed dated 31<sup>st</sup> March, 2021, the said flat has been gifted to Mrs. Hetal Jitendra Nandu, who is now the legal owner of the said flat.

6. It is further stated that Flat No. 52, situated in Chandraprabha Co-operative Housing Society Ltd., belongs to Mrs. Hetal Jitendra Nandu and, therefore, cannot be subject to the Warrant of Attachment. It is further requested that the said property be deleted and released from the attachment mentioned in the subject Notice.

7. This office received a letter dated 05<sup>th</sup> February, 2022 from Mrs. Jyoti Dhiraj Nandu (Co-Parcener of Dhiraj Popatlal Nandu HUF), requesting an extension of time until 12<sup>th</sup> February, 2022 to file an objection Affidavit in reference to the Notice dated 20<sup>th</sup> December, 2021, issued under Rule 581

of Bombay High Court (Original Side) Rules 1980.

8. Subsequently, this office received an Affidavit of Claim from Dhiraj P. Nandu [Karta for Dhiraj Popatlal Nandu (HUF)], on 8<sup>th</sup> February, 2022. However, the said Affidavit, dated 08<sup>th</sup> February, 2022, was filed beyond the prescribed time limit.

9. It is stated that Flat No. 41 in Chadraprabha Co-operative Housing Society was purchased by Dhiraj Popatlal Nandu (HUF) through an agreement of sale dated 04<sup>th</sup> April, 1998, which was duly registered with the Sub-Registrar of Assurances, Mumbai Suburban. It is further stated that, the said Flat No. 41 belongs to Dhiraj Popatlal Nandu (HUF) and, therefore, cannot be subject to the Warrant of Attachment. It is further requested that the said property be deleted and released from the attachment.

10. Vide Order dated 23<sup>rd</sup> February, 2023, the office was directed to issue a Notice to both societies, viz. "Chandraprabha" and "Surekh Co-op. Hsg. Soc. Ltd.". The said Notice dated 10<sup>th</sup> March, 2023, was duly served to both societies.

11. Pursuant to Notice dated 10<sup>th</sup> March, 2023, Secretary of Surekh Co-op. Hsg. Soc. Ltd. filed a reply dated 23<sup>rd</sup> March, 2023. It is stated in the said letter that, as per the societies record, the owner of the premises is the

late Mrs. Bharatiben Hasmukhlal Doshi who is Judgment Debtor No. 5 in the present case. The flat has an approximate built-up area of 620 sq.ft., and there are no outstanding dues as per the societies record. A copy of the Share Certificate reflecting the name of Bharatiben Hasmukhlal Doshi was enclosed with the reply.

12. Ld. Advocate for the Decree Holder vehemently opposed the statements made in the Affidavit raising objections, which was filed by Mr. Jitendra Popatlal Nandu, Mrs. Hetal Jitendra Nandu and Dhiraj P. Nandu [Karta for Dhiraj Popatlal Nandu (HUF)].

13. The Ld. Advocate submits that the Third Party Claimants have neither filed any application for lifting the attachment before the Hon'ble Court nor obtained any stay order on the present execution proceedings. The Ld. Advocate for Decree Holder further contends that the claim of Dhiraj P. Nandu [Karta for Dhiraj Popatlal Nandu (HUF)], a Third Party Claimant, cannot be entertained as it has been filed beyond the prescribed limitation period. The Ld. Advocate emphasizes that, there is no stay on the execution proceedings; therefore, this forum may proceed with the matter.

14. In view of the above, the contentions / submissions made in the Affidavits filed by Third Party Claimants have been perused.

15. In my view, the claims of Mr. Jitendra Popatlal Nandu and Mrs. Hetal Jitendra Nandu can be considered and to be appended and included in the Proclamation of Sale. Similarly, the information provided by Surekh CHS. Ltd. can also be appended and included in the list of Proclamation of Sale as per the provisions of Order XXI Rule 66(2)(e) of the Code of Civil Procedure. However, the claim filed by Dhiraj P. Nandu [Karta for Dhiraj Popatlal Nandu (HUF)] cannot be included in the list of Proclamation of Sale as it is filed beyond the time prescribed in Notice under Rule 581 of Bombay High Court (Original Side) Rules 1980. This is pertinent to note here that, Third Party Claimants have not filed any application before the Hon'ble Court for raising attachment. This forum cannot extend the time limit prescribed in the Notice issued as per provisions of law.

16. In the present matter parties are aware that the matter is regarding the settlement of Proclamation for Sale and this office cannot decide any other issue except for incorporating the details of the property in the Proclamation of Sale. Questions regarding granting extension of time for filing Affidavit of Claim, raising attachment and title cannot be raised before this office and shall be determined by the Court dealing with the claim or objection.

17. Therefore, in my view, in the present

matter, Proclamation of Sale can be issued and accordingly, matter to be listed for settlement of Proclamation for Sale. Advocate for the Decree Holder is directed to file the draft Proclamation of Sale along with its soft copy on/or before next date of hearing.

18. Matter is adjourned to 26<sup>th</sup> October, 2023. Office to place the matter under the caption 'for Settling Proclamation of Sale'.

**03.10.2023**

**Commissioner for Taking Accounts**