

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
EXECUTION APPLICATION NO. 129 of 2012
ARB/CASE/ARB/SVC/R/124/2009**

The Shamrao Vithhal Co-op. Bank Ltd. Decree Holder
Vs.
Apeksha Enterprises & Ors. Judgment Debtor
And
Vijay Warty Third Party Claimant

Ms. Supriya Gurav i/b. Mr. Vishal Narkar, Advocate for Decree Holder

Before : Mrs. Shonali K. Dighe
Commissioner for Taking Accounts
Date : 28th August, 2023

CALLED FOR DECIDING CLAIM :

1. Pursuant to letter dated 26th April, 2023, Suyash Co-op. Hsg. Soc. Ltd. has filed their Reply. It is, inter-alia, stated in the said letter that Mrs. Ahilya Purushottam Warty was the owner of Flat No. 5, Second Floor, Suyash CHS Ltd. and the said flat was mortgaged to M/s. Reliance Capital Ltd., Mumbai in the year 2007. Mrs. Ahilya Purushottam Warty had nominated Mr. Purushottam Warty in respect of the said flat. Mrs. Ahilya Purushottam Warty expired on 30th December, 2009. Thereafter, Mr. Purushottam Warty has also expired. It is further stated in the said letter that the said flat is currently being occupied by Mr. Vinay Purushottam Warty, Judgment Debtor No. 2 herein and his family. Mr. Vinay Purushottam Warty has availed loan by mortgaging the said flat to Axis Bank whereas Society has not granted any NOC. It is further stated that no application has been made till date to the society for transfer of shares of the Society by the legal heirs / Nominee.

2. As per Notice to Claimants issued under Rule 581 of Bombay High Court (Original Side) Rules, time to file claim was 10th July, 2013 and Mr. Vijay Warty has filed claim on 15th July, 2013 alongwith Affidavit in Support of claim affirmed on 12th July, 2013.

3. Perused Affidavit of Claim filed by Vijay Warty. It is the contention of Third Party Claimant that he is the eldest son of Late Ahilya Warty and brother of

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Opponent No. 2. It is the contention of Claimant that Opponent No. 2 is not the sole owner of the immovable property mentioned in Warrant of Sale and the said flat belongs to children and grand children of the Claimant and Opponent No. 2. He further states that without a Will or Succession Certificate of Late Ahilya Warty, the said residential flat cannot under any circumstances, claim to be the sole ownership of Vinay Warty, Opponent No. 2 herein. The claimant has prayed in the said Affidavit to withdraw the Warrant of Attachment sought to be levied by the Opponent in respect of the said property forthwith.

4. It appears that even though time to file claim was 10th July, 2013. However, Mr. Vijay Warty has filed claim in this office on 15th July, 2013. The said Affidavit in Support of claim is affirmed on 12th July, 2013 which was required to be filed in this office on or before 10th July, 2023. Hence, the said Affidavit is affirmed beyond limitation of time to file claim.

5. Ld. Advocate for Decree Holder vehemently opposed the contentions raised by Third Party Claimant. In the Affidavit filed by Third Party Claimant, he has prayed for raising of attachment levied by Sheriff of Bombay; whereas she has not filed any Application in that behalf before the Hon'ble Court. Ld. Advocate for Decree Holder further submits that the claim of the Third Party Claimants cannot be considered as the same is filed beyond limitation.

6. In view of above, claim of Vijay Warty cannot be appended in the list of Proclamation of Sale; whereas information provided by Society to be appended in the Proclamation of Sale as per provisions of Order XXI Rule 66(2)(e) of CPC.

7. Ld. Advocate for Decree Holder to file draft Proclamation of Sale alongwith its soft copy in this office.

8. Matter is adjourned to 6th September, 2023. Office to place the matter under the caption 'for Settling Proclamation of Sale'.

28.08.2023

Commissioner for Taking Account