

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
EXECUTION APPLICATION NO. 223 OF 2022**

Santosh B. Gupta and Anr. Claimants
V/s.
1. ~~Sagarmal Chunilal~~ (Since Deceased)
2. Gopal Sagarmal Verma Respondents
And
Mrs. Santosh Surajmal Kumawat Third Party Claimant

Mr. Akshay Patil i/b. M/s. Ajay Law Associates, Advocate for Claimants.
None present for Respondents.

Mr. Bhagwandas Gupta, Secretary of Dharnidhar Vastu Vaibhav C.H.S.
Ltd., Third Party Claimant in EXA No. 221 of 2022 present in person.

None present for Mrs. Santosh Surajmal Kumawat, Third Party Claimant.

Before : Mrs. Shonali K. Dighe
Commissioner for Taking Accounts
Date : 17th October, 2024

CALLED FOR DECIDING CLAIM :

- Sr.no.9
1. Heard Ld. Advocate appearing on behalf of Claimants.
 2. Today, matter is listed for Deciding Claim. Pursuant to the Affidavit of Claim on the attached property dated 18th June, 2024, filed by Third Party Claimant Mrs. Santosh Surajmal Kumawat. This
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office has received Letter dated 10th July, 2024 duly signed by Secretary of Dharnidhar Vastu Vaibhav C.H.S. Ltd. In the said letter society has mentioned that being Owner / Developer of the Building Respondent has not enrolled himself as a member of the society and therefore no share certificate is issued.

3. While furnishing details, Society has given name of the owner of the premises as per record of the society as Mr. Gopal Sagar Verma. Further society has mentioned outstanding dues which are about Rs. 33,50,090/- (Thirty Three Lakh Fifty Thousand Ninety Only). Property taxes are of Rs. 43,33,155/- (Forty Three Lakh Thirty Three Thousand One Hundred Fifty Five only) and amount due as on 31st March, 2024 towards installation of fire fighting system in the society building and other necessary and urgent work done by the society is of Rs. 15,96,912.00/- (Fifteen Lakhs Ninety Six Thousand Nine Hundred Ten only).

4. Dharnidhar Vastu Vaibhav C.H.S. Ltd., has filed Affidavit of Claim in Execution Application No. 221 of 2022, thereby stating therein that, Respondents, Judgment Debtors have not paid and provided any services as required for the safety and security of the members of the said society as mentioned in Paragraph No. 5 of the said Affidavit. It is further stated that, there are outstanding amounts towards maintenance charges, property tax, amount due as on 31st March, 2024 towards

installation of fire fighting system in the society building and other necessary and urgent work-done etc. It is further stated that, Respondent is responsible and liable to pay all water charges, taxes, charges etc., until the entire property is conveyed to the said society. And the Claimants are legally entitled to recover from the said Respondent and it is further prayed that the claim of the society be considered and paid to the society out of the estate of the Respondent. Therefore, the claim of the society can be appended in the Proclamation of Sale, under provisions of Order XXI, Rule 66 (2) (e) of Civil Procedure Code, 1908.

5. I have perused Affidavit dated 18th June, 2024 filed by Radha Gopal Verma. The said Affidavit is filed in the capacity of being Power of Attorney Holder of Mrs. Santosh Surajmal Kumawat, Third Party Claimant. It was the contention of Third Party Claimant, that she is daughter of Sagarmal Chunilal. However, she was not impleaded as a Legal Heir in the proceedings of Arbitration and as a daughter she is still has 1/3rd undivided share in the attached flat. It was further contended in the said Affidavit that her 1/3rd share in the flat ought to be taken on record.

6. I have perused Affidavit in reply to the Affidavit of claim in the attached property filed by the Third Party Claimant dated 11th July, 2024 filed by director and authorized person of Claimant. Ld. Advocate for Claimant has submitted that, Third Party Claimant is aware of the Arbitration

Proceedings and she also use to attend the said Arbitration Proceedings along with her husband and Respondent No. 2 hereto. Ld. Advocate further submits that, Respondent No. 2 i.e. Gopal Verma represented the Arbitrator, that his father has left a Will and as per the said Will he is entitle to entire share to the Flat No. 1 and his two sisters have no right, title and interest in the said flat and therefore his two sisters have no interest in his father's assets and thereby requested the Arbitrator Tribunal not to implead his two sisters and since he is already a party as Respondent No. 2 in the matter persuaded the Arbitrator to continue the proceedings without impleading the two sisters in view of the said will dated 27th February, 2017. Ld. Advocate further stated that, Arbitrator allowed Respondent No. 2 to proceed with the Arbitration proceedings and did not implead the two sisters.

7. Ld. Advocate for Claimant submits that, even though Third Party Claimant has filed their claim they have not obtained any stay order for the Execution Proceedings nor they have filed any application for raising of attachment.

8. In view of the above, said claim of Mrs. Santosh Surajmal Kumawat cannot be included in the list of claims to be appended in the Proclamation of Sale. However, attention of Ld. Advocate for Decree Holder is invited to the provisions of Order XXI, Rule 66 (2) (e) of Civil Procedure Code, 1908, and he is requested to make submission in inclusion of the said information in the draft of Proclamation of Sale. 5

9. I have heard Advocate for Claimant and Secretary of the society at length. Today, no-one is present on-behalf of Respondent as well as Third Party Claimant. Already time was granted to Third Party Claimant, whereas, they remained absent today.

10. Therefore, in my view, in the present matter, Proclamation of Sale can be issued and accordingly, the matter to be listed for Settlement of Proclamation of Sale.

11. Matter is adjourned to 23rd October, 2024. Office is directed to list the matter under caption for **‘Settlement of Proclamation of Sale’**.

17.10.2024

Commissioner for Taking Accounts