

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
EXECUTION APPLICATION NO. 2225 OF 2016
ARB. REF. NO. COS/28 OF 2015**

The Cosmos Co-op. Bank Ltd. Decree Holder
V/s.
R K D Telecom Pvt. Ltd. & Ors. Judgment Debtor
And
State Bank of India Third Party Claimant

Ms. Pushpa Prajapati i/b. Mr. Jayant Gaikwad, Advocate for Decree Holder
Mr. Vivek Sawant, Advocate for Third Party Claimant (State Bank of India)

Before : Mrs. Shonali K. Dighe
Commissioner for Taking Accounts
Date : 09th November, 2023

CALLED FOR SETTLING PROCLAMATION OF SALE :

1. Today, matter is listed for settling Proclamation of Sale of the properties mentioned at Sr. Nos. 1 and 2 of Warrant of Sale i.e. (i) ownership residential immovable premises situated at Flat Nos. 102/103, Vasant Apartment, J.P. Nagar Road No. 1, Goregaon (East), Mumbai – 400 063 and (ii) immovable business premises situated at Unit No. 4, Gujarat Industrial Estate, Vishweshwar Nagar, Off. Aarey Road, Goregaon (East), Mumbai – 400 063.

2. Ld. Advocate for Decree Holder submits that Respondents have neither filed any Application for raising of attachment against all the three properties mentioned in Warrant of Sale nor they have obtained any stay order with regard to said property from the Hon'ble Court. I have already observed in my order dated 9th October, 2023 that matter can be proceeded for issuing Proclamation of Sale in respect of two properties mentioned at Sr.No. 1 and 2 of Warrant of Sale. As Advocate for Decree Holder has agreed to keep third property aside for the time being, question regarding issuance of Proclamation of Sale for third property will be decided at the later stage.

3. Ld. Advocate for Decree Holder has also pointed out that Respondent No. 3 Nikita Ramesh Dedhia has filed notarized Affidavit dated 14th March, 2019 in Execution Application No. 2200 of 2016. The said Affidavit is filed in reply to Notice dated 14th January, 2019 issued in Warrant of Sale. In the said Affidavit, she herself has stated that she is the absolute owner of Flat No. 102/103 by virtue of Release Deed and Gift Deed. The said Affidavit is

solemnly affirmed and statements made therein were made on oath by Nikita Dedhia i.e. Respondent No. 3 herein. Ld. Advocate further submits that in view of statements made on oath in the Affidavit filed in Warrant of Sale in Execution Application No. 2200 of 2016 it is clear that Flat Nos. 102/103 belongs to Respondent No. 3 and she is the absolute owner of the said flat and as such, Proclamation of Sale can be settled against the said property.

4. Ld. Advocate for Decree Holder submits that they have already applied before Collector Office for documents pertaining to Index II of the property mentioned in Warrant of Sale and she undertakes to provide the same by next date. Undertaking accepted.

5. For the said purpose, matter is adjourned to 13th December, 2023. Office to place the matter under caption 'For Settlement of Proclamation of Sale'.

6. Ld. Advocate Shri Vivek Sawant has filed Affidavit to place on record documents evidencing creation of charge in favour of State Bank of India over the properties of the Opponent No. 2 i.e. Smita Ramesh Dedhia on behalf of State Bank of India, Third Party Claimant.

7. Ld. Advocate for Third Party Claimant submits that he has filed Interim Application (Lodging) No. 30234 of 2021. In view of pendency of Interim Application, Ld. Advocate for Decree Holder submits that at present he does not wish to proceed further with immovable property situated at Unit No. 5, Mezzanine Floor and First Floor, Equal Star Industrial Estate, CTS No. 268, Plot No. 12, Survey No. 73, Hissa No. 1, Village Pahadi, Vishweshwar Road, Off Aarey Road, Goregaon (East), Mumbai – 400 063.

8. Matter pertaining to Third Party Claimant wherein claim is already filed by State Bank of India is required to be kept pending.

9. In view of above, matter is adjourned to 13th December, 2023. Office to place the matter under caption 'For Settlement of Proclamation of Sale'. At the request of Ld. Advocate for Third Party Claimant, matter is adjourned to 22nd January, 2024. Office to place the matter under caption 'For Directions.'

09.11.2023

Commissioner for Taking Accounts