

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.612 OF 2004
IN
CHAMBER SUMMONS NO.242 OF 2004
IN
EXECUTION APPLICATION NO.18 OF 2004

1. Mrs.Kalpu R. Gandhi & anr.

.. Appellants

v/s.

1. Sumikin Bussan International
(Hong Kong) Limited & anr.

..Respondents

Mr.H.N.Thakur i/by M/s.T.Jariwala & Associates for
appellants.

Mr.Chetan Kapadia with Ms.Trishna i/by M/s.Khaitan
& Co. for respondents.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 30th September, 2004

P.C.

Heard Mr.H.N.Thakur, the learned counsel for
the appellants and perused the impugned order.

2. On the basis of the unregistered memorandum of understanding dated 6th June, 2003 entered into between the present appellants and Manhar Lal T. Mody (one of the judgment debtors), the application was made by the present appellants for raising the attachment of residential flat No.201 on 20th floor of the Building Silver Arch, situate at 66, Nepean Sea Road, Mumbai together with two car parking spaces Nos.12 and 85 on P1 and P2 levels of the said building. The said application came to be

rejected by the learned Chamber Judge. Aggrieved thereby, the present appeal has been preferred.

3. The agreement for sale by itself does not create any interest in or charge on the immovable property. This is what is provided in section 54 of the Transfer of Property Act. The person has to establish his right, title or interest in the property independent of the judgment debtor in the application under Order 21 Rule 58 CPC for raising the attachment. Under section 64 of the Code of Civil Procedure, any private transfer or delivery of the property after the attachment is void. However, sub-section (2) of section 64 carves out an exception in respect of private transfer or delivery of the property attached or any interest therein made in pursuance of any contract entered into and registered before the attachment. Firstly as already noticed above the agreement of sale by itself does not create any interest in or charge on the immovable property. It only entitles the party to seek specific performance. Secondly for getting benefit of section 64(2) CPC, the agreement is not only required to be of the date before the property was attached but also such agreement has to be registered. The learned counsel for the appellant sought to urge that such agreement in law was not required to be registered as it related to the shares of the Co-operative society, we are afraid,

the argument of the learned counsel for the appellants cannot be accepted.

4. No case for raising attachment was made out before the learned Chamber Judge. Appeal, accordingly, does not deserve to be admitted and is dismissed in limine.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)