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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 341 OF 2014
IN
EXECUTION APPLICATION NO. 421 OF 2011
IN
SUIT NO. 279 OF 2005**

Pushp Holdings Ltd	...Plaintiff
<i>Versus</i>	
Rhea Arts & Ors	...Defendants
<i>And</i>	
Jitendra M Nirula & Anr	...Applicants

**WITH
CHAMBER SUMMONS NO. 1676 OF 2015
IN
CHAMBER SUMMONS NO. 341 OF 2014
IN
EXECUTION APPLICATION NO. 421 OF 2011
IN
SUIT NO. 279 OF 2005**

Pushp Holdings Ltd	...Plaintiff
<i>Versus</i>	
Rhea Arts & Ors	...Defendants
<i>And</i>	
Kusum Jitendra Nirula	...Applicant

Mr Amogh Singh, with Pavan S Patil, for the Applicant in both the

Chamber Summonses.
Ms Mamta Sadh, i/b Sudhakar Lakhani, for the Plaintiff/Decree Holder.

CORAM: G.S. PATEL, J
DATED: 6th March 2017

PC:-

1. Chamber Summons No. 341 of 2014 is filed by Jitendra and Kusum Nirula, the parents of the 4th Defendant, Manish Nirula. The Applicants say that the Plaintiff-Decree Holder in execution of the decree dated 18th February 2005 in Suit No. 279 of 2005 wrongly attached their residential premises at 803/804, Belscot Towers, Lokhandwala Complex, Andheri (West), Mumbai 400 053 and various movables in that flat.
2. This Chamber Summons is supported by an Affidavit by Jitendra. He said Kusum and he first purchased Flat Nos. 703/704 in 1986 in that building. They then decided to exchange these two flats with Flat Nos. 803/804 previously owned by Ashok Goel and his wife Nita Goel. Paragraph 5 of that Affidavit says Jitendra and Kusum were thus the joint owners of these flats. This statement is somewhat inaccurate. The annexures to this Affidavit show there were two flats, and Jitendra and Kusum held one flat each, though these seem to have been combined into a single unit.
3. Jitendra Nirula died on 23rd September 2015 while these applications were pending. His widow Kusum then filed second Chamber Summons No. 1656 of 2015 to amend the earlier Chamber

Summons. Here she says that Jitendra gifted his flat to her by a registered Gift Deed dated 21st May 2007. Why this does not find mention in Jitendra's Affidavit in Support of the first Chamber Summons is unexplained and, evidently, is something that we will never know.

4. Given the facts of the case, and since it is obvious that the 4th Defendant had no right, title and interest in the property attached, I believe I must allow the first Chamber Summons fully, although perhaps the correct thing to do is to first allow the second Chamber Summons directing amendment of the first Chamber Summons and then allow the first Chamber Summons. In either case, it makes no difference.

5. The two Chamber Summonses are disposed of by the following order:

- (a) The attachment levied in respect of Flat Nos. 803/804 is vacated and raised as is the attachment on the movables therein;
- (b) No further execution proceedings are to take place in respect of these flats or the furniture and fittings in that flats;

6. It is however clarified that the Plaintiff is at liberty to proceed against the 4th Defendant in respect of his personal assets including any part of his late father's estate that may have come to his hands.

7. Both the Chambers Summonses are disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)