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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1867 OF 2010
IN
EXECUTION APPLICATION NO. 441 OF 2006
IN
SECUNDERABAD O.S. SUIT NO. 313 OF 1997**

TCI Finance Limited	...Plaintiff
<i>Versus</i>	
Delvin Electric Private Limited & Anr	...Defendants
<i>And</i>	
Kuber Housing & Investment Pvt Ltd	...Objector/ Claimant

**WITH
CHAMBER SUMMONS NO. 1603 OF 2016
IN
CHAMBER SUMMONS NO. 1867 OF 2010
IN
EXECUTION APPLICATION NO. 441 OF 2006
IN**

SECUNDERABAD O.S. SUIT NO. 313 OF 1997	
TCI Finance Limited	...Plaintiff
<i>Versus</i>	
Delvin Electric Private Limited & Anr	...Defendants
<i>And</i>	
Kuber Housing & Investment Pvt Ltd	...Objector/ Claimant

Ms Sweedal Karkada, *for the Objector/Claimant.*
Mr Deepak Sharma, *with Mr Prakash Kadam, for DMS Legal, for*
the Plaintiff.

CORAM: G.S. PATEL, J
DATED: 21st June 2018

PC:-

**CHAMBER SUMMONS NO. 1867 OF 2010 IN EXECUTION
APPLICATION NO. 441 OF 2006 IN SECUNDERABAD O.S.
SUIT NO. 313 OF 1997**

1. The Chamber Summons seeks to raise an attachment on a commercial office premises, A-1, Inder Mohini Cooperative Housing Society Ltd, 1/22, Dadabhai Road, Linking Road (Extension), Santacruz (West), Mumbai 400 054. The Applicant is one Kuber Housing & Investment Pvt Ltd (**“Kuber”**). The Suit was originally filed by TCI Finance Limited, a non-banking financial company, in the Civil Court in Secunderabad. It obtained a decree against the 1st Defendant, Delvin Electric Private Limited (**“Delvin”**) and the 2nd Defendant, Rajeev M Dixit (**“Dixit”**) who was both a director and a guarantor for a loan taken by Delvin.
2. Kuber claims that this property belongs to it absolutely. The narration in the Affidavit in Support of this Chamber Summons does not, unfortunately, establish that.

3. The property originally belonged to one Apro Exports Private Limited (**“Apro Exports”**), which acquired it under a Deed of Sale dated 15th January 1993. One TVS Lakshmi Credit Ltd (**“TVS Lakshmi”**) granted a loan of about Rs. 40 lakhs to Apro Exports. Dixit was a guarantor for that loan and security was created in respect of these very premises. Apro Exports deposited the title deeds to these premises with TVS Lakshmi, thus creating an equitable mortgage in favour of TVS Lakshmi.

4. On 17th July 1998, TVS Lakshmi executed a Deed of Assignment with one Harita Finance Ltd (**“Harita Finance”**) to which Apro Exports was also a party. TVS Lakshmi assigned its right and interest under the outstanding loan to Harita Finance. Apro Export was a confirming party to this transaction.

5. Later, Apro Exports granted a power of attorney to Mahalaxmi Factoring Services Ltd (**“Mahalaxmi Factoring”**). This power of attorney was registered. It is stated in the Affidavit that the loan was then settled—the details of this are not set out—and a deed of transfer of the property was executed on 29th January 2005 which was registered with Sub Registrar of Assurances. A copy of that document is from page 79 onwards. It seems that in this transaction Apro Exports was represented by its constituted attorney Mahalaxmi Factoring and it purported to transfer the flat to Kuber. Clause 5 says that Harita Finance had in turn sold its book debts to Mahalaxmi Factoring and that Kuber was a recovery agent for Mahalaxmi Factoring.

6. All this is, at the very least, most unusual. The peculiarity of this transaction is that although there is a recital that Harita Finance assigned its assets to Mahalaxmi Factoring which in turn took a power of attorney from Apro Exports, Harita Finance was not a party to this deed of settlement and there are no details given of this alleged transaction with Harita Finance. Mahalaxmi Factoring was the Constituted Attorney for Apro Exports and Kuber was Mahalaxmi Factoring's recovery agent. This is all rather too convenient.

7. It is impossible to tell therefore from this narrative whether Kuber has properly acquired title to the property in question. It claims to have intervened in some proceedings filed by the State Bank of India in the DRT. However there is no record or evidence of Kuber having obtained any order of a Court on an adjudication of its title.

8. Having regard to the nature of the document, I am not at all satisfied that it can be said that title has passed to and vested in Kuber.

9. The present Chamber Summons is dismissed. It is open to Kuber to adopt the necessary proceedings to have its title adjudicated. To that extent all contentions are left open. There is, however, no question of staying further execution at the instance of Kuber.

10. No costs.

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SUMMONS NO. 1867 OF 2010 IN EXECUTION
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11. In view of the foregoing, this Chamber Summons No. 1603 of 2016 is disposed of as infructuous.

(G. S. PATEL, J)