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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS (L) NO. 1187 OF 2018
IN
EXECUTION APPLICATION NO. 1641 OF 2018
IN
SUIT NO. 3513 OF 1995**

Harsharansingh Pratapsingh Gujral & Ors	...Applicants/ Plaintiffs
<i>Versus</i>	
Lokhandwala Builders Limited & Ors	...Respondents/ Defendants

Mr RN Narula, *with Ms Ekta Pandav, i/b Jhangiani, Naural & Associates, for the Plaintiff.*
Mr Karl Tamboly, *with Mr Ashraf Diamondwala, i/b Diamondwala & Company, for Defendant No.2.*

CORAM: G.S. PATEL, J
DATED: 1st October 2018

PC:-

1. Not on board. Mentioned. By consent taken on board.

2. By a separate order made in Chamber Summons No. 1802 of 2016, I have permitted the Woodstock Cooperative Housing Society

Ltd (“**the Society**”) to be impleaded and substituted for the Plaintiffs. The present Chamber Summons is not on board. By consent it is taken on board. All parties are present before the Court. The following order is by consent, though some directions are required independently.

3. The first prayer is to dispense with Notice under Order 21 Rule 22 of the Code of Civil Procedure 1908 (“**CPC**”). By consent this is allowed.

4. The second prayer is for a direction to the Prothonotary and Senior Master or some other officer of this Court to execute the conveyance, a copy of which is annexed to Affidavit in Support from page 39.

5. A few things are important about this. The decree in question is dated 2nd March 2012, based on Consent Terms dated 11th November 2011. The consideration payable has been fully effected already. Hence, having regard to the provisions of the Income Tax Act, and, as I have recently held in *Atithi Estate & Investment Corporation v Salsette Coop Hsg Soc Ltd & Ors*,¹ the relevant year for assessment for stamp duty will be the date of the agreement i.e. 11th November 2011 (the date of the underlying Consent Terms which led to the decree of 2nd March 2012).

6. The remaining difficulty in Mr Narula’s way for the Plaintiff is that the person who originally granted the power of attorney in the

1 Execution Application No. 24 of 2016 in Suit No. 946 of 1979, decided on 26th September 2018.

mid 1980 is no longer available. That power of attorney would now, under the changed legislative and statutory scheme, be required to be authenticated. That is no longer possible. It is for this reason that prayer (b) seeks a direction to the Prothonotary and Senior Master to execute the conveyance. I am making it clear that the Prothonotary and Senior Master or someone authorised by him is to execute this conveyance as an officer of this Court and by virtue of this order in place and instead of the original executant. This conveyance will be in favour of the newly impleaded Society. Having regard to the draft agreement, the Prothonotary and Senior Master is required to sign on behalf of the Vendors as shown in the Deed of Conveyance at page 39.

7. The procedure will be that the draft conveyance will be lodged with the authorities with the Superintendent of Stamps for assessment as to the stamp duty as of 2011. Those authorities will act on production of an authenticated copy of this order and will not insist on further documentation. They will complete the assessment within a period of four weeks from the time of submission to them. Once the document is returned and the stamp is duly paid, the Prothonotary and Senior Master or a person authorised by him will execute the Deed of Conveyance.

8. Mr Tamboly states that an amount of Rs.25 lakhs is in escrow with Mr Narula's firm. Mr Narula states that this amount will be paid to Mr Tamboly's clients with accrued interest thereon within seven days of the execution of the conveyance by the Prothonotary and Senior Master or his authorised officer. The parties are left to decide the exact date of payment because the amount has been

placed in a fixed deposit and a premature encashment may result in an imposition of some percentage points in penalty.

9. Liberty to the parties to apply.

10. The Chamber Summons is disposed of in these terms.

(G. S. PATEL, J)