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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.1141 OF 2017
IN
EXECUTION APPLICATION NO.1222 OF 2014

Arvind Desai & Anr	...Applicants
<i>In the matter between</i>	
Navoday Management Services Pvt Ltd	...Plaintiff
<i>Versus</i>	
DS Batra	...Defendant

Mr SM Khaire, *for the Claimant.*
Mr M Khan, *with Ms N Kalra, for the Applicant.*

CORAM: G.S. PATEL, J
DATED: 9th February 2018

PC:-

1. The Chamber Summons seeks to raise attachment levied under a warrant of attachment dated 26th July 2017 in respect of an immovable property described as Plot No.68, Nutan Laxmi Society Limited, Road No.8, JVPD Scheme Juhu, Vile Parle (W), Mumbai 400 056. The Plot is about 668.88 square meters and there once stood upon it a bungalow. This, I am told, has now been demolished.
2. The ownership history the plot goes back to 1st July 1953, when one Chhotalal Ujamshi Mehta joined the Society. On 12th

December 1961, the society a granted a lease of this plot to Chhotalal with effect from 18th August 1958. From 1971 onwards, there were several transactions in respect of this plot. Chhotalal assigned it to Sharda Dharnidharka and Chanda Dharnidharka. Thy in turn then assigned their rights to Shakuntala R Goel and Shrichand Goel. The Goels constructed on the plot. Shrichand Goel released his share in favour of Shakuntala, who then became the sole owner andm on 31st October 1994, a good four years before the present Summary Suit was filed, Shakuntala transferred her interest to one Lohagadh Real Estate & Construction Pvt Ltd, in which the Defendant, Batra, happened to be a Director. There was a litigation between Shakuntala and Lohagadh. This ended on 9th February 2007. In parallel, there started another litigation by one GHCB Corporation, a foreign company for recovery of a loan it had granted to Batra. GHCB Corporation obtained a foreign decree from the Queen's Bench Division, UK. GHCB moved in execution, and this property was then attached and became the subject matter of a warrant of sale on 15th November 2008 since Lohagadh guaranteed the repayment of the loan to Batra.

3. On 30th December 2010, Shakuntala Goel transferred her interest in the property on an as-is-where-is basis to one Pankaj Valia and one Sumeet Goyal. Valia sought to settle the claims with GHCB. The execution proceedings were stayed and as part of that settlement, Lohagadh, GHCB, Shakuntala, Pankaj Valia and Sumeet Goyal agreed to sell the property to the present Applicants, Arvind and Kamini Desai.

4. In the meantime the Plaintiff obtained an *ex parte* decree against Batra on 7th October 2002 in the present Summary Suit. Having done that, the Plaintiff seems to have gone into hibernation for a period of 11 years and 363 days. Two days before the statute of limitation ran out on the execution of that decree, the Plaintiff filed an execution application and a Notice under Order 21 Rule 22 of the Code of Civil Procedure 1908. This execution application itself was thus filed only in 2014. By that time Arvind and Kamini Desai had issued public notices in as many as four newspapers. They filed consent terms in the GHCB/Lohagadh proceedings on 23rd March 2015 and there was a transfer of all rights to Arvind and Kamini Desai by a registered deed dated 27th August 2015. The names of Arvind and Kamini Desai were entered into the society records and mutated on the property card.

5. On 26th July 2017, the Plaintiffs got a warrant of attachment issued in respect of this plot and it was sought to be executed by means of a pasting on the property's gate.

6. The Application today is by Arvind and Kamini Desai who say that they are *bona fide* transferees for value without notice, and, in any case, acquired valid title without there being any prior restraint. Having regard to this litigation history, I believe that this correct. The Plaintiff has only itself to blame if it remained somnolent for nearly 12 years. The law will not come to the aid of the party not diligent in prosecuting its rights.

7. The Chamber Summons is made absolute in terms of prayer clause (a).

(G. S. PATEL, J)