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**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 121 OF 2016
IN
SUIT NO. 146 OF 2014**

Laxmi Infra Construction LLP

.. Applicant/Intervener

IN THE MATTER BETWEEN

M/s. Sai Builders and Developers
and Others

... Plaintiffs

V/s

M/s Sakla Enterprises and Others
AND

... Defendants

Laxmi Infra Construction LLP

.. Applicant/Intervener

.....

Mr. R.B. Jain , Ms. Sneha Pokle i/by
Legal Juris for the Intervener
Mr. R.U. Singh for the Plaintiffs

.....

**CORAM : B. P. COLABAWALLA, J.
JUNE 21, 2019.**

P.C.:

1. This Notice of Motion has been filed by the Intervener in a suit that has already been disposed of pursuant to Consent Terms dated 7th March 2014. By these Consent Terms, the Defendant had agreed to pay a Sum of Rs. 1,35,00,000/- to the Plaintiffs within a

particular period as mentioned therein. The Consent Terms further provided that on the failure of the Defendants not paying the aforesaid amount of Rs. 1,35,00,000/-, the Plaintiffs would be entitled to execute the Decree against the Defendants inter alia by attachment the suit property and other personal properties of the Defendants.

2. Admittedly, this amount of Rs. 1,35,00,000/- was not paid by the Defendants to the Plaintiffs and hence the Plaintiffs filed Execution Application No. 2593 of 2015 and sought to attach the suit property as well as other properties.

3. The applicant in this Notice of Motion claims that he is the owner of the suit property and that the Defendants have no right, title or interest in the same. It therefore, cannot be attached at all.

4. Considering the provisions of Order XXI Rule 58 of the C.P.C., this Notice of Motion in a disposed of suit is not maintainable. It is accordingly dismissed. However, it is clarified that the Intervener herein namely Laxmi Infra Construction LLP shall be at liberty to file an appropriate application under Order XXI Rule 58 of the C.P.C. before the Executing Court objecting to any attachment of the suit property. I have not opined one way or the other on the

merits of the matter or on the rival contentions of the parties.

(B.P.COLABAWALLA, J.)