

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7282 OF 2015**

Offshore Infrastructure Ltd.

..Petitioner

Vs.

Roshma Engineering Construction & Anr

..Respondents

Mr. Nagendra Dube for the Petitioner

**Mr. C. K. Thomas a/w Mr. Manoj Mane i/b C.K. Thomas & Associates for
the Respondents**

CORAM : R. M. SAVANT, J.

DATE : 14th SEPTEMBER, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked under the Order dated 2-3-2015 passed by the Learned Judge of the City Civil Court, Mumbai, by which order Chamber Summons No.100 of 2015 filed by the Petitioner i.e the Judgment Debtor for dismissal of the execution of the proceedings being Execution Application No.568 of 2014 came to be rejected. The said Execution Application has arisen out of a decree passed by the Learned Civil Judge Senior Division Kudligi, Taluka Dharwad State of Karnataka. The said decree is a money decree and was transferred for execution to this court. However on the pecuniary jurisdiction of the City Civil Court Mumbai being enhanced, the decree came to be transferred by this Court to the City Civil Court for execution and presently the Learned Judge of the City Civil Court is in seisin of the said execution proceedings.

2 The instant application i.e. the Chamber Summons is founded on the fact that the Petitioner/Judgment Debtor has not been noticed under Order XXI Rule 22 of the Civil Procedure Code, since the decree passed is in the year 2010 and a period of more than 2 years has elapsed. The decree holder i.e. the Respondent herein filed its reply to the said Chamber Summons and the grant of reliefs in the Chamber Summons was objected to on the ground that the Petitioner/Judgment Debtor is very well aware of the decree passed, as against the decree passed the Judgment Debtor has filed an Appeal in the High Court of Karnataka, Dharwad Bench, which Appeal came to be dismissed and hence the decree has become final and binding. The decree was as indicated above put into execution and transferred to the City Civil Court for such execution.

3 The Trial Court considered the said application and has by the impugned order rejected the said Chamber Summons. The Executing Court held that since the Judgment Debtor i.e. the Petitioner herein had adopted the proceedings against the said decree, it was very well aware of the decree passed and therefore now cannot be heard to complain that it was not issued a notice under Order XXI Rule 22 of the Civil Procedure Code. The Executing Court held that a notice under Order XXI Rule 22 is provided for so that a Defendant can be noticed of the filing of the said execution proceedings. However, in the instant case, since the Defendant No.3 i.e. the Judgment

Debtor i.e. the Petitioner herein had already adopted proceedings, against the said decree and therefore the non issuance of the notice cannot be said to have cause any prejudice to the Judgment Debtor.

4 The Learned Counsel appearing on behalf of the Petitioner/Judgment Debtor sought to reiterate the contention raised by the Petitioner before the Executing Court and sought to place reliance on the Judgment of the Apex Court in the matter of **Satyanarain Bajoria & Anr. Vs. Ramnarain Tiberwal & Anr.**¹, wherein the Apex Court has held that issuance of notice Under Order XXI Rule 22 is mandatory as the same is intended to safeguard the interest of the Judgment Debtor. The said finding has been recorded by the Apex Court wherein the Apex Court seem to be satisfied that the said case before it was a typical case of a money lender who has an evil eye to grab the property of the Judgment Debtor some how or the other. The Apex Court in the said case found fault with the manner in which the Sale was carried out in the execution proceedings. However, in so far as the instant case is concerned, as indicated above the Judgment Debtor had filed an Appeal in the High Court of Karnataka, Dharwad Bench, which Appeal did not meet with any success and the Judgment Debtor was therefore very much aware of the decree that was passed and the Trial Court was therefore right in concluding that the Judgment Debtor i.e. the Petitioner herein cannot now be heard to say that the execution proceedings are vitiated on the ground that notice under

1 (1993) 4 Supreme Court Cases 414

Order XXI Rule 22 has not been served. It is also required to be noted that the notice of auction sale has now been issued and probably the same had prompted the filing of the Chamber Summons for rejection of the execution proceedings.

5 In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed order