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

**NOTICE NO. 874 OF 2013
IN
EXECUTION APPLICATION NO. 600 OF 2013**

Dallah Albaraka Investment Company Ltd. ...Applicant
Vs.
Mrs. Zinnia Mehernoosh Khajotia & Ors. ...Respondent

Mr. Kunal Dwarkadas a/w. Tejas Sanghraika i/b.
Dave & Girish & Co., for Applicant
Dr. Birendra Saraf a/w. Rohan Sawant, Nafisa Khandeparkar
Malvika Kalra for Defendant in Execution No. 600 of 2013.

**CORAM : MRS. ROSHAN DALVI, J.
DATED : 12TH JUNE, 2015**

ORDER:

1. The applicant has sought to execute the decree passed in Claim No. HQ09X01243 in the High Court of Justice, Queens Bench Division dated 11th December, 2009 between Dallah Albaraka Investment Company Ltd. And The Estate of Mehernoosh Khajotia. Since it is a foreign decree the applicant has applied for permission of this Court to execute the decree under Order 21 Rule 22 (i)(b) of the CPC. The notice has been served upon the respondents / judgment debtors on 18th December, 2013. No affidavit in reply is filed. Application for time to file the application is refused. However the Counsel on behalf of the judgment debtors is heard on questions of law.

2. It is contended by the judgment debtors that aside from this execution application to execute the foreign judgment the applicant has also sued in this court under a separate civil action. The applicant must opt for one of the two remedies open to the applicant and cannot prosecute both.
3. The suit has been filed. It is pending adjudication. It would be prosecuted only if the execution in the above claim has not been satisfied. The applicant would not be entitled to prosecute the suit also if the execution application is enforced and satisfied.
4. Counsel on behalf of the respondents drew the Court's attention to the case of **A.P. State Financial Corporation Vs. M/s. Gar Re-rolling Mills & Anr. And Kota Subba Reddy & Ors. (1994) 2 SCC 647** in which the Supreme Court held that the two remedies under Sections 29 and 31 of the State Financial Corporation Act, 1951 which deal with the 2 remedies, required election of one of them. These are two specified rights of the financial corporation upon default under Section 29 and enforcement of claims by the financial corporation under Section 31. Whereas one deals with the vesting of the property in the transferee, the other deal with the satisfaction of the claim by sale, enforcement of liability, management and injunction. Consequently the Supreme

Court held in para 15 of the judgment that there are two remedies for the same relief requiring option or election of one of them. However the Supreme Court also observed in para 15 of the judgment that the doctrine of election does not apply when the ambit and scope of the two remedies is essentially different as that would result in injustice and inconsistent results. There is, therefore, no reason why the plaintiff cannot execute the decree and get his suit adjudicated later for the amount not recovered thereunder.

5. In this case the suit would have to be prosecuted and the decree obtained, which can be executed. The execution application would precede the execution of the decree. If the execution proceeds fruitfully the suit would not be allowed to be prosecuted. At present, therefore, the applicant may be taken to have elected to execute the above claim.
6. It is further argued on behalf of the respondents / judgment debtors that the execution would not lie against the estate of a deceased person. Counsel on behalf of the respondent referred to the judgment in the case of **Nataraja Pillai (died) & Anr. Vs. Appasami Naidu** MANU/TN/0238/1949 = AIR 1949 Mad 804, 1949-62-LW328, (1949)1 MLJ 523 which dealt with Hindu Law relating to an execution of a decree against the estate of a deceased widow for the properties which had come to her

hands relying upon the case of the Bombay High Court of 1895 in the case of **Erava Vs. Sidramappa ILR (1895) 21 Bom. 424**. The relevant portion relied upon by the learned Judge which is now relied upon by the Counsel on behalf of the respondents / judgments runs thus:

“The so-called estate of a deceased person is a very convenient legal fiction, but, as a matter of fact, there is in Hindu Law at least no such objective reality as the estate of a deceased person. At the moment of Nagappa's death, the property owned by him ceased to be his, and became the property of his heirs subject, of course, to the liabilities and obligations created by him”.

7. The observation shows that the property of the deceased would become the property of his heirs upon his death. That would be subject to the liabilities and obligations created by the deceased. That is precisely what is the case of the applicant / decree holder herein. The estate of the deceased is the property of the judgment debtors shown in this application. It would be their property subject to discharge of the liabilities and obligations of the deceased. One of the liabilities and obligations is the payment of the decree passed in the above claim. For the enforcement in execution of the decree under the claim for such payment it would be the property of the heirs. It is that property which is sued as the estate of the deceased person.

8. The question of foreign judgment under section 13 of

the CPC and its execution as a reciprocal territory under Section 44(a) of the CPC has been considered by this Court in the suit filed by the applicants / judgment creditors under the order dated 9th December, 2013. An appeal from that order is stated to be admitted. The order has not been stayed.

9. Consequently notice under Order 21 Rule 22 of the CPC is required to be granted to allow the applicant / judgment creditor to proceed in execution of the above claim.
10. Hence the notice is made absolute as prayed. The execution shall proceed.

(ROSHAN DALVI, J.)