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

**APPEAL (L) No. 349 of 2015
IN
NOTICE No. 663 OF 2011
IN
EXECUTION APPLICATION No. 265 OF 2011**

WITH

**NOTICE OF MOTION (L) No. 1057 OF 2015
IN
APPEAL (L) No. 349 OF 2015
IN
NOTICE No. 663 OF 2011
IN
EXECUTION APPLICATION No. 265 OF 2011**

Noshir Moshin Chinwalla
Vs.
Masterbaker Marketing Ltd.

....Appellant
.....Respondent

Mr.Karl Tamboly i/b. Divya Bahl for Appellant

Mr.D.D. Madon, Senior Counsel a/w. Cyrus Ardeshir a/w. Aparna
Suresh i/b. Sagar Divekar for Respondent

***CORAM : V. M. KANADE &
REVATI MOHITE DERE, JJ.***

DATE : FEBRUARY 22, 2016

P.C. :[PER V.M. KANADE, J.]

1. Heard the learned counsel appearing on behalf of the Appellant and the learned counsel for the Respondent.
2. The Appellant has filed this appeal, challenging the order passed by the Learned Single Judge dated 13th March, 2015 in Notice No. 663 of 2011 taken out by the Plaintiff under Order 21 Rule 22 (b) of the Civil Procedure Code. By the said order, the Learned Single Judge was pleased to make the Notice issued by the Respondent- Plaintiff herein absolute.
3. Brief facts, which are relevant for the purpose of deciding the Appeal, are as under:

The Respondent-Plaintiff filed Execution Application No. 265 of 2011 for execution of a decree passed by the High Court of the Republic of Singapore under section 44-A of the CPC. The case of the Respondent-Plaintiff was that the Appellant-Defendant was the Chief Financial Officer of the Plaintiff and after he retired in 2008,

certain irregularities were found in his work and, therefore, an inquiry was made, in which, it was noticed that the Appellant-Defendant herein had siphoned off money of the Plaintiff Company and had deposited the same in various companies incorporated by him and his wife.

4. The Plaintiff filed the suit for recovery of the amount which was misappropriated and siphoned off by the Defendant and claimed damages against the Appellant-Defendant. Though the Appellant-Defendant was served, he did not appear before the Court and, therefore, the Court in Singapore passed its judgment on 2nd September, 2010. The Appellant challenged the execution of decree; firstly, on the ground that the judgment was not on merits. Secondly, it was contended that the decree was obtained by fraud and this Court was not competent to execute a decree.

5. On the other hand, it was contended by the Respondent-Plaintiff that the very same grounds were taken out by the Appellant in the Court in the USA. It was submitted that, therefore, the claim of the Appellant was barred by principles of *res-judicata* on the question of fraud.

6. The Learned Single Judge after going through the record and

various judgments on which reliance was placed by the Appellant, was pleased to make the Notice under Order 21 Rule 22 absolute.

7. The learned counsel appearing on behalf of the Appellants has firstly submitted that the foreign judgment had been obtained by playing fraud in the Court and, therefore, could not be executed in India. Secondly, it was submitted that the Learned Single Judge has not considered the contention of the Appellant that the Appellant had paid 34 Million US Dollars before the institution of the foreign suit and that this fact was not disclosed before the foreign Court. It was submitted that the Appellant was entitled to place before the Executing Court the material facts and documents which were concealed from the foreign Court for the purpose of showing that the decree was obtained by fraud. It was then submitted that the judgment delivered by the foreign Court was not the judgment which was given on merits.

8. We have gone through the impugned order passed by the Learned Single Judge and we are of the view that the Learned Single Judge has considered all the submissions made by the Appellant-Defendant and also has considered the judgments on which the

reliance was placed by the learned counsel for the Appellant and has firstly held that the judgment of the foreign court was the judgment on merits and it was not a judgment given only on account of default for non-appearance of the Appellant-Defendant. We have gone through the reasons given by the Learned Single Judge in arriving at the said conclusion and we concur with the reasons which are given by the Learned Single Judge. The Learned Single Judge has also rightly considered the ratio of the judgments which were relied upon by the learned counsel for the Appellant.

9. We do not see any infirmity in the reasons given by the Learned Single Judge. It was very vehemently urged that the judgment was obtained by fraud. It was contended that the amount claimed by the Respondent was already paid by the Appellant prior to the filing of the suit in Singapore High Court. The Learned Single Judge has rightly held that the alleged payment claimed to have been made before filing of the suit and, as such, it was open for the Appellant, who has brought this fact to the notice of the foreign Court and, therefore, the Learned Single Judge did not accept the said contention. The Learned Single

Judge, thereafter, considered the judgment of the Apex Court in the case of **Sankaan Govindan Vs. Lakshmi Bharathi & Ors., MANU/SC/0406/1974** and judgment of the foreign Court in the case of **Abouloff (Sic) Vs. Oppenheimer, 1882, 10 QBD 295** and other judgments referred by the Apex Court. In our view, the Learned Single Judge, therefore, has rightly come to the conclusion that the fraud ought to have been discovered by the Appellant after the date of the foreign judgment. The Learned Single Judge has rightly held that since the facts were known to the Appellant much prior to the foreign judgment, it was not open for the Appellant to contend that this issue should be tried by the executing Court. The Learned Single Judge after taking into consideration all the judgments which were relied upon by the Appellant, by a reasoned order has not accepted the theory of the fraud played by the Respondent on the foreign court. The last submission was regarding non executability of the judgment. Reliance was placed by the Appellant on the judgment of the Apex Court in the case of **Lalji Raja & Sons Vs. Firm Hansraj Nathuram, MANU/SC/0008/1971**. The Learned Single Judge has rightly held that the facts of the said case would have no application to this case.

We do not see any merits in the submissions made by the learned counsel for the Appellant. Hence, Appeal is dismissed.

REVATI MOHITE DERE, J.

V.M. KANADE, J.