

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

**NOTICE NO.739 OF 2009
IN
EXECUTION APPLICATION NO.181 OF 2009
IN
SUIT NO.4 OF 1996**

Abeezar Faizullabhoy & Ors.Plaintiffs

V/s.

Nariman Mehta & Ors.Defendants/applicants

Mr.Fredun Devitre, Senior Advocate a/w Mr.Firdosh Pooniwala & Mr.Walter Lewis i/by N.N.Bhandrashete for claimant/applicant.

Mr.M.S.Bhandari i/by Pranjali Bhandari for respondent (judgment-debtors).

CORAM : K.R.SHRIRAM,J

DATE : 13.7.2016

P.C.:-

1 The applicant has taken out this application under order 21 rule 22 of the Code of Civil Procedure, 1908 since the execution application has been filed more than 2 years after the date of the consent decree.

2 As recorded in the order dated 21.10.1997 the parties had entered into a consent decree. The defendants had to perform certain obligations as recorded in paragraphs-3, 6 & 8 of the consent minutes. The counsel for the plaintiffs states that the defendants have fulfilled their obligations as required in paragraphs-3 (partially as requirement under prayer (g) of the plaint is yet to be completed)

and para- 6 but para-8 is yet to be complied with.

3 Shri Devitre submitted that the plaintiffs did not take steps for executing the decree because the defendants initially took all steps to comply with all their obligations as mentioned in the consent minutes. The defendants had also addressed communications to the Bombay Port Trust according their no objection and consent for transferring their rights to the plaintiffs and defendant no.5/society. The need to file this Execution Application on 18.11.2008 arose only because of a letter dated 29.8.2008 from the defendants through their Advocates in which the defendants withdrew their permission granted by them to assign the lease which have been agreed in the mutual consent minutes dated 21.10.1997.

4 Shri Bhandari appearing for the defendants stated that this court does not have jurisdiction and defendants have already taken a stand that this court has no jurisdiction and until that was decided by the appeal court, the hearing of the present application should be deferred.

5 This court by an order dated 9.4.2014 held that this court has jurisdiction and the Execution Application cannot be transferred to City Civil Court and will be heard by this court. Against this order, the

defendants preferred an appeal bearing Appeal No.105 of 2015. The appeal court in its order dated 18.1.2016 has noted the issue raised by the defendants as to whether after the pecuniary jurisdiction of the City Civil Court was increased by the Bombay City Civil Court (Amendment) Act 2012, along with all suits or proceedings in the said suits viz. Execution proceeding would also stand transferred to the City Civil Court, more particularly in view of section 4 of the Amendment Act. The court has directed the appeal be listed for final disposal at the stage of admission but also clarified that in the meantime, the present execution proceeding to continue including application under order 21 rule 22 of the Code of Civil Procedure, 1908. The appeal is yet to be heard and disposed.

6 The position as on date is a single Judge of this court has held that this court has jurisdiction and the Division Bench has clarified that even though there is a pendency of appeal challenging the conclusions of the single Judge the execution application may still continue including the present application.

7 In view thereof, I have decided to go ahead with hearing this application.

8 It is correct, as submitted by Shri Devitre that all along,

until the letter dated 29.8.2008 was issued by the defendants, the defendants went along with the plaintiffs by writing letters to Bombay Port Trust to assign the residual period of the lease which has been agreed to in the mutual consent minutes dated 21.10.1997. If the defendants had all along agreed and also taken steps in compliance with the Mutual consent minutes dated 21.10.1997, there was no need for the plaintiffs to take out an Execution Application. Only when defendants addressed the letter dated 29.8.2008, did the need to file the execution application arise. It is also required to be noted that the Execution Application in any event is within 12 years. I am satisfied with the explanation given by the counsel for the plaintiffs.

9 The notice therefore, is made absolute and the Execution be proceeded with.

10 Shri Bhandari raised various points submitting why the execution application should not be entertained. Mr.Devitre states that none of those grounds impinged on the execution of the decree.

It is open to the defendants to take out such application, as advised, to have the execution application rejected in view of the grounds raised in their letter dated 29.8.2008 and the court will decide the same in accordance with law.

(K.R.SHRIRAM,J)