

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.705 OF 2012
IN
CHAMBER SUMMONS NO.1839 OF 2011
IN
EXECUTION APPLICATION NO.883 OF 2011
IN
DISPUTE CASE NO.CC/IV/149 OF 2007

Zenal Construction Pvt. Ltd. .. Appellant

Vs

1. Vasudev Vishandas Kataria,
2. Mamata Vasudev Kataria,
3. Rajani Dharshan Kataria,
4. Harnesswala Co-op.Housing Society Ltd., and
5. Arvind Chakravati. .. Respondents

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Shri Girish Godbole along with Ms. Sarika Mehra i/b LJ Law for the Appellant.

Shri Nitin Thakkar, Senior Counsel along with Ms. Sneha Dedhia i/b Ms. S.S. Bangera for the Respondent No.4.

Shri Manoj Nikose for the Respondent No.5.

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CORAM : A.S. OKA & A.A. SAYED, JJ

DATE ON WHICH SUBMISSIONS WERE HEARD : 1ST JULY 2016

DATE ON WHICH JUDGMENT IS PRONOUNCED: 1ST DECEMBER 2016

JUDGMENT : (PER A.S. OKA, J)

1. By this Appeal, the Appellant has taken an exception to the Judgment and Order dated 14th June 2012 passed by the learned Single Judge in a Chamber Summons in the pending Execution Application.

2. Briefly stated the facts of the case are as under:-

- (a) A Development Agreement was executed by and between the Appellant and the fourth Respondent which is a Co-operative Housing Society duly registered under the Maharashtra Co-operative Societies Act, 1960 (for short “the Co-operative Societies Act”). The first to third Respondents filed a Dispute under Section 91 of the Co-operative Societies Act before the Co-operative Court at Mumbai. The Dispute was filed against the present Appellant and the fourth Respondent Society. Even the fifth Respondent who was at the relevant time the Chairman of the fourth Respondent Society was a party to the Dispute. There was a prayer made in the Dispute directing the Appellant to hand over the possession of the property of the fourth Respondent which was the subject matter of the Development Agreement;

- (b) On 20th February 2008, the consent terms were filed in the said Dispute to which the parties to this Appeal are signatories;
- (c) On 17th June 2008, a commencement certificate was obtained by the Appellant from the Mumbai Municipal Corporation. This fact was communicated by the Appellant by its letter dated 26th June 2008 to the fourth Respondent stating therein that the bank guarantee in the sum of Rs.1.5 crores will be furnished by 15th July 2008;
- (d) Under the consent terms, the Appellant agreed to construct a building consisting of stilt plus podium and 9 upper residential floors as per the amended plan submitted to the Mumbai Municipal Corporation, a copy of which was annexed to the consent terms. It was provided that for making any variation or change in the said plans, the Appellant shall take permission of the fourth Respondent Society;

- (e) Under the consent terms, the Appellant agreed to provide a new flat on ownership basis free of cost on the first floor immediately above the podium car parking of the proposed building in lieu of the existing Flat No.1A to the first and second Respondents. The area of a new flat was agreed to 750 sq. ft. (carpet area). The Appellant also agreed to provide a new flat on ownership basis free of cost on the same floor to the third Respondent. The said flat in the proposed building was agreed to have an area of 750 sq. ft (carpet area). Clause 7 of the consent terms provides that the Appellant shall get the proposed amended plan approved and commencement certificate for construction of the building within a period of 45 days from filing of the consent terms;
- (f) An undertaking was given by the Appellant to provide a bank guarantee of Rs.1.5 crores to the fourth Respondent Society within a period of 30 days from the date on which the commencement certificate is issued by the Mumbai Municipal Corporation. It was provided in the consent terms

that the bank guarantee shall be valid till the Appellant obtains an occupation certificate in respect of the proposed building and the first to third Respondents are placed in vacant and peaceful possession of the flats respectively agreed to be allotted to them free of cost;

- (g) An undertaking was given by the Appellant not to commence construction unless and until the bank guarantee as aforesaid was furnished. The consent terms also record that first to third Respondents have handed over the possession of the Flat Nos.1A and 1B to the Appellant to facilitate development of the property;
- (h) Certain amounts were to be paid by the Appellant to the first to the third Respondents as provided in Clause 15 of the consent terms. The Appellant was to pay corpus fund of Rs.18 lakhs to the first and second Respondents together for the Flat No.1A and Rs.18 lakhs to the third Respondent for the Flat No.1B;

- (i) Various other undertakings of the Appellant were incorporated in the consent terms dated 20th February 2008;
- (j) The learned Judge of the Co-operative Court passed an order on 20th February 2008 recording that the parties to the consent terms were identified by the respective Advocates and they made a statement that the contents of the consent terms are true and correct. The undertakings in the consent terms were accepted under the said order. On 1st March 2008, the learned Judge of the Co-operative Court passed an order disposing of the Dispute;
- (k) On 29th October 2010, the learned Judge of the Co-operative Court passed an award directing that the Dispute was disposed of in terms of the consent terms and the award be drawn accordingly;
- (l) On 24th August 2011, the learned Judge of the Co-operative Court No.4 issued Execution Certificate under Section 98 of the Co-operative Societies Act on the basis of the Application made by the fourth

Respondent. On the basis of the said certificate that the Execution Application was filed before the learned Single Judge;

- (m) On the basis of the Application dated 22nd October 2008 made by the Appellant, the learned Judge of the Co-operative Court extended the time granted to the Appellant under the consent terms to furnish the bank guarantee till 6th November 2008. Thereafter, time was extended from time to time. Lastly, on 2nd March 2009, the learned Judge of the Co-operative Court extended the time for giving bank guarantee till 17th April 2009.
- (n) On 9th September 2011, the fourth Respondent filed an Execution Application before the learned Single Judge on the basis of the award made in the Dispute filed by the first to third Respondents and the certificate issued by the learned Judge of the Co-operative Court;
- (o) On 19th September 2011, a warrant of possession under Rule 35 of Order XXI of the Code of Civil

Procedure, 1908 (for short “the said Code”) was ordered to be issued in the Execution without issuing a notice under Rule 21 of Order XXII of the said Code;

(p) The Appellant was dispossessed in execution of the warrant on 30th September 2011. The Appellant allegedly became aware of the execution on the same day on 8th November 2011, the present Appellant filed a Chamber Summons raising an objection to the Execution Application and inter alia, praying for restoration of possession ;

(q) By the impugned order, the said Chamber Summons has been dismissed by the learned Single Judge;

4. In the affidavit-in-support of the Chamber Summons taken out by the Appellant, it is stated that on the basis of the warrant for possession issued in execution, on 30th September 2011, the Appellant has been dispossessed from the suit property with incomplete building structure of ground, podium plus three upper floors. It is claimed that the Appellant became aware of the warrant of possession only on 30th September 2011 when a Director of the Appellant received an

intimation from a Bailiff from the office of the Sheriff about his visit to the property for execution of the warrant for possession. It is claimed in the affidavit-in-support filed by Shri Prakash J. Barot, a Director of the Appellant that as the Appellant never wanted to disobey the order of the Court, formal possession of the property was handed over without any objection. However, machinery, material and belongings of the Appellant are still lying on the property. It was contended that the warrant of possession was executed in a most dishonest manner by the fourth Respondent Society. It was contended that the consent decree was not executable. It was contended that the consent decree was nothing but a modification of the terms of the Development Agreement dated 11th December 2006. Various steps taken by the Appellant for development of the property such as deposit of large amount of premium with MHADA were set out in the affidavit. It was urged that a notice under Sub-Rule (1) of Rule 22 of the Order XXI of the said Code was not served.

5. Various contentions were raised in support of the Appeal including the contention that the fourth Respondent is not a decree holder as it was an opponent in the Dispute under Section 91 of the Co-operative Societies Act. It was contended that there was no executable award or decree. It was pointed out that the Dispute was disposed of in terms of the consent terms on 1st March 2008 and, therefore, the

learned Judge of the Co-operative Court could not have made an award on 29th October 2010. It was submitted that the execution certificate issued by the learned Judge of the Co-operative Court is not legal on the basis of which the execution could not have been filed. It was pointed out that the certificate was issued not on the basis of the purported award dated 29th October 2010, but on the basis of the order dated 1st March 2008 by treating it as an award.

6. The learned counsel appearing for the Appellant submitted that the provision of Sub-rule (1) of Rule 22 of the Order XXI of the said Code has been always held to be mandatory and non-compliance thereof vitiates the execution proceedings. It was submitted that if the notice of execution would have been served on the Appellant, an objection to executability could have been raised by the Appellant even before the warrant for possession was issued. Reliance was placed on the decision of the Apex Court in the case of *Bhanwar Lal v. Satyanarain and Another*¹ as well as the decision of the Apex Court in the case of *Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal and Another*². It was submitted that under Rule 316 of the Bombay High Court (Original Side) Rules, 1980, there is no discretion whatsoever and once the execution is filed beyond the two years from the date of the decree, the Prothonotary and Senior Master is under an obligation

1 (1995)1 SCC 6

2 (1997)3 SCC 694

to serve notice in Form 49 appended to the said Rules to the judgment debtor. He urged that in view of the decision of the Apex Court in the case of *Iridium India Telecom Ltd. v. Motorola INC.*¹, the Original Side Rules will prevail and, therefore, Sub-rule (2) of Rule 22 of the Order XXI of the said Code which confers discretion on the Court to dispense with the notice under Sub-rule (1) of Rule 22 of the Order XXI of the said Code will not be available. It was urged that in any case, the Prothonotary and Senior Master has no such discretion. It was submitted that Sub-rule (3) of Rule 22 of the Order XXI of the said Code added by the Maharashtra Amendment dated 30th September 1966 does not exist on the Rule Book in view of the Central amendments to the said Code effected for the years 1999 and 2002. It was submitted that as the Dispute was disposed of by an order dated 1st March 2008 in terms of the consent terms, in view of Rule 7 of Order XX of the said Code, the date of the award will be 1st March 2008. The submission is that as the notice in terms of the Rule 316 was not served, the order of issue of warrant and the execution thereof was illegal. The learned counsel appearing for the fourth Respondent supported the impugned order. He urged that there is a complete breach committed by the Appellant of the relevant terms and conditions of the consent award. He urged that the order dated 29th October 2010 directing the award to be made in terms of the consent terms was not challenged by the Appellant and, therefore, the Execution Application filed on 9th

1 (2005)2 SCC 145

September 2011 was well within two years from the date of the executable award. He urged that the members of the Society are out of possession and no interference is called for.

7. We have given careful consideration to the submissions. We have perused the written submissions on record. It will be necessary to make a reference to some of the terms and conditions incorporated in the consent terms filed before the learned Judge of the Co-operative Court in the Dispute filed by the first to third Respondents. The fourth Respondent Society is a party to the Dispute and to the consent terms. It is, therefore, necessary to make a reference to the relevant terms and conditions in the consent terms which read thus:

- “1. The Developer Opponent No.2 shall construct Proposed Building consisting of stilt plus podium (for car parking) and 9 upper residential floors as per the amended plans now submitted to the Mumbai Municipal Corporation for its approval, the copy whereof is annexed hereto and marked as Exhibit “A” colly. The Developer shall not construct the basement in the proposed building. There shall be 2 car lifts for podium car parking in the proposed building.
4. The Opponent No.2 Developer shall provide permanent alternate accommodation a new flat on ownership basis free of cost on 1st floor immediately above the podium car parking of the proposed building comprising of an area of 750 sq. ft. carpet including lobby area of 50 sq. ft. (and excluding area of 75 sq. ft. elevation Dry Balcony, Indian Seating, Niches etc.) as is

provided in the Development Agreement dated 11-12-2006 (executed between opponent No.1 and 2) in lieu of existing Disputed Flat No.1-A to the Disputants No.1 and 2 in accordance with the plan annexed at Exh."A" colly heretoabove.

5. The Opponent No.2 Developer shall provide permanent alternate accommodation a new flat on ownership basis free of cost on 1st floor immediately above podium car parking of the proposed building comprising of an area of 750 sq. ft. (Net carpet area) including lobby area of 50 sq. ft. (and excluding area of 75 sq. ft. elevation Dry Balcony. Indian Seating, Niches etc.) as is provided in the Development Agreement dated 11-12-2006 (executed between opponent No.1 and 2) in lieu of existing Disputed Flat No.1-B to the Disputant No.3 in accordance with the Plan annexed at Exhibit "A" colly hereto above.
6. The Opponent No.2 Developer shall construct minimum 8 stilt car parking on the ground floor of proposed Building to be given on ownership basis to the 8 existing members of the society Opponent No.1 including Disputants herein.
7. The Opponent No.2 Developer shall get the proposed amended plan approved and obtain the Commencement Certificate of construction of proposed building from the Mumbai Municipal Corporation within 45 days from the date of filing of this consent terms in this Hon'ble court.
8. The Opponent No.2 developer given undertaking to this Hon'ble court that they will provide and give Bank Guarantee of Rs.1.5 crores to opponent No.1 society within 30 days from the date of issue of commencement certificate by the Mumbai Municipal Corporation for construction of proposed building. The said Bank Guarantee shall remain valid till the Developers obtain Occupation Certificate of the proposed Building from the

Mumbai Municipal Corporation/Competent Authority and the Disputants are given vacant & peaceful possession of their flats in the new Building. The said Bank Guarantee shall be of any Nationalized Bank/Schedule Bank but not of any cooperative bank.

9. The Developers Opponent No.2 further undertakes to this Hon'ble Court that they shall not commence the construction work of the proposed Building unless and until they give the said Bank guarantee of Rs.1.5 crores to the Opponent No.1.”

8. The clause no.10 in the consent terms provides that in the event a default as provided therein is committed by the Appellant, the Dispute will stand allowed in terms of the prayer clauses (a) and (b) thereof. We are not reproducing the Clause No.10 as the same forms a part of the order passed by the Co-operative Court which we are reproducing. As noted earlier, on 20th February 2008, the consent terms were taken on record. On 1st March 2008, the learned Judge of the Co-operative Court No.4 passed an order disposing of the Dispute. What is material is Paragraph 10 of the said order which reads thus:

“10. In the event the developer opponent no.2 for whatsoever reason unable to get the proposed amended plan (annexed at Exhibit-A Colly) approved and obtain Commencement Certificate from the Mumbai municipal Corporation in respect of the construction of proposed building within 45 days from the date of filing of this Consent terms in this Hon'ble Court and give bank guarantee of Rs.1.5 crores to the opponent no.1 society within 30 days from the date of issuance of said commencement certificate by the Mumbai Municipal Corporation in respect of construction of proposed building, then there shall be an order,

**Decree and award as prayed for in terms of prayers
(a) and (b) of the dispute application i.e.**

- (a) It be declared that resolutions passed in the meetings held on 1-8-2004, 15-8-2004 and 15-11-2006 of the opponent no.1 society are arbitrary illegal, bad in law and against the provisions of M.C.S. Act, Rules and Bye-laws of the opponent no.1 society.
- (b) It be declared that the development agreement dated 11-12-2006 and Power of Attorneys dated 10-9-2004 and 11-12-2006 and other documents executed by and between the opponents no.1 and 2 and 3 in pursuant to the reconstruction, redevelopment of opponents no.1's property bearing CTS No.33(5) part, Gurunanak Road, 10th Road, JVPD Scheme, Mumbai – 400 049 admeasuring about 608.68 sq. meters, is illegal, bad in law, and not binding upon the disputants” and **as such the contract given by opponent no.1 to opponent no.2 in respect of redevelopment of property of opponent no.1 including all resolutions passed by opponent no.1 thereof is cancelled forthwith and whatever the payment is made by opponent no.2 to opponent no.1 and its members including disputants herein will become forfeited, the opponent no.2 shall forthwith vacate and handover possession of opponent no.1's property to them, and opponent no.2 have no claim, right, title and interest upon the property of opponent no.1 including damages against the opponent no.1 and its members including disputants and the decree/ awards be drawn/passed accordingly.”**

(emphasis added)

9. Thus, in case of breaches specified in Clause 10, the Dispute was to stand allowed in terms of prayer clauses (a) and (b).

The prayer clause (b) provides for the Appellant vacating and handing over possession of the property of the fourth Respondent Society to the said Society. It was this clause which was invoked for seeking a possession warrant.

10. In the order dated 1st March 2008, there is no specific direction issued for drawing an award in terms of the consent terms. The said order was passed by the learned Judge of the Co-operative Court No.4 on 29th October 2010. The said order reads thus:

“In view of the judgment and order passed by my Ld. Predecessor Judge, on 1-3-2008 and award is not passed.

After perusing the consent terms which bears the signatures of the parties and Advocates. I pass the award in terms of consent terms accordingly.

Consent terms award

- 1) The dispute is disposed off in terms of consent terms.**
- 2) No order as to costs.
- 3) award is accordingly drawn.”**
(emphasis added)

11. We must note here that admittedly the orders dated 1st March 2008 and 29th October 2010 have attained finality and thus, they bind the parties. The correctness of the said orders cannot be gone into in the execution proceedings and therefore, in this Appeal as well.

Therefore, we will have to proceed on the footing that the award was ordered to be made by the order dated 29th October 2010. An argument was canvassed by the Appellant that in view of Rule 7 of Order XX of the said Code, the date of the judgment shall be the date of the award. In the present case, on 1st March 2008, the learned Judge of the Co-operative Court passed an order on the basis of the consent terms without directing that an award should be made in terms of the consent terms. Thereafter, the specific order which is noted above is passed on 29th October 2010 directing that the award be drawn in terms of the consent terms. The said order specifically records that the award was not passed by the order dated 1st March 2008. It is not the case of the Appellant that it was not aware of the said order which specifically records that the award was not passed. After having accepted the correctness of the said order dated 29th October 2010, now it is not open for the Appellant to raise a contention that the award shall be deemed to have been made on 1st March 2008. In view of the fact that the order dated 29th October 2010 has attained finality, this Court will have to proceed on the footing that the award was made on 29th October 2010.

12. On this aspect, we must note here that there appears to be some reason as to why the award was not ordered to be made earlier. A compilation was tendered across the bar by the learned counsel

appearing for the Appellant which contains the copies of the Applications made by the Appellant from time to time to the Co-operative Court. On 22nd October 2008, an Application was made by the Appellant stating that on the earlier date, the first and second Respondents have filed a reply and the Appellant was desirous of filing a rejoinder. Therefore, a prayer was made that the Dispute be kept on 6th November 2008 and earlier order to furnish the bank guarantee in favour of the fourth Respondent Society be extended till 6th November 2008. Accordingly, extension was granted by the learned Judge of the Co-operative Court. There are subsequent orders passed on 6th November 2008, 25th November 2008, 4th December 2008, 16th December 2008 and 12th January 2009 extending the time to furnish the bank guarantee. On 16th December 2008, time was granted as a last chance. Lastly by an order dated 2nd March 2009, time was finally extended by the Co-operative Court till 17th April 2009. It appears that on 14th August 2009, an Application was made by the Appellant before the Co-operative Court containing the following prayer:-

“(a) that Opponent No.2 be allowed to furnish the Bank Guarantee of Rs.150 lacs to the society on or before 15th October 2009 and Clause of consent terms of furnishing Bank Guarantee be extended upto 15th October 2009 or allow the Opponent No.2 to deposit Rs.75,00,000/- in Bank in the name of society.”

13. The said Application clearly records the admitted position that the commencement certificate was obtained by the Appellant as late as on 17th June 2008 after expiry of the period provided in the consent terms. It also records that the time to furnish bank guarantee was lastly extended till 17th April 2009 and it specifically records that the Applications were made on 17th April 2009 and 15th June 2009 for grant of further extension of time for furnishing the bank guarantee. The said Applications were kept for orders, but the extension was not granted. Thus, it is crystal clear that as provided in Clause 7 of the consent terms, the commencement certificate was not obtained by the Appellant within a period of 45 days from the date of filing the consent terms. Admittedly, the bank guarantee of Rs.1.5 crores was not furnished by the Appellant within 30 days from the date of issuance of commencement certificate as provided in clause 8 of the consent terms. In fact, the bank guarantee was never furnished though the time was finally extended till 17th April 2009. Therefore, Clause 10 of the consent terms was squarely attracted as breaches were committed by the Appellant. As there was a failure to obtain commencement certificate within the specified time and to furnish bank guarantee within the specified time, the Dispute stood decreed in terms of the prayer clauses (a) and (b) which we have quoted above which are set out in the order dated 1st March 2008. We may note here that the building of the fourth

Respondent Society containing residential premises of its members was already demolished by the Appellant. The award in terms of the prayer clause (b) which became operative provided that the Appellant shall hand over the possession of the property to the fourth Respondent Society. The fact that the Applications were repeatedly made by the Appellant for extension of time show that no award was made in terms of the consent terms. Perhaps, that is the reason why subsequently, the award was ordered to be made.

14. As stated earlier, the date of the award will have to be treated as 29th October 2010. The provisions regarding settlement of disputes are contained in Chapter IX of the Co-operative Societies Act. Section 96 of the Co-operative Societies Act deals with the decision of the Co-operative Court. As far as the execution is concerned, the relevant provision is Section 98 which provides that an order passed by the Co-operative Court under Section 96, if not implemented, on a certificate signed by the Co-operative Court, it shall be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court. Section 98 of the Co-operative Societies Act reads thus:

“98. Money how recovered.- Every order passed by the Official Assignee of a de-registered society under sub -section (3) of section 21 A or every order passed by the Registrar or a person authorised by him under section 88 or by the Registrar [or the Co-operative Court under section 95 or by the Co-operative Court under section 96, every order passed in appeal under the last preceding section every order passed by a Liquidator under section 105, every order passed by the State Government in appeal against orders passed under section 105 and every order passed in revision under section 154 shall, if not carried out,-

(a) On a certificate signed by the Official Assignee or the Registrar or the Cooperative Court or a Liquidator, be deemed to be a decree of a Civil Court, and shall be executed in the same manner as a decree of such Court, or

(b) be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue:

Provided that, any application for the recovery in such manner of any such sum shall be made by the Collector, and shall be accompanied by a certificate signed by the Registrar. Such application shall be made within twelve years from the date fixed in the order and if no such date is fixed, from the date of the order.”

15. Thus, on a certificate issued by the Co-operative Court under Section 98, the decision of the Co-operative Court on a Dispute shall be deemed to be a decree of a Civil Court and such a decree can be executed by a Civil Court. In the present case, the certificate has been issued on 24th August 2011.

16. As stated earlier, after the said certificate was issued, execution application was filed in this Court on 9th September 2011. It is true that the Rule 7 of Order XX of the said Code provides that the decree shall bear the date on which the judgment was pronounced. In the present case, there is no judgment delivered by the Co-operative Court. The question is whether the award was ordered to be made in terms of the consent terms. In the present case, the award was ordered to be made for the first time on 29th October 2010. Moreover, the decision of the Cooperative Court becomes an executable decree only on a certificate issued under Section 98 of the Cooperative Societies Act. Under Rule 22 of Order XXI, it is mandatory to issue a notice to the persons against whom execution is applied requiring him to show cause on a date fixed provided the Application for execution is made more than two years after the date of the decree. In the present case, the date of the decree cannot be any date prior to 29th October 2010 inasmuch as on that date, the Co-operative Court directed the award to be made in terms of the consent terms. As noted earlier, the said order was never challenged by the Appellant. In any event the decision of the Co-operative Court became an executable decree only when the certificate under Section 98 was issued on 24th August 2011. We must note here that the argument of the Appellant based on the decision of the Apex Court in the case of *Iridium India Telecom Ltd.* is that the execution will be governed by Rule 316 of the Bombay High Court

(Original Side) Rules, 1980. Rule 316 of the Bombay high Court (Original Side) Rules reads thus:

“316 Notice under Order XXI, Rule 22 of the Code of Civil Procedure.- When the provisions of Order XXI, Rule 22 of the Code of Civil Procedure apply, the Prothonotary and Senior Master shall issue notice on the application for execution in Form No.49.”

17. Even accepting that Rule 316 is mandatory, the execution was filed within a period of two years from the date of the award/executable decree.

18. There was some argument canvassed in the Chamber Summons that the fourth Respondent was not the Disputant in the Dispute and, therefore, the Execution Application at the instance of the said Respondent is not maintainable. We have carefully perused the provisions of Part-II of the said Code which deals with the execution and Order XXI of the said Code. All these provisions deal with the execution of a decree. The Application for execution under Rule 11 of Order XXI of the said Code is to be made by a decree holder. The decree holder is defined under Sub-section (3) of Section 2 of the said Code to mean any person in whose favour a decree has been passed or an order capable of execution has been made. In the present case, prayer clause (b) of the Dispute has been granted. Hence, there is a decree for possession in favour of the fourth Respondent which is

capable of being implemented. Therefore, the execution application filed by the fourth Respondent was maintainable.

19. We have perused several decisions relied upon by the parties. We find that none of the decisions really assist the parties. The case is crystal clear on facts.

20. Hence, we find no merit in the Appeal and the same is accordingly dismissed with no orders as to costs.

21. The ad-interim or interim order which is operative in the Appeal shall continue to operate for a period of eight weeks from today.

(A.A. SAYED, J)

(A.S. OKA, J)