

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

**NOTICE NO. 1817 OF 2011
IN
EXECUTION APPLICATION NO. 1099 OF 2011
IN
KERALA O.S. 14 OF 1991**

M/s. Rehabilitation Plantations Ltd.	.. Decree Holder/Pltff.
Vs.	
1. M/s. M.B. Freight Movers (Private) Ltd.	
& Ors.	.. Judgement Debtors/ Defendants

Mr.Rony P. Joseph for applicant/claimant.

Ms.Kalyani G. Parmar for respondent no.6.

**CORAM : K.R.SHRIRAM, J.
DATE : 8TH JUNE, 2016**

P.C.

1 The notice has been issued to respondent no.6 under Order XXI, Rule 22 of Code of Civil Procedure, 1908. Respondent No.6 has filed an affidavit in reply stating that respondent no.6 was not even a party to the original proceedings in which the plaintiff had obtained a decree and respondent no.6 has been added only at the stage of execution.

2 The counsel for the applicant stated that the plaintiff's application to add respondent no.6 was granted pursuant to an order dated 5th April 2010,

copy whereof has been annexed to the affidavit in rejoinder. It appears that the plaintiff had filed an application before the Subordinate Judge, Kottarakara, Kerala on 4th April 2008 to implead respondent no.6. It is the case of the Directors of defendant no.1 and respondent no.6 are common.

3 The counsel appearing for respondent no.6 points out from the affidavit in reply that they have nothing to do with defendant no.1. It was also stated that they were never served a copy of the application to implead them as a respondent.

4 The counsel for the applicant states that as mentioned in the order dated 5th April 2010, the notice was served by paper publication and a copy of the paper publication is annexed to the affidavit in rejoinder.

In the rejoinder, it is stated that the notice was published in daily 'Yashobhoomi' on 3rd December 2008 but in the copy annexed it states 'Bihar, Jharkhand'. It does not state that it was published in Mumbai.

5 I asked the counsel for the plaintiff to explain why it was published in Bihar, Jharkhand and also to explain as to why it was served by paper publication and not by direct service. The counsel had no explanation. Therefore, it is quite clear that respondent no.6 has not been served the

application properly to be joined as respondent no.6 to the Execution Application.

6 In the circumstances, this is a fit case to discharge the notice.

The notice stands discharged.

(K.R. SHRIRAM, J.)