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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.17 OF 2015

Barkatali Yousufali Patawala,
Age : 77 years, Occupation – Business,
Residing at Room No.11, 4th Floor,
Rehmani Manzil, 67, Mutton Street,
A proprietor of M/s Paradise Chemicals,
Room No.22, 3rd Floor, Jamnabai Building,
50, Essaji Street, Mumbai-400 003
..APPLICANT
(Original Decree Holder)

VERSUS

Sayyed Manzar Sayyed Usman,
Age : 45 years, Occupation Business,
Residing at Village Kharda,
Taluka Jamkhed, District Ahmednagar
and
Proprietor of M/s Seagull Fireworks at
Village Kharda, Taluka Jamkhed,
District Ahmednagar
..RESPONDENT
(Original Judgment Debtor)

Mr A.R. Devkate, Advocate for applicant;
Respondent served

CORAM : N.W. SAMBRE, J.

DATE : 14th July, 2017

ORAL ORDER

Heard learned Counsel appearing on behalf of the applicant.

2. The suit filed by the applicant being Summary Suit No.3765 of 2003 against respondent for recovery of amount came to be decreed vide judgment and order dated 19th January, 2005, whereby it was ordered that

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the applicant-plaintiff will be entitled to recover amount of Rs.3,11,400/- along with interest and costs. Accordingly, the applicant initiated execution proceedings in the Court of Civil Judge Senior Division at Shrigonda on 13th November, 2007 for execution of the decree dated 19th January, 2005. The said execution proceedings came to be dismissed as delivery of the warrant which was ready was not taken by the applicant-decree holder so as to reach the same to the Court at Jamkhed for execution.

3. The applicant thereafter filed another execution proceedings being Regular Darkhast No.30 of 2014 on 20th April, 2014. The said Darkhast came to be rejected by the learned Civil Judge Junior Division, Jamkhed vide impugned order dated 16th October, 2014 on the ground that in view of provisions of Order XXI, Rule 106, sub-rule (3) of the Code of Civil Procedure (for short "CPC") the limitation prescribed for restoration of a dismissed Darkhast is thirty days.

4. While questioning both these orders, learned Counsel appearing on behalf of the applicant submits that the limitation prescribed for execution of a money decree as per provisions of Article 136 of the Limitation Act is twelve years. According to him, the decree in question is of 2005 and is executable till 2017. He would urge that even if the first execution proceedings was dismissed in default, the second was very much maintainable. He would then urge that the provisions of Order XXI, Rules 105 and 106 of CPC will not be attracted in the present case as the Darkhast was never fixed for hearing, but it was kept only for taking steps

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for execution of warrant. He would draw support from the judgment of this Court in the matter of **Suglabai Prabhu Jaishete (Smt.) & anr. vs. Rangrao Govindrao (Since died through his L.Rs.) & ors.**, reported in **2011 (6) Bom. C.R. 403**, particularly paragraph 11.

5. None appears on behalf of the respondent though duly served.

6. It is to be noted from the record that it is not the observations of the Trial Court that second execution petition was not maintainable. What is observed by the learned executing court is, the first execution since was dismissed in default the applicant should have applied for restoration of the same within thirty days, in view of provisions of Order XXI, Rules 105 and 106 CPC. Rules 105 and 106 contemplate its invoking in an eventuality when execution is fixed for hearing. The fact that the regular Darkhast which was filed earlier was not fixed for hearing but was fixed for execution of warrant is apparent from the observations made in the impugned order. In view thereof, the provisions of Order XXI, Rule 106 of CPC as are relied upon by the learned executing court for rejecting the execution petition is not sustainable. Apart therefrom, it is required to be noted that the second execution is barred by any of the provisions particularly Section 11 of CPC is not applicable to execution petition being settled position, is an issue which is required to be appreciated.

7. In the aforesaid backdrop, in my opinion, the order dated 16th October, 2014, passed by learned Joint Civil Judge Junior Division,

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Jamkhed, below Exh.1, in Regular Darkhast No.30 of 2014 is not sustainable and the same stands quashed and set aside with directions to the said Court to decide the said Darkhast without being influenced by the fact that earlier Darkhast was dismissed in default.

With above observations, Civil Revision Application stands allowed.

(N.W. SAMBRE, J.)

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