

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

NOTICE OF MOTION NO.119 OF 2016
IN
EXECUTION APPLICATION LOD.NO.209 OF 2014
IN
SUIT NO.275 OF 1998

Smt. Shardaben Manilal Panchal ..Plaintiff
-Versus-
M/s. Rajkamal Steel Industries & Ors. ..Defendants

Ms. Shirin Shaikh i/b. Raval Shah & Co. for applicant/plaintiff
Mr. Makarand Bakore i/b. JMB Partners for defendant Nos. 1, 5 and
7

CORAM : K.K.TATED, J.

DATE : 20th November 2017.

P.C.

1] Heard learned Counsel for parties. This notice of motion is preferred by the original defendant No.6 for restoration of Execution Application Lod.No.209 of 2014 which stood dismissed in view of conditional order dated 29th October 2015 passed by the Prothonotary & Senior Master for non removal of office objections.

2] Learned Counsel for applicant submits that as soon as the

order was passed by the Prothonotary & Senior Master on 29th October 2015, they immediately filed precipae in the Registry for allowing them to remove objections. But since the papers were not traceable in the Registry, the office objections could not be removed. She further submits that in the interest of justice, this Court be pleased to set aside the order dated 29th October 2015 passed by the Prothonotary & Senior Master and restore the execution application on file for hearing on merits. She submits that the applicant is ready and willing to remove all office objections in execution application within three weeks from today.

2] On the other hand, the learned Counsel for the defendants Nos. 1, 5 and 7 vehemently opposed the present notice of motion. He submits that the application for execution was filed more than two years back and the applicants did not remove the office objections. Hence, in execution application conditional order was passed by Prothonotary & Senior Master on 29th October 2015 directing the claimants to remove office objections on or before 26th November 2015. He submits that though it is urged that the papers were not traceable for removal of office objections, as many as two

precipaes were filed with the registry in which nothing has been mentioned about non availability of papers. Hence, there is no substance in the above notice of motion and the same be dismissed.

3] I have heard the learned Counsel for the parties. Because of mistake on the part of Advocates the litigants need not and should not suffer. Considering this fact and for the reasons disclosed in the affidavit in support of motion, I am allowing this notice of motion on a condition that the plaintiffs shall pay cost of Rs.10,000/- to defendant Nos. 1, 5 and 7 within four weeks. Hence, following order:-

- (i) Order dated 29th October 2015 passed by Prothonotary & Senior Master by which the execution application Lod.No.209 of 2014 stood dismissed is set aside;
- (ii) Execution application is restored to file for hearing on its own merits;
- (iii) The applicants shall remove office objections in execution application within four weeks from today, failing which the same again shall stand dismissed without reference to court;

(iv) Applicant shall pay cost of Rs.10,000/- to the defendants Nos. 1, 5 and 7 or their Advocate within four weeks from today, failing which the motion shall stand dismissed without reference to the court;

(v) Notice of motion is disposed of.

(K.K.TATED, J.)s