

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

**NOTICE NO. 88 OF 2016
IN
SUMMARY SUIT NO. 3485 OF 2007**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Prothonotary's orders	Court's or Judge's orders
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Mr. Rajinder Kumar for Plaintiff.

Ms. Lopa Joshi i/by. Vandana Jaisingh for Defendant No.2.

CORAM : K. K. TATED, J.

DATE : NOVEMBER 7, 2017

P.C.:

1. Heard learned Counsel for parties.

2. The learned Counsel Ms. Joshi appearing on behalf of Defendant No.2 submits that Advocate on record is out of India. She further submits that matter may be adjourned for some time again. This Court refused to adjourn the matter. She submits that she do not have instructions to go on with the matter. When this Court started dictating the order, the learned Counsel for Defendant No.2 submits that she is ready to argue the matter.

3. By this Notice under Order 21 Rule 22 of the Code of Civil Procedure, Plaintiff is seeking

permission to file Execution Application to execute the decree dated 4th January, 2012 passed in Summary Suit No. 3485 of 2007 for the sum of Rs. 19,87,251.40/- with further interest at the rate of 24% per annum on principal amount till realization. There was a delay on the part of Plaintiff to lodge the Execution Application. Hence, the Plaintiff has preferred the present Notice under Order 21 Rule 22 of the Code of Civil Procedure.

4. The learned Counsel Mr. Rajinder Kumar appearing on behalf of Plaintiff submits that in the interest of justice this Hon'ble Court be pleased to allow the Notice filed by the Plaintiff under Order 21 Rule 22 of the Code of Civil Procedure to proceed with the Execution Application for execution of the decree dated 4th January, 2012. He submits that though the decree was passed on 4th January, 2012 Defendants failed and neglected to make the payment to the Plaintiff. Hence, they preferred the present Notice as well as Execution Application.

5. On the other hand, the learned Counsel Ms. Joshi appearing on behalf of Defendant No. 2 vehemently opposed the present Notice. She submits that the Plaintiff failed and neglected to serve the proceedings in Summary Suit No. 3485 of 2007 itself. She further submits that the Plaintiff in Execution Application in clause

(J) shows the Flat No. 54, Roop Darshan Society, Juhu Lane, Andheri (W), Mumbai as the ownership flat of Defendant No.2 which is not correct. She further submits that Plaintiff had failed and neglected to place on record any documentary proof to show that said flat stands in the name of Defendant No.2 Therefore, there is no question of allowing the present Notice.

6. I have heard both the sides at length.

7. It is to be noticed that Notice under Order 21 Rule 22 of the Code of Civil Procedure is only to seek liberty to proceed with the Execution Application, if it is filed beyond the period of two years from the date of decree.

8. Submission made by the learned Counsel Ms. Joshi for Defendant No.2 Notice is not maintainable in the present facts and circumstances of the case. The Executing Court cannot go beyond the decree. Whether the Flat No. 54 stands in the name of Defendant No.2 or not it requires to be proved by the Plaintiff at the time of proceeding with the Execution Application. There is no question of deciding the same at present.

9. Considering the submission made by the learned Counsel for Plaintiff and averments made in Affidavit in support of Execution Application, I am satisfied that Plaintiff has made

out the case for allowing this Notice. Hence, I proceed to pass following order.

ORDER

(A) Notice preferred by the Plaintiff under Order 21 Rule 22 of the Code of Civil Procedure for permission to file Execution Application to execute the decree dated 4th January, 2012 in Summary Suit No. 3485 of 2007 is allowed.

(B) Plaintiff to proceed with Execution Application according to law.

(C) Notice stands disposed of accordingly.

(K.K.TATED, J.)