

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE NO.1749 OF 2016
IN
ARBITRATION NO.ARB/SVC/41/2009
(EXECUTION APPLICATION NO.804 OF 2016)**

The Shamrao Vithal Co-operative Bank Ltd. ...Applicant
Vs.
Mr.Nikhil N. Jhaveri & Ors. ..Opponents

Mr.Vishal Narkar, Advocate for Applicant.

CORAM : K. K. TATED, J.
DATE : SEPTEMBER 12, 2017

P.C.:

1. Heard the learned Counsel Mr.Narkar for the applicant.
2. The learned Counsel Mr.Narkar for the applicant made a statement across the bar that he received instructions from his client not to press this notice against respondent No.3 Mr.Nilesh R. Jhaveri and respondent No.4 Veena Sargam. The said statement is accepted. Applicant is directed to carry out amendment to that effect in Notice as well as in Execution Application within three weeks from today. Re-verification is dispensed with.
3. The learned Counsel Mr.Narkar submits that they tried to serve respondent nos.1 and 2 through Bailiff, but the respondent nos.1 and 2 refused to accept the service. To that effect, the Bailiff has submitted his report. He submits that the said report is placed on record by them by affidavit of service dated 14th February 2017.

4. Considering the submission made by the learned Counsel for the applicant and the affidavit of service dated 14th February 2017, I hold that service is effected on the respondent nos.1 and 2.

5. This notice is preferred by the applicant under Order XXI Rule 22 of the Code of Civil Procedure, 1908 for execution of Decree/Award dated 6th April 2011 as there was delay on their part to file the same within two years.

6. Considering the submission made by the learned Counsel for the applicant and averments made in affidavit in support of the Execution Application, I satisfy that the applicant has made out a case for allowing the notice. Hence, the following order:-

ORDER

- i) Notice preferred by the plaintiff under Order XXI, Rule 22 of the Code of Civil Procedure, 1908, is allowed;
- ii) The applicant is permitted to execute the decree according to law.

(K.K.TATED, J.)