

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

MISCELLANEOUS CIVIL APPLICATION (ST.) NO. 25311 OF 2018

Mahendra P. Shah	Applicant
V/s.	
Canara Bank & Ors.	Respondents

Mr. Madhav Jamdar i/b. Mr. Sanket Mungale for the applicant.
Mr. Satyakumar M. Shettigar for respondent no.9.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 10TH DECEMBER, 2018.**

P.C.:

. By this application, filed under Section 24 of the Civil Procedure Code, the applicant has sought transfer of the Execution Application No.733 of 2013 with all papers and proceedings of the Chamber Summons, Notices of Motion, etc. from Bombay City Civil Court to the High Court of Judicature at Bombay.

2. The respondent no.1 who was the original plaitniff had filed a suit for recovery of sum of Rs.25,86,077.78 along with interest @ 12% p.a. The same was decreed as per the Consent Terms. The said consent decree dated 18/06/1974 was modified on 03/11/1976. The applicant herein had purchased the subject property in an auction held by BMC on 28/11/1984. Certificate of Sale was issued by BMC on

02/04/1985. Pursuant to the order passed in execution proceedings, the property was proposed to be sold in public auction scheduled on 22/11/1985. The applicant herein intervened in the execution application which was filed before this Court.

3. The claim in the suit was less than Rs.1 Crore and in view of the enhancement of the pecuniary jurisdiction of the City Civil Court, Bombay upto Rs.1 crore, the execution application along with all other proceedings were transferred to the City Civil Court, Bombay.

4. Mr. Madhav Jamdar, learned counsel for the applicant contends that the execution application was filed in the year 1983 which was much prior to the amendment of section 3 and insertion of section 4(a) to the City Civil Court Act, 1948 and hence, this application could not have been transferred to the City Civil Court, Bombay based on the monetary claim involved in the original suit. In support of the said contention, he has relied upon the judgment of the Single Judge of this Court in *Execution Application No.539/2012 in Suit No.3279/1987 in the case of Anant Narayan Kajrolkar v/s. Neeta Madhukar Kajrolkar and ors.* Relying upon the said decision, he contends that it is only the High Court, Bombay that has jurisdiction to decide the

Execution Application No.733/2013 (*High Court Execution Application No.65/1983*) and hence, the said application needs to be transferred from City Civil Court, Bombay to the High Court, Bombay.

5. Mr. Satyakumar Shettigar, learned counsel for respondent no.9 has opposed the application on the ground that the proceedings were transferred in the year 2013. He submits that the applicant has submitted to the jurisdiction of the City Civil Court, Bombay and has participated in the proceedings and has filed the present application after a lapse of almost five years. He further submits that the facts in the case of *Anant Narayan Kajrolkar (supra)* are distinguishable and that the principles laid down in the said case are not applicable to the facts of the present case.

6. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

7. It is not in dispute that the Execution Application No.733 of 2013 was filed before this Court and that on the date of filing of the execution proceedings, it was only this Court that had jurisdiction to decide the said execution application. In view of insertion of Section

4(A) and the rules framed in exercise of powers conferred by Section 4B of the Bombay City Civil Court, this Court through the Registrar (Original Side)/Prothonotary and Senior Master issued a notice that fresh filing of the suits of pecuniary jurisdiction not exceeding Rs.1 Crore as well as the suit would not be accepted in the Registry w.e.f. 01/09/2012 and that all pending suits not exceeding Rs.1 Crore except the admiralty suits, testamentary suits, parsi and intellectual property rights suits shall be transferred to the Bombay City Civil Court (Amendment) Act, 2012 r/w. Government Notification dated 28/08/2012.

8. It is not in dispute that the claim in Suit No.398/1974 was less than Rs.1 Crore. By virtue of the amendment to the Bombay City Civil Court Act, the Execution Application in Suit No.398 of 1974 along with several other execution applications pending before this Court, with pecuniary jurisdiction of less than Rs.1 Crore were transferred to the City Civil Court.

9. The petitioner having participated in the execution proceedings for over five years, has now filed the application for transfer by invoking provisions of Section 37(1)(b) of the Civil Procedure Code.

Relying on the judgment in Anant Narayan Kajrolkar (supra), the learned counsel for the applicant has sought to contend that this Court has jurisdiction to execute the decree as the question in the above cited decision is not applicable to the case in hand. It is not about the jurisdiction of this Court but is about the jurisdiction of the City Civil Court to execute the decree. In view of increased in pecuniary jurisdiction of the City Civil Court by virtue of amendment to the Bombay City Civil Court Act, the City Civil Court has jurisdiction to execute the decree.

10. The application has no merits and is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)