

Sharayu Khot.

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

JUDGES ORDER NO. 89 OF 2019

IN

EXECUTION APPLICATION (L) NO. 577 OF 2019

Rashmikant Hirji Bheda

...Claimant

Versus

Sadhana Vijay Loke & Anr.

...Respondents

Ms. Mamta Shah, for the Claimant.

CORAM : R.I. CHAGLA J.

DATE : 11 June 2019

ORDER :

1. The learned Counsel for the Claimant seeks Judges Order in the Execution Application that the process in execution of the above award dated 10th August 2016 may be issued without issuing the show cause notice under Order XXI Rule 22

of the Code of Civil Procedure, 1908.

2. She states that by an award dated 10th August 2016, the Claimant was awarded an amount of Rs. 4,08,60,390/- along with interest at 18% from the date of the award till payment of the said amount by the Respondents to the Claimant. She states that the Arbitration Petition under Section 34 of the Arbitration and Conciliation Act, 1996 has been taken out by the Claimant to challenge the award as major part of the claim has not been awarded to the Claimant. The Arbitration Petition came up before this Court on 17th February 2017, when the Petition was admitted and placed for final hearing and the Respondents were directed not to take any steps to execute the award. Thereafter, by order dated 20th February 2019 passed by the learned Judge of this Court permission was granted to the Petitioner to withdraw the Arbitration Petition and the Petitioner was allowed to execute the impugned award as decree of this Court. The period of two years had therefore, lapsed from the date of the award.

3. Order XXI Rule 22 of Code of Civil Procedure, 1908 contemplates where an application for execution is made more than two years after the date of the decree, the Court executing the decree shall issue notice to the person against whom execution is applied for requiring him to show cause on the date fixed why the decree should not be executed against him. In the present case, the application for execution is made more than two years after the date of the award due to the above order of this Court dated 17th February 2017 passed in the Arbitration Petition which directed the Arbitration Petition to be placed for final hearing and the Respondents were directed not to execute the award. Thereafter, the Petition came to be withdrawn and the award became executable as a decree after the lapse of over two years. Considering the given fact that the award became executable as a decree after withdrawal of the Arbitration Petition, notice under Order XXI Rule 22 of the Code of Civil Procedure, 1908 is dispensed with.

4. Accordingly, the Judges Order is made absolute.

5. The Judges Order is accordingly signed separately.
6. The Prothonotary & Senior Master, High Court, Bombay shall act on an authenticated copy of this Judges Order.

[R.I. CHAGLA J.]