

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 1 OF 2019
AND
INTERIM APPLICATION NO. 2 OF 2019
IN
EXECUTION APPLICATION NO. 1095 OF 2017**

Kotak Mahindra Bank Ltd.	Applicant
In the matter between	
Essel Finance Business Loans Ltd.	Claimant/Decree holder
V/s.	
Sayyed Sharfuddin & Ors.	Respondent/Judgment-Debtor

Mr. Nishant Rana a/w Ms. Chinmayee Ghag & Ms. Rupa Patel i/b
Zastriya Attorneys & Legal Consultants, Advocate for the Applicant.
Ms. Sejal Shal i/b SRLex, Advocate for the Respondent No.3.

CORAM : G.S. KULKARNI, J.
DATE : 13th DECEMBER, 2019

P. C.

Interim Application No. 1 of 2019

Heard learned counsel for the Applicant and learned counsel for the Respondent No.3. Other Respondents are already served.

2. This is an application, praying for the name of the original claimant/decreed holder i.e. Essel Finance Business Loans Limited to be substituted by the Applicant /proposed decree holder i.e. Kotak Mahindra Bank Limited in the execution application as also in the warrant of attachment. There is further prayer that the time be extended for the warrant of attachment as the same has expired.

3. On the last occasion when this application was heard, learned counsel for the Respondent No.3 desired that Respondent No.3 be given inspection of the assignment deed. Accordingly permitting the same, hearing of this application was adjourned. Pursuant thereto the

inspection of the deed of assignment was granted to the advocates for Respondent No.3.

4. Today learned counsel for Respondent No. 3 contends that her clients have an objection to the board resolution dated 10th May 2019, which is in relation to the deed of assignment, which according to her is not passed in the manner known to law, under which, Mr. Amitabh Chaturvedi, Director and/or Mr. Sabyasachi Rath, CEO and Executive Director and other three authorities, jointly and / or severally were authorised to sign and execute the necessary documents.

5. The other objection as raised on behalf of Respondent No. 3 is in regard to the warrant of sale which she contends to have expired on 8th March 2019. She has referred the orders dated 25th March 2019, 3rd May 2019, 10th June 2019, 8th July 2019, 14th August 2019, 6th September 2019, 18th September 2019 and 9th October 2019 as passed by the Commissioner for Taking Accounts recording the said fact.

6. Perusal of the order dated 10th June 2019 passed by the learned Commissioner for Taking Accounts itself indicates that even before the Commissioner for Taking Accounts, the fact that the decree has been assigned to Kotak Mahindra Bank Limited by the Applicant was noted by the Commissioner for Taking Accounts thereby indicating that it would be necessary in the changed circumstances to amend the execution application in view of the assignment deed and subsequently amend the warrant of attachment.

7. It thus appears that through-out Respondent No.3 was aware in regard to the said developments as clearly seen by the orders passed by the Commissioner for Taking Accounts. Now when the interim application has been moved on behalf of the Applicant Kotak Mahindra Bank Ltd, all these objections are sought to be taken. The

orders passed by the Commissioner for Taking Accounts infact supports the application as made by the Kotak Mahindra Bank Ltd. The objection as raised on behalf of Respondent No.3 that the Board Resolution is not being passed in accordance with law, without raising any objection to assignment deed, cannot be accepted. If Respondent No. 3 is aggrieved by any resolution passed by the board of directors, the remedy is elsewhere.

8. In my opinion, perusal of avarements as made in application and moreover as it can be seen that Respondent No.3 was aware about all these developments, none of the objections as urged by the Respondent No. 3 can be considered as a valid opposition to the present application and more so without even filing a reply affidavit to the interim application.

9. In the above circumstances the application is required to be allowed. It is accordingly allowed in terms of prayer clause (a) of the application. Necessary amendment to be carried out within three weeks from today.

10. Interim Application No. 1/19 is disposed of in above terms. No costs.

Interim Application No. 2 of 2019

11. Interim application No. 2/19 has been filed to bring on record the legal heirs of Respondent No. 1. The names of the legal heirs are furnished by Respondent No.3.

12. Having perused the averments in the application, application deserves to be allowed. It is accordingly allowed in terms of prayer clause (a).

13. Interim Application no. 2/19 is disposed of in above terms.

14. No costs.
15. Amendment be carried out within three weeks from today.

[G.S. KULKARNI, J.]