

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

**CHAMBER SUMMONS NO.1049 OF 2019
IN
EXECUTION APPLICATION NO.646 OF 2013**

Five Fate Infrastructure Pvt. Ltd. .. Applicant
v/s.
Amrut Industries Limited & Ors. .. Opponents/Respondents

Mr. Prathamesh Kamat a/w Zoeb Cutlerywala, Vikram Kamath i/b.
Phoenix Legal for the applicant.

Ms. Sapna Rachure for respondent no.1.

**CORAM : A. K. MENON, J.
DATED : 7TH DECEMBER, 2021.**

P.C. :

1. By this Chamber Summons, the applicant-original plaintiff seeks restoration of the Execution Application along with Chamber Summons which was pending on date of dismissal. The Chamber Summons came to be dismissed on 24th January, 2019 for default.
2. Mr. Kamat, the learned counsel appearing for the applicant today points out that the applicants may be at fault in not having attended the matter on 24th January, 2019 when it came to be

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dismissed. However, it is material to note that daily cause list of 24th January, 2019 on which he places reliance reveals that at item no.12, the Notice and Execution Application also listed. Item no.12 follows item no.11 under the caption “Notice for hearing and final disposal”.

3. Mr. Kamat states that Notice no.756 of 2016 which was listed on that date was in fact Notice under Order XXI Rule 22 which had been allowed against respondent no.1 on 4th December, 2017. By an affidavit in support, Mr. Kamat has taken me through the reasons set out for absence of applicant and counsel on that date. The affidavit contains usual reasons but the fact remains that as per the cause list displayed a Notice which had already been disposed. It is stated that respondent no.1 was in liquidation. The Official Liquidator has entered appearance but Ms. Rachure points out that the company is out of liquidation pursuant to an order dated 6th June, 2019. In that view of the matter, I find no reason to refuse this application.
4. Accordingly, IA can be allowed but limited to restoration of the execution application since Mr. Kamat does not press for restoration of the Chamber Summons no.804 of 2016 and the notice no.756 of 2016 is already disposed.

5. Accordingly, chamber summons is made absolute in terms of prayer clause (a).
6. It is clarified that only execution application is restored.
7. If no process is adopted for attachment of the companies property within four weeks from today, this order will stand vacated and the execution application shall stand dismissed.

(A. K. MENON, J.)