

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.976 OF 2023
IN
EXECUTION APPLICATION (L) NO.1110 OF 2021

Zarina Park Co-operative Housing Ltd. ... Applicant / Decree Holder
Vs.

Sudhir Shetty ... Respondent / Judg. Debtor

Mr. Bhavik Manek a/w. Ms. Nutan Patel i/b. Ms. Nutan Patel for Applicant / Decree Holder.

CORAM : MANISH PITALE, J.

DATE : JUNE 15, 2023

P.C. :

Heard learned counsel for the applicant.

2. By this application, the applicant (decree-holder) is seeking an order directing the Registry to dispense with objection raised by the Section Officer so that the applicant can proceed with the application for execution of decree filed in this Court.

3. The objection of the Registry pertains to the question of limitation. It is stated in the objection that the execution application is barred by limitation. According to the applicant, the peculiar facts of the present case would show that the aforesaid objection needs to be dispensed with.

4. Mr. Bhavik Manek, learned counsel appearing for the applicant invited attention of this Court to the order dated 15.09.2003, passed by the learned Single Judge of this Court, whereby the suit was decreed in terms of prayer clause (a) and it was directed that the decree would not be sealed till the documents as directed in the said order were tendered. According to the learned counsel for the applicant, after the said order was passed, the plaintiff approached the defendant for execution of conveyance in terms of the decree. It is pointed out that there were

certain negotiations between the parties, wherein the plaintiff tried to impress upon the defendant that the execution of the conveyance ought to be in terms of the decree passed by this Court. But, according to the applicant, the differences could not be sorted out and eventually, the applicant was constrained to take out chamber summons before this Court seeking condonation of delay in complying with the direction of this Court in the order dated 15.09.2003, to place the documents on record. By an order dated 13.10.2015, the Chamber Summons were allowed and consequently, the delay was condoned and the applicant was permitted to place the documents on record. Such documents were placed on record on 26.10.2015.

5. According to the learned counsel for the applicant, it was only after the said documents were tendered, that as per the order dated 15.09.2003 passed by this Court, the decree came to be sealed. The period of limitation stood triggered on the said date and the execution application having filed on 18.09.2020 was within the period of limitation. On this basis, it was submitted that the objection pertaining to limitation raised by the Registry ought to be dispensed with.

6. This Court has perused the order dated 15.09.2003 passed by this Court in Suit No.4820 of 1994. The relevant portion of the said order reads as follows:-

“3. No written statement has been filed. The facts stated in the plaint are accepted as correct. Perusal of the plaint indicates that the Plaintiff have established its case. There is nothing on record to belies the Plaintiff’s prayer for a decree as above.

4. The learned advocate appearing on behalf of the Plaintiffs shall file a compilation of the original documents within four weeks from today. In the event of the compilation being filed by the Plaintiffs, the Plaintiffs shall be at liberty to withdraw the original documents on tendering in lieu thereof copies duly certified by the advocate to be true copies.

5. The suit is decreed in terms of prayer (a) and costs. Cost to be quantified as per rules. Decree not to be sealed till the

documents are tendered as stated above.”

7. The said order required the applicant to place on record compilation of original documents within four weeks from the date of the order. In the chamber summons taken out by the applicant, it is stated in detail as to why the original documents could not be placed before this Court within the aforesaid period of four weeks. Eventually, the chamber summons were taken out for condonation of delay and for a prayer to place the original documents on record in terms of the order dated 15.09.2003.

8. As noted hereinabove, by order dated 13.10.2015, the said chamber summons were allowed and consequently, the applicant could place on record the documents as directed by this Court, on 26.10.2015. A proper reading of the order dated 15.09.2003, shows that the decree could be sealed only after the documents were tendered by the applicant and this could be done only after the chamber summons stood allowed by the order dated 13.10.2015.

9. In this backdrop, this Court is convinced that the trigger point for limitation actually arose from the date when the original documents were tendered by the applicant before this Court in terms of the order dated 15.09.2003 read with the order dated 13.10.2015. The execution application filed on 18.09.2020, therefore, has to be treated as having been filed within the period of limitation.

10. In that light, the objection dated 21.10.2022 raised by the Section Officer of the Registry is dispensed with.

11. Interim Application is disposed of accordingly.

12. The Registry is directed now to take the follow-up action in the matter.

(MANISH PITALE, J.)