

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

**INTERIM APPLICATION NO. 1952 OF 2022
WITH
INTERIM APPLICATION (LODGING) NO. 26361 OF 2022
IN
COMMERCIAL EXECUTION APPLICATION NO. 21 OF 2022**

Rameshchandra Mansukhani & Ors. ...Applicants

Versus

Jagdishchandra Mansukhani & Ors. ...Respondents

* * *

- Mr. Venkatesh Dhond, Senior Counsel a/w Mr. Rohaan Cama, Mr. Nishit Dhruva, Ms. Niyati Merchant, Mr. Yash Dhruva and Mr. Harsh Sheth i/by MDP & Partners, for the Applicants.
- Mr. Atul Singh and Ms. Mithila Agrawal i/by AVS Lega, for Respondent Nos. 1 to 4.

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CORAM : MANISH PITALE, J

DATE : 06th FEBRUARY, 2023.

P. C. :

1. This is an Interim Application for amendment filed in Commercial Execution Application No. 21 of 2022, seeking various reliefs, apart from seeking amendment of column "J" of the Commercial Execution Application, in terms of the schedule appended to the present application.

2. The Respondent Nos. 1 to 4 have filed their reply to the present application, styled as Preliminary Affidavit-in-reply. They have raised a preliminary objection to this Court entertaining the present application for amendment, on the ground that in the facts of the present case, Section 96 of the Insolvency and Bankruptcy Code, 2016, has come into play as an application for initiating insolvency

resolution process under Section 95 has been already filed. It is submitted that in view of the said application being filed, interim moratorium has kicked in and even the present amendment application ought not to be considered by this Court. It is orally submitted on behalf of the said Respondents that they have objection to inclusion of certain properties by way of amendment in column “J” to the Commercial Execution Application.

3. Mr. Dhond, learned Senior Counsel appearing for the Applicants in the present application has pressed for the reliefs in the present application. He submits that the interim moratorium contemplated under Section 96 of the aforesaid Code cannot apply to the present situation where this Court is considering an amendment application. He submits that this Court may allow the present application reserving the right of the Applicants to press for reliefs under prayer clauses (c) to (e) in the Commercial Execution Application.

4. On the other hand, Mr. Atul Singh, learned Counsel appearing for the Respondent Nos. 1 to 4 submits that Section 96 of the said Code would apply, not only to the Commercial Execution Application, but to the present application for amendment and that this court ought not to take up the application for disposal in the facts and circumstances of the present case.

5. Heard learned Counsel for rival parties. There is no serious dispute about the fact that an application as contemplated under Section 95 of the aforesaid Code has been filed and that the question of applicability of Section 96 to the execution proceedings would arise. It is also noted that for the present the Applicants are seeking to press prayer clause (b) in the present application, which reads as follows :

“B. This Hon’ble Court be pleased to allow the amendment to Column ‘J’ of the captioned Commercial Execution Application in terms of the Schedule of Amendment as set out in Exhibit A hereto and allow such further consequential amendments, if any;”

6. Insofar as prayer clause (c) to (e) are concerned, the Applicants themselves submit that the same may be reserved for the applicants to pursue in the execution proceedings.

7. This Court is of the opinion that if the contentions sought to be raised on behalf of the Respondents on both the aspects i.e. firstly, that the interim moratorium under Section 96 of the aforesaid Code applies to the execution proceedings, and secondly, objection to the inclusion of certain properties in column “J” of the execution application, could be kept open and the present application seeking amendment to the extent of prayer clause (b) could be allowed. This

would be expressly without prejudice to the aforementioned contentions and objections raised on behalf of the Respondents, which really matter insofar as the continuance of the execution proceedings are concerned.

8. In view of the above, the present application is allowed in terms of prayer clause (b) quoted hereinabove, subject to the aforementioned two contentions raised on behalf of the Respondents being expressly kept open for consideration and decision in Commercial Execution Application No. 21 of 2022. The amendment be carried out within two weeks from today. Re-verification is dispensed with.

9. The Applicants herein are granted liberty to press reliefs in terms of prayer clauses (c) to (e) of the present application in the Execution proceedings bearing Commercial Execution Application No. 21 of 2022. It is clarified that when the present application is allowed in above terms in terms of prayer clause (b), the Applicants will be permitted to amend column "J" of Commercial Execution Application No. 21 of 2022, as per schedule of amendment set out in Exhibit "A" as well as Exhibit "B"

10. The application stands disposed of in above terms.

(MANISH PITALE, J.)