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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.28 OF 2017
IN
EXECUTION APPLICATION NO.448 OF 2006

Charanjeet Kaur Kalsi & Anr. ...Applicants
In the matter between
Rammurath Singh Ramnath & Ors. ...Decree Holder

Versus

The State of Maharashtra & Ors. ... Respondent /
Debtors

Nitesh Acharya for Applicants.

Mrs. Jyoti Chavan AGP for Respondent No.1 – State.

Karan Gajra i/b. Abhijeet Desai for the SRA.

CORAM : R.I. CHAGLA J
DATE : 8 MARCH, 2023

ORDER :

1. By this Chamber Summons, the Applicants who are legal heirs of the original Applicants have sought restoration of Execution Application No.448 of 2006 which came to be rejected by conditional order dated 28th November, 2014. Further relief is sought for substituting the name of the original Applicant No.8 by the names of the legal heirs of the original Applicant. The Original Applicant No.8

is stated to have expired on 11th September, 2016.

2. The learned Advocate appearing for the Applicant states that the Execution Application was dismissed under Rule 329 of High Court Original Side Rules, 1980 for non prosecution of the Execution Application when infact the Execution Application had been proceeded with. This has been specifically averred in the Affidavit in Support of the Chamber Summons, wherein mention is made of the steps taken in the Execution Application. Notice under Order XXI Rule 22 had been issued and which was made absolute. Thereafter Warrants of Attachment were issued in respect of the immovable properties of the Defendant No.4 and the Warrant of Attachment have also been executed for the movable and immovable properties on 5th April, 2007 i.e. much prior to the conditional order dated 28th November, 2014 by which a series of Execution Applications including the above Execution Application had been dismissed under Rule 329 of the High Court (Original Side) Rules, 1980.

3. The learned Advocate appearing for the Applicants has also referred to the various proceedings and orders passed in the above Execution Application as well as evidence which was recorded

by the Court Commissioner in these proceedings. He has submitted that during the pendency of the Execution Application, the Original Applicant No.8 in the above Execution Application had expired on 11th September, 2016. A copy of the Doctor's Certificate dated 20th June, 2016 has been annexed to the Affidavit in Support of the Interim Application which shows that the Original Applicant No.8 was suffering from heart disease and chronic kidney diseases which required medical attention and was frequently admitted to hospital and after prolonged illness, the original Applicant No.8 expired.

4. The learned Advocate for the Applicants states that on 3rd October, 2016 upon the Applicants visit to the Advocate's office to inquire about the proceedings, the Advocate checked the matter on the website and learnt that by common order dated 28th November, 2014 passed by this Court, the Execution Application had been dismissed.

5. Accordingly, the present Chamber Summons has been taken out on 13th October, 2016 for restoration of the above Execution Application and for bringing the legal heirs of the original Applicant No.8 on record in place and stead of original Applicant

No.8.

6. I have considered the averments in the Affidavit in Support of the Chamber Summons as well as taken note of the fact that, the Execution Application No.448 of 2006 has stood disposed of by common order dated 28th November, 2014 passed in a series of Execution Applications for non prosecution under Rule 329 of the High Court Original Side Rules, 1980. The said common order dated 28th November, 2014 had been passed without considering the steps taken in Execution Application No.448 of 2006. It is noted that the Execution Application No.448 of 2006 has been proceeded with and attachment of warrant executed. Further, various proceedings have been filed in the Execution Application which had also resulted in evidence being led and series of orders passed. Accordingly, the Execution Application requires to be restored.

7. Further, it appears that the original Applicant No.8 expired on 11th September, 2016 and upon his expiry the Applicants as legal heirs of the original Applicant No.8 were not aware of the common order dated 28th November, 2014 passed by this Court by which the Execution Application had been rejected and it is only on

3rd October, 2016 that they had learnt from their Advocates after checking the matter on the website that vide common order dated 28th November, 2014 the above Execution Application had been rejected. In view thereof, the Chamber Summons has been filed without delay.

8. Accordingly, the relief sought for in the Chamber Summons is granted. The Applicants who are the legal heirs of the Original Applicant No.8 are entitled to be brought on record in place and stead of original Applicant No.8 for proceeding with Execution Application. Hence, the following order:-

(i) The Execution Application is restored to file by recalling of the order dated 28th November, 2014 to the extent the common order applies to the Execution Application No.448 of 2006.

(ii) In view of restoration of the Execution Application, the Applicants who are legal heirs of the original Applicant No.8 are permitted to be brought on record in place and stead of original Applicant No.8 who has expired as per the schedule A annexed to the Chamber Summons and the amendment shall be carried out

within a period of two weeks from the date of this Order.

(iii) The Chamber Summons is accordingly disposed of.

[R.I. CHAGLA J.]