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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.345 OF 2019
IN
COMMERCIAL EXECUTION APPLICATION NO.23 OF 2022

Vardhman Developers Ltd.] .. Applicant
vs.
Orbit Corporation Ltd & Ors.] .. Respondents\

ALONGWITH
INTERIM APPLICATION NO.2103 OF 2021
IN
COMMERCIAL EXECUTION APPLICATION (L) NO.988 OF 2018
ALONGWITH
INTERIM APPLICATION NO.280 OF 2023
IN
COMMERCIAL EXECUTION APPLICATION NO.23 OF 2022

.....

Mr.Abhay Khandeparkar a/w Vishal Kanade and Yash Ghadigaonkar i/b Swati kapadia for the Applicant Dinesh Agarwal.

Mr. Karl Tamboly a/w Kausasr Banatwala and Paluck Bengali i/b Tushar Goradia for the Plaintiff/Decree Holder.

Mr.Gaurang Mehta a/w Ashish Parwani and Dikshat Mehra for the Applicant in IA No.280/2023.

CORAM : BHARATI DANGRE, J

DATE : 15th December, 2023.

P.C.

1] Interim Application No.280/2023 is taken out by Respondent Nos.2 and 3 to the Execution Application, where the Application seek a declaration that the Execution Application be declared as misconceived, void ab initio and it shall be struck off the record or in the alternative, it is prayed that the hand-written endorsement of 04.04.2022 by the Section Officer/the delegate of Prothonotary and Senior Master, directing the same to be taken on file and numbering the Execution Application be set aside.

In short, it is prayed that the Execution Application be dismissed as it was numbered without removal of the office objection.

2] I have heard the learned counsel for the Applicant and perused the proceedings of the Execution Application.

The Application for executing the Decree/ Order dated 12.06.2015 and 29.09.2016 is filed in the Suit No.345/2015 and it was allotted a lodging number upon its filing on 26.03.2018.

Certain objections were notified upon the lodging the application and on 11.03.2022 lodging number No.673/2018 was allotted to it. The said Execution Application alongwith the Chamber Summons as well as the Contempt Petition were listed before the Court on 11.03.2022 when the proceedings were stood over to 25.03.2022 with a direction that, in the meanwhile all the office objections be removed and proceedings be numbered.

3] It is the contention of the learned counsel that the objections were never removed and therefore the conversion of the lodging number allotted to the Execution Application into Commercial Execution Application No.23/2022 is erroneous.

My attention is invited to the noting on the file, which is to be found on Page 39 of the Application and I deem it appropriate to reproduce the same

“Seen. Original certified copy of drawn up decree is filed in Execution Application No.123 of 2017.”

“Seen praecipe dated 04.4.2022 for correction in column ‘J’ at page 5. ‘A’ pursuant to office objections.”

4] The above noting in order dated 04.04.2022 record that original certified copy of the drawn up decree is filed in Execution Application No.1232/2017. Apart from this, the precipe for correction in Column ‘J’ is also accepted on the very same day.

What is pertinent to note is the noting put up on 05.04.2022, which defer certain objections at the time of issuance of warrant, but a direction is issued to number the Application and that is how Commercial Execution Application was numbered as 23/2022.

5] When the Application is perused, it is accompanied with an email communication addressed by the Advocate for the Judgment Debtor to the Plaintiff/Decree Holder where it is intimated that from the Website of the Bombay High Court, it was noticed that the Execution Application was kept pending for a long time on lodging number i.e. from 26.03.2018 till 04.04.2022, which has now been allotted a final registration number as Commercial Execution Application No.23/2022.

What is important to note in this communication is para Nos.2 and 3;

“2. It is evident that all steps for having the E.A. finally numbered were only taken by your clients in the last two weeks of thereabouts.

3. *To get the E.A. finally numbered your office and/or your clients in all probability have complied with the office requisitions raised by the execution department of the office of the Prothonotary and Senior Master which may also have entailed amendment of the E.A. and filing of praecipis and further Affidavit/s.”*

In the wake of above, a request is made to serve a full and complete copy of the Execution Application with all the amendments alongwith copy of the praecipe affidavits filed in the matter for removing the office objection.

6] The removal of office objections is a matter which falls within the province of the Prothonotary and Senior Master or his delegate and once he is satisfied that the office objections are removed, I do not think that the Court shall delve into this technical aspect as ultimately it is the satisfaction of the concerned Authority, who is to notify the office objections, and ensure that the office objections are removed..

In any case when the endorsement dated 04.04.2022 and 5.04.2022, clearly record that the office objections have been removed and the Application is directed to be numbered, there is compliance of the order dated 11.03.2022, pursuant to which, execution application has received its regular number replacing the lodging number on which it was pending on the file of this Court for a period of almost 4 years.

7] The reliance placed by the learned counsel on the decision of this Court in case of *M/s. T.A. Darbar & Company & Ors. vs. Union Bnak of India, 1992(3) DCR 702*, is misconceived as it deal with the obligation of the Court to have the decree holder remove the defect if

any in the Execution Application and the observation that the office of the Prothonotary and Senior Master must scrutinize every application for execution of decree and ascertain whether the application is complete and whether the compliance with the requirements under Order 21 Rule 11 and 14 of the Code and if the office objections are not removed it is imperative to communicate the same to the Applicant or the Advocate for the applicant.

8] What the decision state is, sufficient time should be given for removal of office objections before the decree is executed. Nonetheless since it has recognized the power of the Prothonotary and Senior Master and it is his satisfaction which would be relevant for considering whether the office objections are removed and in this case since he has expressed the satisfaction and execution application has been directed to be numbered, I see no reason to interfere with the same unless and until some grave malafides are attributed.

In the wake of above Interim Application No. 280/2023 which has raised an objection about allotting a regular number to the Execution Application is rejected.

9] Let the respective counsel throw some light on the legal position as to whether transfer to defeat the Decree is permitted to be assailed in the Execution Application or does it require filing of a separate proceeding.

List the remaining proceedings 20.12.2023 a/w Chamber Summons No. 1/22.

[BHARATI DANGRE, J]