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

INTERIM APPLICATION (L) NO.21744 OF 2023

IN

EXECUTION APPLICATION NO.1368 OF 2015

Kalpesh Rajkumar Koradia

...Applicants /
Claimant (Decree
Holder)

Versus

Navin Shah (Since deceased)

...Respondent /
Ori. Judg Debtor

Swanand Ganoo with Amit G. Dubey for the Applicant / Ori.
Claimant.

Shailesh Mishra for the Respondent No.1.

Rishika Solanki for Respondent No.2.

CORAM : R.I. CHAGLA J.

DATE : 5TH JANUARY, 2024.

ORDER :

1. By this Interim Application, the Applicant / Original Claimant has sought setting aside of the Order dated 20th January, 2020 of dismissal of the above Execution Application passed by this Court under Rule 329 of High Court Original Side Rules and the

Execution Application be restored to file by condoning the delay in filing of the present application. Further relief is sought in view of the Judgment Debtor having expired and for bringing the legal heirs of the Judgment Debtor on record who are Respondents to the Interim Application. Additional relief is sought for issuance of fresh warrant of attachment under Order XXI Rule 54 of the Code of Civil Procedure, 1908 in respect of right, title and interest of the Respondents in ownership of immovable properties i.e. Flat No.105-A, Simla House CHSL, Nepean Sea road, Mumbai 400 006 and Flat No.104-A, Simla House CHSL, Nepean Sea Road, Mumbai 400 006.

2. The Applicant / Original Claimant has stated that a common order dated 20th January, 2020 was passed by this Court by which the above Execution Application was dismissed for non prosecution under Rule 329 of the Bombay High Court (Original Side) Rules 1980. This Court by passing of the said order was not aware of the warrant of attachment having been issued in the above Execution Application on 20th July, 2015 in respect of the aforementioned properties belonging to the Judgment Debtor. Thus steps had been taken in the Execution Application for execution of the Award dated 30th October, 2014 by the Applicant and thus the

above Execution Application could not have been dismissed for want of prosecution under Rule 329 of the Bombay High Court (Original Side) Rules, 1980.

3. The Applicant has stated that he is unaware of whether warrant of attachment was executed against the aforementioned immovable properties as the Applicant has been unable to obtain the Report with regard to the execution and levying of the attachment on the said properties either from the office of Sheriff of Mumbai or from the records of erstwhile advocate of the Applicant.

4. The Applicant has further stated that in or about April, 2023 the Applicant checked with his erstwhile Advocate to know the status as to when the matter will be listed and after follow up in first week of May, 2023 the Applicant's Advocate checked the status of the matter on official website of the High Court and that's when Applicant learnt that the above Execution Application had been dismissed by the common order dated 20th January, 2020. The Applicant has stated that he was not aware of the dismissal of the above Execution Application and he is very much desirous of proceeding with the Execution Application.

5. The Applicant has further stated that the Judgment Debtor expired on 31st August, 2019 and the Applicant is seeking impleadment of the Respondents in place and instead of the original Judgment Debtor. The Applicant has stated that the death of the original Judgment Debtor on 31st August, 2019 was not to his knowledge and he came to know subsequently in the year 2022. However, being a lay person he was unaware that he had to join the legal heirs of the original Judgment Debtor in the above Application. The Applicant has submitted that in view of the Applicant not being able to produce bailiff's report before this Court as regards the execution of the Warrant of Attachment which had been issued on 20th July, 2015 and also being unable to produce the original of the warrant of attachment for extension of returnable date of the same, he has prayed for issuance of fresh warrant of attachment under Order XXI Rule 54 of the CPC.

6. Having considered the averments in the present Interim Application as well as the fact that the Applicant has taken requisite steps for prosecuting the Execution Application, it appears that due to inadvertence that common order had been passed in the above Execution Application which was listed before this Court along with

other Execution Applications. In that view of the matter, the above Execution Application is restored to file by recalling of the common order dated 20th January, 2020 in so far as it pertains to the above Execution Application.

7. Further, in view of the original Judgment Debtor having expired, the Respondents are required to be brought on record in the restored Execution Application.

8. The learned Advocate for the Respondents has not objection to the Respondents being brought on record subject to the rights and contentions of the Respondents being kept open.

9. Accordingly, the Applicant / Original Claimant shall take requisite steps for bringing the Respondents on record by amending the Execution Application and which shall be carried out within a period of two weeks from the date of this Order.

10. A fresh warrant of attachment shall be issued considering that the Applicant is unable to confirm whether the warrant of attachment issued on 20th July, 2015 is executed and / or

to produce bailiff's report. The office shall take requisite steps for issuance of fresh warrant of attachment against the immovable properties which are Flat No.105-A, Simla House CHSL, Nepean Sea road, Mumbai 400 006 and Flat No.104-A, Simla House CHSL, Nepean Sea Road, Mumbai 400 006.

11. The Interim Application is accordingly disposed of.

[R.I. CHAGLA J.]