

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2029 OF 2025
IN
FAMILY COURT APPEAL (L) NO.4188 OF 2025

Ms. Sheila Josephine Johar Matharani	...Applicant
<u>In the matter between</u>	
Ms. Sheila Josephine Johar Matharani	...Appellant
Versus	
Mrs. Meher Rajan Matharani and Ors.	...Respondents

Mr. Rohaan Cama a/w *Ms. Sita Kapadia, Trishi Pant a/w Rutuja Rane i/b. Keystone Partners a/w Asadali Mazgaonwala, Ali Kazmi a/w Tanvi Shah, for the Applicant/Appellant.*

Ms. Taubon Irani a/w *Sushmita Sherigar and Disha Shetty and Noor Alam, for the Respondents.*

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE : 25 APRIL 2025

P.C.:

1. The dispute in this Family Court Appeal is between two wives of deceased husband Mr. Rajan Matharani, namely the second wife Ms. Sheila Josephine (appellant) with whom Mr. Rajan Matharani was remarried after a consent divorce with the first wife Mrs. Meher Matharani (respondent).
2. This Family Court Appeal challenges the judgment and order dated 6 January 2025 passed by the learned Judge, Family Court No.2, Mumbai dated 24 August 2001 in Petition No. A-116/2001 in the proceedings between Mr. Rajan Matharani and Mrs. Meher Rajan Matharani. As noted above, these proceedings came to be disposed of in terms of the consent

terms, which were entered between the parties dated 24 August 2001.

3. After the said consent decree, the husband Mr. Rajan Matharani remarried. The appellant Ms. Sheila Josephine Johar Matharani is the wife of the original petitioner – Rajan Matharani.

4. We may at the outset note the relevant paragraph of the consent terms insofar as the property of Rajan Matharani, namely, in respect of a bungalow situated at Pune, subject matter of the dispute, wherein Mr. Rajan and Mrs. Meher agreed to the following:-

10. Petitioner agrees and undertakes that the bungalow viz. Avadh, situated at Plot No. 22, Empress Garden View Society, Near Sopan Baug, Ghorpadi, Pune, which belongs to the Petitioner absolutely, will ultimately devolve upon the minor son Avadh after the demise of the Petitioner. The Petitioner further agrees and undertakes to nominate the minor son Avadh as a nominee with respect to the aforesaid property and undertakes not to create any third-party rights therein or alter the said nomination during his lifetime. The petitioner undertakes to have a will to that effect.”

5. It appears that Mr. Rajan and Ms. Sheila continued to occupy the said bungalow despite the aforesaid clause in the consent terms. On 30 May 2023, Mr. Rajan Matharani – original petitioner expired. In these circumstances, clause no.10 of the consent terms became subject matter of assertion of rights by the respondent and the son Avadh, in filing execution proceedings to execute such part of the decree, being Regular Darkhast No.223 of 2023. The appellant Ms. Sheila, the second wife of deceased Rajan, obstructed the execution and/or challenged the execution. It is in such context, an application came to be filed by Ms. Sheila/appellant for dismissal of the execution petition being application

dated 5 April 2024, a copy of which is annexed at page 108 of the paper book, which *inter alia* raises a contention that the decree was not enforceable, considering the provisions of Article 136 of the Limitation Act, 1963 as 12 years for enforceability of the decree are required to be counted from the date of the decree which, according to the appellant, was required to be executed on or before 24 August 2013.

6. Mrs. Meher and son Avadh - the respondents considering that the property in question is situated at Pune which is beyond the territorial jurisdiction of the Executing Court at Mumbai, moved an application below Exh.1 in the execution proceedings (Regular Darkhast No.223 of 2023) for transfer of the decree to the Family Court at Pune. In the proceedings of such application, Ms. Sheila/appellant appeared and raised an objection that the decree itself was not enforceable on the ground that it was not executable considering the issue of limitation. Considering the rival contentions, the Family Court held that the execution proceedings are within limitation and it accordingly needs to proceed. While so observing, the Family Court held that Mr. Rajan, as the original petitioner expired on 30 May 2023, it was held that the proceedings are within limitation. The impugned order needs to be noted which reads thus:-

*“IN THE FAMILY COURT NO.2 AT BANDRA, MUMBAI
(PRESIDED OVER BY G. G. VAYAL, JUDGE)
REGULAR DARKHAST NO-221 OF 2023*

1. Maher Matharani
2. Avadh Matharani

...Decree Holders

Versus
 Rajan Sunder Mathrani
 (Since deceased through
 is heirs and legal representatives)
 1A. Sheila Matharani
 1B. Tarini Matharani

..Judgment Debtor

ORDER BELOW EXHIBIT-

This proceeding is filed for the transfer of the decree passed on 24.08.2001 in petition A-116/2001. Since the decree is of 2001, by order dated 26.06.2024 at Exh. 1 Decree Holder was called upon to argue on the point of limitation. Heard learned advocates for both parties.

2. *Petition A-116/2001 was filed for dissolution of marriage under Section 27 of the Special Marriage Act. Both the spouses arrived at settlement and executed consent terms. Consequently, marriage of the parties was dissolved by mutual consent. Consent terms executed by the parties at Exh. 6 form part of the decree. Clause 10 of the said consent terms says that the husband Rajan Mathrani undertakes that Bungalow named Avadh, Plot No.22, Empress Garden View Society, Near Sopan Baug, Ghorpadi, Pune will ultimately devolve upon minor son Avadh after the demise of petitioner i.e. Rajan. Clause 11 says that if petitioner Rajan desires to sale the said bungalow during his life time then he will invest 50% of the sale proceeds by buying another bungalow/flat/row house which will ultimately devolve upon Avadh.*

3. *By the present execution, decree holder wife and son Avadh claimed execution of clauses 10 and 11 of the said consent terms. It is not in dispute that Rajan Mathrani (Original petitioner) expired on 30.05.2023. This proceeding is filed on 28.07.2023. Clause 10 uses the word "devolve". It relates to devolution of the house property in favour of son Avadh. The specific use of word clearly shows that clause 10 of the consent terms which form part of the decree will become executable only upon demise of the original petitioner i.e. Rajan. Thus, clause 10 becomes executable after 30.05.2023 From the said demise of Rajan, the present execution is well within the limitation. Hence, following order.*

Order

1. *This proceeding is within limitation and it shall proceed accordingly.*
2. *Since the property under execution is situated at Pune i.e. beyond the jurisdiction of this Court, this decree be transferred to Family Court Pune for execution under Section 39 of the Civil Procedure Code.*
3. *A certificate under Order 21 Rule 6(b) of Civil Procedure Code be issued to the transferee Court.*

Sd/- 06.01.2025

(Govind G. Vayal)
Judge, Family Court No.2,
Mumbai.

Date: 06.01.2025

Place: Mumbai.”

7. Mr. Cama, learned counsel for the appellant in assailing the impugned order would submit that considering the consent terms entered between the parties (Mr. Rajan and Mrs. Meher) and the fact that Mr. Rajan had made a Will in U.K. and is probated in U.K., the appellant would intend to contend that the decree itself is not executable. It is also his contention that clause 10 of the consent terms would assist Mrs. Meher and Avadh/respondents, only in the event Mr. Rajan was to make a Will in such terms and a Will having not being made, the appellant would intend to canvass the issue of limitation. It is Mr. Cama's submission that making of a Will for clause 10 of the consent terms to take effect was necessary, and once it was not made in terms as agreed, the impugned order cannot be sustained and needs to be interfered.

8. On the other hand, Ms. Irani, learned counsel for the respondent has opposed this appeal. She submits that the impugned order is a well considered order. It has considered the issue in the appropriate perspective inasmuch as the husband Rajan expired on 30 May 2023 and it is only after the husband expired, the execution proceedings could have been filed. Hence, the observations as made by the Court in the context of limitation could not be interfered. She also contended that the decree has

been rightly transferred for execution by the Family Court at Pune.

9. We have heard the learned counsel for the parties. With their assistance, we have perused the record.

10. In our opinion, the Family Court has appropriately considered as to what was the effect of clause 10 of the consent terms (supra). In such context, Mr. Rajan, original petitioner having expired on 30 May 2023, the execution proceedings filed on 28 July 2023, it could not be said that the execution proceedings were barred by limitation. Clause 10 of the consent decree categorically used the word “devolve” and once it reflects devolution of the house property in favour of son Avadh, certainly it would be required to be intended that the said term was used in the context of the rights which would accrue in favour of Avadh after the death of Mr. Rajan Matharani (the original petitioner). It is in such context, the execution application (Regular Darkhast) as filed by the respondent is required to be held to be maintainable and not barred by limitation.

11. We may observe that it is settled principle of law that insofar as the rights of the member of the family in respect of the property is concerned, succession opens only on the death of the person who owned the property, hence to consider any issue in regard to the devolution and/or the succession rights in the property are concerned, the cause of action necessarily would arise only after the death of the person. Thus, in our

opinion, when the Family Court by the impugned order held that the execution application cannot be said to be barred by limitation, there is no infirmity in such finding.

12. The contention as urged on behalf of the petitioner, however, is on the executability of the decree and in the context of interpretation of clause 10 and as to in what manner clause 10 of the consent terms/decrees are to take effect. These are the contentions on merits including the objections which the appellant intends to set up in obstructing the execution of the decree. In our opinion, it would be appropriate and in the interest of the parties that all such issues are gone into by the Family Court at Pune who is now tasked with the execution of decree. It will be open to the appellant to raise all such contentions on merits before the Executing Court, which shall be considered by the Executing Court and appropriate orders in that regard can be passed on any application which may be filed by the appellant.

13. In the aforesaid circumstances, we are of the opinion that this appeal can be disposed of in terms of the following order:-

ORDER

(i) As ordered by the impugned order, the decree stands transferred to the Family Court at Pune.

(ii) It is open to the appellant to move an appropriate application and raise all contentions including the

contention to the effect and interpretation of clause 10 in the execution proceedings.

(iii) Let the execution proceedings be decided as expeditiously as possible and preferably within six months.

(iv) All contentions of the respondents in that regard are expressly kept open while not interfering in the present appeal.

14. In this view of the matter, Mr. Cama has fairly stated that the application as filed by the appellants before the Family Court at Bandra praying for dismissal of the execution petition is not being pressed as all such contentions as raised in such application would be raised in the execution proceedings, before the Pune Court, except for what has been observed by us hereinabove.

15. In this view of the matter, we are not inclined to interfere in the appeal, except for what has been observed hereinabove.

16. The Family Court Appeal stands disposed of in the aforesaid terms. No costs.

17. The interim application would not survive, it stands disposed of.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]