

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.12630 OF 2025

IN

CIVIL REVISION APPLICATION NO.382 OF 2017

Mr. Dominic Silvano Fernandes

...Applicant (Org.
Respondent No.2)

IN THE MATTER BETWEEN

Ms. Tabassum Govil

...Applicant (Org.
Defendant No.1)

Versus

Delfina R. Fernandes (since deceased)

Thr. Legal Representative & Ors.

...Respondents

And

Peter S. Fernandes

...Original Proforma-
Defendant (deceased)

Mr. Chirag Kamdar a/w Nanki Grewal, Krisha Thakhar and
Abhishek Ranjan i/b Wadia Ghandy & Co., for the Applicant.
Mr. Rajan Malkani, for the Respondents.

CORAM: MADHAV J. JAMDAR, J.

DATED : 16th February 2026

PC:-

1. Heard Mr. Kamdar, learned Counsel appearing for the Applicant- Original Respondent No.2 in Interim Application No.12630 of 2025 and Mr. Malkani, learned Counsel appearing for the Respondent i.e. Original Applicant in Civil Revision Application No.382 of 2017.

2. The relief sought in the Interim Application is to the effect that it be clarified that order dated 20th February 2018 passed in Civil Revision Application No.3820 of 2017 will not prevent the learned Judge, Small Causes Court, Bandra from entertaining, hearing and deciding, the two applications for amendment filed in (i) Execution Application No.25 of 2017 and (ii) Mesne Profits Application No.06 of 2017, both in R.A.E. Suit No.44/102 of 1987, for bringing on record the legal heirs of Respondent No. 3 (deceased).

3. However, Mr. Malkani, learned Counsel appearing for the Original Revision Applicant points out order dated 29th September 2022 passed by this Court in Writ Petition No.12781 of 2019 and more particularly Paragraph No.11 of the same. Learned Counsel submits that the present Interim Application is filed with oblique motive and therefore the Interim Application be dismissed.

4. In the said Writ No.12781 of 2019 the present Applicant i.e. Original Respondent No2. has challenged the order dated 06th March 2019 passed in Execution Application (Stamp) No.816 of 2018 by which the learned Executing Court has kept execution

proceedings in abeyance as decree has been stayed. The Execution Application No.25 of 2017 and Execution Application (Stamp) No.816 of 2018 are seeking to execute the same judgment and decree.

5. Mr. Malkani has relied on Paragraph No.11 of said order dated 29th September 2022 passed in Writ Petition No.12781 of 2019, which reads as under :

“11. It is further significant to note that this Court stayed the execution by order dated 20th February 2018 and thereafter execution proceedings without disclosing the order passed by this Court are filed on 14th September 2018 In any case proceeding with the execution proceeding and insisting that decree on the ground of non-user be executed is abuse of the process of law. The same is totally contrary to the order dated 20th February 2018 passed by this Court. The present Petitioners are arrayed as Respondents in said Civil Revision Application No. 382 of 2017 and appeared through Advocate. Thus, the Petitioners are aware about the order dated 20th February 2018 granting stay to the execution. Thus filing of execution proceeding and even this Writ Petition challenging the order of Executing Court keeping in abeyance execution proceedings as the decree is stayed is also abuse of the process of law. Therefore this petition is dismissed with cost of Rs.25,000/-. The said cost be paid to Kirtikar Law Library within three weeks from today.”

(Emphasis added)

6. Mr. Malkani, learned Counsel appearing for the Revisional Applicant states that although, the prayer is innocuous, however, it is likely that the Respondent No.2 will take unfair advantage of the order and will proceed with the Execution Application. Learned Counsel therefore submits that the relief sought in the Interim Application is for *malafide* purpose.

7. In any case, execution proceedings are stayed by this Court by order dated 20th February 2018.

8. Thus, in the facts and circumstances, no relief can be granted in Interim Application. The Interim Application is accordingly dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]