

IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXHIBIT 15
IN
OBSTRUCTIONIST NOTICE NO.125 OF 2020
IN
MISC. NOTICE NO.11 OF 2005
IN
L.E.&. C SUIT NO.508/532 OF 1986

The Board of Mumbai Port Authority	...Plaintiffs
Versus	
1. Shri Ebrahim Abdul Latif & Another	...Defendants
And	
Laxmidas Sunderji Bhanushali	...Obstructionist

Ms. A. R. Khanna, Ld. Advocate for the Plaintiff.
Mr. R. H. Joshi, Ld. Advocate for the Obstructionist.

Coram :- K. I. Khan, Judge
Court Room No.24

Date :- 02nd May, 2025

ORAL ORDER :

Present application is filed by the obstructionist for permission to carry out amendment in his reply as per schedule annexed to the application.

2. The other side objected the application vide their reply Exhibit-16 and prayed to reject the application.

3. Heard both the sides.

4. Present application is made by the obstructionists for amendment in his reply. By way of this, obstructionist intends to add his contentions that the execution application wherein the obstruction and resistance was caused by the present obstructionist, in that proceeding the decree holder did not comply the order dt.30.04.2016, which was passed by the Court in respect of death of defendant No.2. As such the order of warrant of possession dt.10.01.2020 which was passed in execution proceeding was defective and became nullity. First of all, this issue is not in respect of decree being nullity and the scope of obstructionist notice is whether the obstructionist has got an independent right in the suit premises.

5. It has further being stated that the execution proceeding which was obstructed by the obstructionist has been disposed of and is not pending, therefore, this Court has become 'functus officio' and the relief claimed in the present obstructionist notice has become infructuous.

6. It is the matter of record that execution wherein the present obstructionist offered resistance and obstructed the execution has been disposed of in view of the in view of taking out of present as well as other obstructionist notices.

7. The scope of the present obstructionist notice is whether the obstructionist is having any independent right, title and interest in the suit premises and whether the decree can be executed against him. It is the matter of record that the present obstructionist notice is pending

since 2020 and the matter is for evidence of the obstructionist. Instead of proceeding with the matter, to prove the independent right, title and interest in the suit premises the obstructionist is delaying the hearing by making this or that application. Even in the last application which was for dismissal of obstructionist notice on technical ground, my learned Predecessor while rejecting that application has observed in para No.27 of that order that, “these objections are a deliberate attempt to delay and prolong the current proceedings.” Even after rejection of that application the obstructionist has not proceeded with the matter to prove the independent right, title and interest in the suit premises and instead has filed the present application. The point which obstructionist intend to agitate is not in respect of his independent right, nor it is in respect of the ground of nullity which an obstructionist can raise.

8. Therefore, the proposed amendment is not necessary for the decision of the issue involved in the present obstructionist notice. Hence, the application is liable to be rejected.

9. But at the same time it is a matter of record that the execution proceeding wherein the obstruction was caused by the obstructionist has been disposed of after filing of the present obstructionist notice. As such ‘Whether this Court has become ‘functus officio’ with the disposal of the Execution Application No.11 of 2005’ is necessary to be gone into and the same has to be decided on the basis of arguments and not on the basis of full fledged trial. Accordingly, I pass the following order.

: ORDER :

1. Application is rejected.
2. Both parties to argue to the point “Whether this Court has become ‘functus officio’ with the disposal of the Execution Application No.11 of 2005.

Mumbai**Date : 02/05/2025****(K. I. Khan)****Judge, C. R. No.24**

Order dictated on computer on : 02.05.2025

Order checked and signed on : 05.05.2025