

CNR No.:MHSCA20004362020

IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXHIBIT-17

IN

OBSTRUCTIONIST NOTICE NO. 128 OF 2020

IN

MISC NOTICE NO. 11 OF 2005

IN

L.E. & C. SUIT NO.508/532 OF 1986

~~(The Board of Trustees of the Port of
Bombay)~~

The Board of Mumbai Port Authority ... Plaintiffs

Versus

1. Shri Ebrahim Abdul Latif & Anr. ... Defendants

And

Mahalaxmi Suppliers Prop Laxmidas ... Obstructionist
Sunderji Bhanushali

Ms. Anu R. Khanna, Ld. Advocate for the Plaintiffs.

Mr. Ravindra H. Joshi, Ld. Advocate for the Obstructionist.

**Coram :- Smt. J.N. Yadav
Judge, C. R. No.24**

Date: 10th April, 2026

ORAL ORDER:

Perused the application and say.

2. This is an application filed by obstructionist to declare the present obstructionist proceeding is infructuous and to declare that this Court has become functus officio with the disposal of Execution Application No.11 of 2005.

3. It is submitted that during the course of the written and

oral submissions made in the application for dismissal of obstructionist notice, it was pointed out that the plaintiffs have preferred pursis dated 11.02.2021 (Exhibit-17) in the Misc. Notice/Execution Notice No.11 of 2005 by which said Misc. Notice/Execution Notice No.11 of 2005 was disposed of by the then Presiding Judge vide order dated 02.03.2021 passed on Exhibit-17 as the plaintiffs have preferred 93 obstructionist notices. Thus, the Misc. Notice/Execution Notice No.11 of 2005 is closed without any judgment and/or further directions. Therefore, the obstructionist preferred application for dismissal of obstructionist notice as the reliefs sought in the obstructionist notice in the Misc. Notice/Execution Notice No.11 of 2005 have become infructuous and therefore, notice is to be dismissed or disposed off.

4. It is further submitted that said application was decided by the then Presiding Judge vide order dated 15.01.2025 and rejected the application. While passing order dated 15.01.2025 it was observed that, “the Hon’ble Court was not adjudicating the execution itself as it has already been withdrawn by the plaintiffs vide their Exhibit-17.” It is further observed that, “the objections of the obstructionists can still be adjudicated through the current obstructionist notice.” In view of the said observations, the obstructionist has been advised to carry out the amendment and consequential amendment in the affidavit in reply filed by the obstructionist in the obstructionist notice. The obstructionist has filed application for amendment in reply, for want of pleadings. The said amendment was just for bringing the above facts on record as the obstructionist cannot travel beyond the pleadings during course of the proceedings of obstructionist notice. Said application was

rejected vide order dated 02.05.2025 and it is directed in para – 9 of the said order that, *“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 in point no.2 of said order”* and it was held that *“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.”*

5. It is submitted that the present obstructionist proceeding has been originated from the execution proceeding initiated by way of execution application itself, due to obstruction caused in the execution application proceeding against the defendant. It is the step within the execution process and the very foundation upon which the Order 21 Rule 97 application rests; and if the very foundation, viz, the Execution Application is removed, the court’s authority to adjudicate the obstruction effectively terminates, rendering the Hon’ble Court functus officio. The mere fact that just because the obstructionist notice taken out under Order 21 Rule 97, it does not mean that the execution application does not survive and can be disposed off. The principle follows logically from the nature and purpose of Order 21 Rule 97 within the framework of execution proceedings and based on the established code. The adjudication of an obstruction is intrinsically linked to the ongoing process of enforcing the decree by way of execution application as per section 36 and Order 21 Rule 10 & Rule 11 of CPC. The present obstructionist notice has aroused out of the execution proceeding initiated by way of execution application. If that process is concluded

or abandoned by the decree holder, vide moving application Exhibit-17 by them, the need for resolving the obstruction ceases or ends. In the present case the decree holder themselves have concluded that execution proceedings vide their Exhibit-17 application and have requested the Hon'ble Court to dispose of the execution application, and the then presiding Judge of the Court vide order dated 02.03.2021 has disposed the execution application. The disposal of the execution application renders this Court functus officio to proceed with obstructionist notice, thus, the present obstructionist notice has not become infructuous. Hence, prayed to allow the application.

6. Otherside objected the application vide their reply at Exhibit-18 and stated that the present application is not in affidavit form, not signed and verified by the party, not made on oath. The obstructionist notice taken out by the plaintiffs for recovery of suit premises from the obstructionist who is in wrongful use, occupation and possession, having no independent right, title and interest and obstructionist is liable to hand over vacant and peaceful possession of the suit premises as the decree is validly passed and binding upon the obstructionist. The present application is taken out with ulterior motives and intentions to delay the hearing of the matter. The obstructionist in order to delay the matter making applications one after the other. The obstructionist is causing resistance and is liable to be detained in the civil prison for the harassment and delay being caused by him by making such applications. The present application is nothing but an attempt to create multiplicity of the proceedings, instead of going with the matter this modus operandi is adopted intentionally to prolong the matter on one count or the other causing

great harm, loss and prejudice to the plaintiffs. They submitted that the plaintiff's advocate was ready to argue on functus officio being a procedural point/point of law but the advocate for the obstructionist was not ready to do so. There is no compulsion that every new Judge with change in assignment, must do anything and everything is a stereotyped way. From the date of filing of the suit till disposal or recovery of possession, satisfaction of the decree, several procedural orders are passed in several proceedings. It is submitted that when the execution application not satisfied as per the decree, once obstructed, further proceedings are pending for recovery of suit premises, the said file is sent to the record department, as disposed off, it was never kept pending in Court. There arises no question of the plaintiffs process of recovery being concluded or abandoned, by the plaintiffs at all. Out of 92 obstructionist notices, some of them are made absolute, execution applications are presented for recovery of possession. Some are pending for hearing and disposal at evidence stage. In around 57/58 matter the present learned advocate has prolonged the matters by not filing evidence of the obstructionist. The present application is not only belated, three months have passed, several dates are taken to make this frivolous application, several dates are taken under the excuse of challenging the order in dismissal application or challenging the order in amendment application, but no efforts are put to file the obstructionist evidence on record. There arises no question of Court becoming functus officio to try this obstructionist proceeding. Hence, prayed to reject the application.

7. Heard learned advocates for both sides.
8. The learned advocate for the obstructionist placed

reliance on following citation and provision.

- a) **Kamladevi Raychand Shah and Ors. Vs. Bhupendra Yashwant Ajinkya and Ors. 2024 NCBHC – AS 20403**, wherein it is observed that,

“Court has a power under Section 151 to dismiss the Suit even in view of subsequent event whereby cause of action itself disappears.”

- b) Order XV Rule 3 of the Code of Civil Procedure, 1908 reads as under,

“3. Parties at issue.—(1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence that the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.”

9. The obstructionist has raised objection that plaintiff had withdrawn Misc. Application No.11 of 2005 by way of filing pursis at Exhibit-17. I have gone through the record. The proceeding of Misc. Notice No.11 of 2005 is with Obstructionist Notice No.146 of 2020. After perusal of said record it shows that plaintiff has filed pursis at

Exhibit-17 and contended that the warrant of possession was issued and it was unexecuted due to obstruction and therefore, the plaintiff has filed 93 obstructionist notices and those notices on board of Court. Said pursis filed by advocate of plaintiff on 11.02.2021. Thereafter, the learned Predecessor has disposed off said Misc. Application No.11 of 2005 in view of Exhibit-17 on 02.03.2021. It is recorded that after decree passed in L.E. & C. Suit No.508/532 of 1986 plaintiff has filed Misc. Application No.11 of 2005 and it is disposed off due to some persons have obstructed the execution of warrant of possession and therefore, plaintiffs have filed 93 obstructionist notices against those obstructionists. Therefore, it shows that the said Misc. Application No.11 of 2005 has not been decided on merits.

10. The plaintiff has filed present obstructionist notice under Order XXI Rule 97 and 98 of the Code of Civil Procedure, 1908. Order XXI Rule 97 of the Code of Civil Procedure, 1908 provides that,

“97. Resistance or obstruction to possession of immovable property.—(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction. 6 [(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

11. I have gone through the said provision. It is specifically provides that the decree holder make an application to the Court compelling of such resistance or obstruction. There is not specifically mentioned that the application should be filed in only execution

proceeding pending before the Court.

12. I have gone through the judgment in case of Kamladevi (supra). In present obstructionist notice plaintiff has filed this notice because at the time of execution of warrant of possession, obstructionist had obstructed. I held that as per averments of both parties the cause of action itself not disappears. Hence, I held that the supra citation is not applicable. The present obstructionist notice is pending for evidence and therefore, at this stage Order XV Rule 3 of the Code of Civil Procedure, 1908 is not helpful to the obstructionist. Considering all above facts and circumstances, I held that, the present application is not tenable, therefore, requires to be rejected. Hence, I pass the following order.

: ORDER :

1. Application (**Exhibit-17**) stands rejected.
2. No order as to costs.

Mumbai
Date : 10/04/2026

(J.N. Yadav)
Judge, C. R. No.24

Order dictated on computer on : 10.04.2026
Order checked and signed on : 10.04.2026