

IN THE COURT OF SMALL CAUSES AT MUMBAI**ORDER BELOW EXHIBIT NO.27
IN
OBSTRUCTIONIST NOTICE NO.232 OF 2018
IN
EXECUTION APPLICATION NO.260 OF 2017
IN
T.E. & R. SUIT NO.268/291 OF 2003**

1. Shri. Tilak Khetshi Shah (Deleted since deceased)
1(a) Smt. Sobhana Tilak Shah & Ors. **Plaintiffs**

Versus

B. Shantilal & Co. **Defendant**

And

1. Vipul Dhansukhlal Sanghvi & Ors. **Obstructionists**

Mr. S.M. Vyas, learned advocate for the Plaintiffs.

Mr. Rakesh H. Pathak, learned advocate for obstructionists No.1,4 & 5.

**Coram :- P. P. Naigaonkar
Judge, C.R.No.19
Date :- 18.10.2023**

ORAL ORDER :-

This is an application filed by obstructionist No.1 for the rejection of obstruction notice.

2. According to him, on 20.12.2022, his advocate had received copy of amended obstructionist notice. While going through the said amended obstructionist notice, it was noticed that, plaintiff has deliberately with malafide intention failed to file / mention registered address with said amended obstructionist notice. It is worth to note that, plaintiffs have not even mentioned their address in cause title of the said obstructionist notice and said obstructionist notice had been filed in the name of dead person i.e. plaintiff No.1 and 2 and this material fact have been suppressed by the Administrator of the Estate of plaintiff from this Court. The obstructionist No.1 states that, plaintiffs had carried out the amendment and now it has more than 8 month have been passed and plaintiffs have not taken any steps in this regard and continue pursuing the said obstructionist notice would their registered addresses and/or description and/or details. The obstructionist No.1 states that, plaintiff has not even satisfies that he written statement prevented by any sufficient cause from filing a registered address at proper time, hence not entitled for any reliefs whatsoever.

3. The obstructionist states that, no prejudice will be caused to the plaintiffs if the above reliefs are granted however great prejudice, harm, loss and injury will be caused to the obstructionists if the said relief is refused and balance of convenience is in favour of the obstructionist. Hence, he prayed that rejection of obstructionist notice as contemplated under Order 7 Rule 21(1) of the Code of Civil Procedure (amended up to) 1908 before adjudicating any other proceedings in the matter.

4. Plaintiffs resisted the application by filing reply. Plaintiffs denied the contents of the application. The application is filed with mala fide intention to delay the matter. The memorandum of registered address is filed today in the Court, therefore, nothing survives in this application and hence, they prayed for rejection of the application.

5. Heard both sides.

6. Considering the contentions and arguments of both the parties following points arise for my determination. I have recorded my findings thereon for the reasons mentioned as under :

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the obstruction notice is liable to be rejected in view of Order VII Rule 21(1) of the Civil Procedure Code, 1908 ?	No.
2.	What Order ?	Application rejected.

:: REASONS ::

7. **As to Point No.1 and 2 :-** The obstructionist No.1 has filed the application only on the ground that, plaintiff has not mentioned the registered address with amended obstructionist notice. The obstructionist No.1 further states that, plaintiffs have not even mentioned their address in cause title. The further submissions of obstructionist No.1 is that, name of dead person i.e. plaintiff No.1 and 2 and this material fact has been suppressed by the Administration of Estate of the plaintiffs. In view of the

same, the obstructionist No.1 has prayed for rejection of the obstructionist notice as per order VII Rule (21) (1) Code of Civil Procedure, 1908. The said application has been opposed from the plaintiffs on the ground that, the application is filed only to delay the matter. The Memorandum of registered address is filed in the court. Hence, the application be rejected.

8. Perused the application and say filed. It appear that, the plaintiffs have filed memorandum of address in court. Hence, contention of application is not well founded. This itself shows that, application under Order VII Rule 21(1) of the Code of Civil Procedure, 1908 is not maintainable. Hence, the application is liable to be rejected. Hence, point No.1 is answered in the negative. In answer point No.2 following order is passed.

:: ORDER ::

- a) Application is rejected.
- b) No order as to cost.

Mumbai
Date : 18/10/2023

[P P Naigaonkar]
Judge, C.R.No.19

Order Dictated on Computer :- 18/10/2023
Order Checked & Signed on :- 18/10/2023