

CNR NO.MHSCA20018682018



IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXHIBIT – 43
IN
OBSTRUCTION NOTICE NO. 234 OF 2018
IN
EXECUTION APPLICATION NO. 259 OF 2017
IN
T. E. Suit NO. 263 /284 of 2002

1. Shri Tilak Khetsi Shah & Anr. ...Plaintiffs

Versus

1. Unknown heirs and legal
Representative of Late Nanubhai
Ambashankar & Ors. ...Defendant

And

1. Arjun Lalchand Vishwakarma & Ors. ...Obstructionists

Shri S. M. Vyas, learned Advocate for the Plaintiffs.
Mr. Jaiprakash Vishwakarma, learned Advocate for the
Obstructionists.

Coram :- N. A. Sarosiya
Judge, C.R.No.19
Date :- 17/03/2022

ORAL ORDER :-

1. This is an application filed by the obstructionists seeking permission to adduce additional evidence.
2. According to him, he has already filed his examination-in-chief. Thereafter, he came to know about the R.A.E. Suit No. 801/6503 of 1964 filed by the predecessor of the plaintiffs. He applied for the certified copy of the order dtd. 09.08.1968 passed in said suit. He received certified copy of the said order. Therefore, he wants to adduce additional evidence in respect of said suit and order passed thereon. He prayed that, he may be permitted to file additional evidence and documents in support thereto.
3. Plaintiffs resisted the application by filing reply. According to them, no case is made out to lead additional evidence. There is no pleading of the obstructionists in respect of said documents. They submitted that, application is not maintainable and liable to be rejected.
4. Heard both sides.
5. Considering the contentions and arguments of both the parties following points are arises for my determination. I have recorded my findings thereon for the reasons mentioned as under :

Sr.
No.

Points

Findings

1. Whether obstructionists needs to be permitted to adduce further evidence ?

Yes.

2. What Order ?

Application is
allowed.

:: REASONS ::

6. **As to Point No.1 and 2** :- According to obstructionists, he has already filed his examination-in-chief. Thereafter, he came to know about the R.A.E. Suit No. 801/6503 of 1964 filed by the predecessor of the plaintiffs. He applied for the certified copy of the order dtd. 09.08.1968 passed in said suit. He received certified copy of the said order. Therefore, he wants to adduce additional evidence in respect of said suit and order passed thereon. He prayed that, he may be permitted to file additional evidence and documents in support thereto.

7. It is true that, obstructionists have not pleaded in respect of R.A.E. Suit No. 801/6503 of 1964. However, plaintiffs did not disputed filing of the present suit by their predecessor. Obstructionists has filed certified copy of the order passed in the said suit. The said document is necessary for adjudication of the present proceeding. Therefore, it is necessary to permit obstructionists to adduce additional evidence and file documents in support of his evidence. Application deserves to be allowed. Hence, point No.1 is answered in the affirmative and in answer point No.2 following order is passed :

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:: O R D E R ::

- a) Application is allowed.
- b) Obstructionist is permitted to adduce additional evidence and file documents as prayed.
- c) No order as to costs.

Mumbai
Date : 17th March, 2022

[N. A. Sarosiya]
Judge, C.R.No.19

Order Dictated on Computer :- 17/03/2022
Order Checked & Signed on :- 17/03/2022