

CNR NO.MHSCA2-001868-2018

IN THE COURT OF SMALL CAUSES AT MUMBAI

**ORDER BELOW EXHIBIT- 54
IN
OBSTRUCTION NOTICE NO. 234 OF 2018
IN
EXECUTION APPLICATION NO. 259 OF 2017
IN
T.E. & R. SUIT NO.263/284 OF 2002**

1. Shri. Tilak Khetshi Shah & Anr.Plaintiffs

Versus

**1. Unknown Heirs and Legal
Representatives of Late Nanubhai
Ambashankar & Ors.Defendants**

And

1. Arjun Lalchand Vishwakarma & Ors.Obstructionists

Mr. S. M. Vyas, learned Advocate for plaintiffs.

Mr. Jaiprakash Vishwakarma, learned Advocate for obstructionist.

**Coram :- Prashant P. Kulkarni
Judge, C.R.No.19**

Date :- 03.12.2022

ORAL ORDER :

Heard. Perused the application and say filed on it. The applicant / obstructionist fled this application for framing additional

issue in the present obstruction notice.

2. It is submitted that, the decree holder who filed the execution application wherein the obstructionist notice is filed. In the obstructionist notice the present applicant is party and who is defendant in the application. It is submitted that, earlier the suit was filed where the present applicant was not made party and decree was obtained. The said decree is not a decree, it is nullity in the eyes of law. Therefore, during the obstruction notice there will be a specific issue in that regard therefore, an additional issue be framed. Hence, present application.

3. In reply at Exhibit-56 it is submitted that, the application is filed without just and proper reason and only to cause delay. It is submitted that, earlier this applicant has filed a declaration suit in respect of the suit premises and suit was dismissed. Therefore, now in the present proceeding by framing specific issue regarding the decree on which basis execution is proceeded, there is no need to frame additional issue. Plaintiffs / decree holder prayed to reject the application.

4. On going through the application, at the outset it is required to take notice that, the obstruction notice is proceeded where the evidence is going on. Considering the application it is at the belated stage. It is also required to say that, the decree is passed and earlier the declaratory suit was filed by the present obstructionist which sufficiently shows that, there was contest earlier also. Now, the

present proceeding wherein already evidence is going on proceedings are at the advanced stage of evidence. If any issue regarding the maintainability of proceeding particularly the nullity of decree. At this stage, it could not find justifiable reason to frame an additional issue. The application deserves to be rejected. Hence, I passed following order.

:: O R D E R ::

- 1) The Application is rejected.
- 2) No order as to costs.

Mumbai
Date : 03/12/2022

[Prashant P. Kulkarni]
Judge, C.R.No.19

Order Dictated on Computer :- 03/12/2022
Order Checked & Signed on :- 12/12/2022