

IN THE COURT OF CIVIL JUDGE & JMFC, AT SHIGGAON

DATED THIS THE 17th DAY AUGUST OF 2022

: **PRESENT:**

MISS.NASRAT MUKHTAR AHMED KHAN, B.A. LLB, LL.M
CIVIL JUDGE & JMFC., SHIGGAON.

Ex..No.11/2015

- DHR** : 1.Smt.Sunanda w/o Ninganagouda Patil
Aged about 56 years, Occ: Household
R/o Belgaum,
2. Smt. Prema w/o Dayanand Halagadagi
Aged about 39 years, Occ: Household,
R/o Sankeshwara
3. Smt. Akkamahadevi w/o Vidyadhar
Hasabi, Age: 35 years, Occ: Household,
R/o Adaragunchi, Tq: Hubli,
Dharwad district.
4. Smt. Rudravva w/o Shidlingappa
kotambri
Age: 77 years, Occ: Nil
R/o Bankapur, Shiggaon taluk,
Haveri district.
5. Revansiddappa Shiddlingappa
kotambari ,Age: 45 years, Occ: Agriculture
R/o Bankapur, Shiggaon taluk,
Haveri district.
6. Veerabhadrappe Shidlingappa
Kotambari
Age: 43 years, Occu: Agriculture, R/o
Bankapur
Shiggaon taluk, Haveri district.

(Rep. by Sri.**V.S.K.**, Advocate.)

Vs

JDR :

1. Amrutlal Hemachand Gujarejain
Age: 45 years, Occ: Business,
R/o Bankapur, Shiggaon taluk, Haveri district
(Rep. by Sri.**G.I.S**, Advocate.)

I.A.No.VII

DHR :

1. Smt.Sunanda w/o Ninganagouda Patil
Aged about 56 years, Occ: Household
R/o Belgaum,
2. Smt. Prema w/o Dayanand Halagadagi
Aged about 39 years, Occ: Household,
R/o Sankeshwara
3. Smt. Akkamahadevi w/o Vidyadhar
Hasabi,
Age: 35 years, Occ: Household,
R/o Adaragunchi, Tq: Hubli,
Dharwad district.
4. Smt. Rudravva w/o Shidlingappa
kotambri Age: 77 years, Occ: Nil
R/o Bankapur, Shiggaon taluk,
Haveri district.
5. Revansiddappa Shiddlingappa
kotambari Age: 45 years, Occ:
Agriculture R/o Bankapur, Shiggaon
taluk, Haveri district.
6. Veerabhadrappe Shidlingappa
Kotambari
Age: 43 years, Occu: Agriculture,
R/o Bankapur
Shiggaon taluk, Haveri district.

V/s

JDR : Amrutlal Hemachand Gujarejain
Aged about 45 years, Occ: Business,
R/o Bankapur, Shiggaon taluk, Haveri district

* * *

ORDER ON I.A.No.VII

The DHR counsel has filed IA.VII under Order 6 Rule 7 of Civil Procedure Code praying this Court to permit him to make an amendment in the execution petition as proposed.

2. DHR has filed an affidavit accompanying the said IA averring that, this Court was pleased to order for amendment in Execution petition on 30.03.2022 for issuing delivery warrant and as per the order of the Court he has sought for amendment in the Execution Petition and it is necessary to amend the Execution Petition in view of the order of the Court on IA.VI dated 30.03.2022 and hence, pray to allow this application.

3. JDR counsel has filed objection to IA.No.VII contending that the said application is not maintainable in law and the Court had ordered on 13.09.2021 directing the DHR to amend the Execution Petition by including the terms of judgment and decree in RA.28/2014 and DHR has not amended the Execution Petition in

time and IA.VII is filed after the lapse of 6 months that too without filing application for condonation of delay and therefore, it has to be dismissed. Further the affidavit annexed to IA.No.VII is not in accordance with the rules of Civil Rule of Practice and the said affidavit is not maintainable in the absence of description of amendment and thereby, it is not maintainable and hence, pray the Court to reject the said IA.

4. Heard both and perused the materials on record.

5. On perusal the following points arise for my consideration:

1. Whether the DHR has made out the ground to allow IA No.VII ?

2. What order ?

6. On perusal of materials on record and after hearing the arguments canvassed by both, my findings for the above points are hereunder:-

Point No.1 : In the Affirmative

Point No.2 : As per final order, for the following:-

REASONS

7. **POINT NO.1** :- DHR has filed the present application to permit to make an amendment in the Execution Petition by adding

order portion of the judgment and decree in RA.28/2014 and has enclosed the certified copy of decree in RA.28/2014 . On perusal of the amendment application it appears that, the DHR is seeking to add the order portion of the decree in RA.28/2014 and this Court by its order dated 30.03.2022 had stated not to issue delivery of possession warrant against JDR till amendment of petition is carried out by the DHR as per the order passed by Hon'ble Prl. Senior Civil Judge, Haveri in RA.No.28/2014 dated 23.02.2017 and accordingly as per the order of this Court ,the present application for amendment is filed to insert the paragraph of order portion of RA.No.28/2014. Further on perusal of the objection filed by the JDR it appears that, the JDR is not objecting to the fact that ,this Court had directed the DHR to amend the Execution Petition by including the terms of the judgment and decree in RA.No.28/2014 but his contention is that, the present application for amendment is filed belatedly after the lapse of 6 months of order and on perusal of the order dated 30.03.2022 of this Court on IA.No.6 it can be seen that no such time limit is given to DHR for filing the amended application directed therein. Further the objection of JDR counsel is that, the present application is not in accordance with Civil Rules of Practice and all the facts shall be set out in the affidavit as per

the Rules but, the JDR has not clarified as to what facts have been left out by DHR in the application. Further objection of JDR is that, the description of amendment is absent but, on perusal of the present application it appears that, the amendment is to insert the order portion of the judgment and decree in RA.No.28/2014 in the Execution Petition and thereby it has been clarified as to what amendment application is filed for. Hence considering the discussion made above, Point No.1 is answered in Negative.

8. POINT NO.2 :- In view of the discussion made above, I proceed to pass the following:-

ORDER

I.A.No.VII filed by the DHR under
Order 6 Rule 17 of Civil Procedure Code
is hereby allowed with cost of Rs.200/-.

(Dictated to the Stenographer, corrected by me, and then pronounced in the open court on this the 17th day of August 2022.)

(NASRAT MUKHTAR AHMED KHAN)
CIVIL JUDGE & JMFC., SHIGGAON.