

Order below Exh.97 in Reg.Dar.No.26/2007.  
Trimbak K.Rajmane V/s. Dattatraya K-Rajmane.

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The decree holder filed this application and stated that he has filed Final Decree application No.1/1994 which was granted.He has stated that the Court has not demanded non-judicial stamp for preparation of final decree. The judgment debtor preferred an appeal against the order of the final decree, but they had not raised any plea that the final decree was not engrossed on the required stamp. But, in the present execution petition they took objection. Therefore, the D.H., stated that he is ready to pay required non-judicial stamp for final decree and prayed for accepting it.

2/- J.D./objector filed say at Exh.99 and opposed the application. According to them, the application is not tenable. The application is filed without registering the separate number. The present application is filed before the executing court. Therefore, it is not within the jurisdiction of executing court. The D.H., is responsible to pay the stamp duty and he cannot blame to the Court. Therefore, they prayed for rejecting the application.

3/- Heard learned counsels for the parties. D.H., relied on Shankar Blawant Lokhande (died) through legal heirs V/s. Chandrakant Shankar Lokhande & others, A.I.R., 1995, S.C., 1211. In this case, the plaintiff/applicant filed Miscellaneous Application No.538/1975 before the Trial Court to accept the non-judicial stamp and to pass final decree. The application was contested by the respondent by pleading bar of limitation. The Trial Court over ruled the objection and allowed the application. The Trial Court hold that the application was not barred by limitation. The first appeal was filed and it is held that the limitation begun to run from the date when the direction was given to pass decree and it is held that the application was filed after expiry of period of limitation counted from that date. The Hon.Supreme Court restored the order of the Trial Court. From the above fact, it is clear that the miscellaneous application is filed and it is registered and decided on merit. It is not filed in the execution or Darkhast petition. In the present matter before me, the present application is filed in the execution petition or Dharkhast application which is objected by the J.D./objector. The executing court only to see that the decree is executable or not. The executing court cannot go behind the decree. Therefore, D.H., ought to have filed a separate miscellaneous application. Hence, the

application deserves to be rejected. Hence, I pass the following order.

ORDER.

- 1/- The application is rejected.
- 2/- No order as to costs.

( P. V. Bulbule )  
Civil Judge,J.D.,  
Karmala.

Dt.22-9-2014.