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2023:BHC-OS:9448

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION (LODGING) NO. 12664 OF 2023
IN
EXECUTION APPLICATION (LODGING) NO. 78 OF 1998**

Kamal Shrigopal Khetan ...Applicant

In the matter between

Kamal Shrigopal Khetan ...Claimant-Applicant

vs.

Olympus Superstructure Pvt. Ltd. ...Respondent

**ALONG WITH
INTERIM APPLICATION (LODGING) NO. 12682 OF 2023
IN
EXECUTION APPLICATION NO. 70 OF 1998**

M/s. Vigya Investments Pvt. Ltd. ...Applicant

In the matter between

M/s. Vigya Investments Pvt. Ltd. ...Claimant-Applicant

vs.

Olympus Superstructure Pvt. Ltd. ...Respondent

Mr.Deepak Y. Chitnis a/w Mr.Reehan H. Ghojaria, Ms.Simran Jaggi
and Mr.Mangesh Parte i/b. Deepak Chitnis Chiparikar and Company
– Advocates for Applicant.

Mr.S.K.Dhekale – Court Receiver present.

CORAM : S. M. MODAK, J.

DATED : 30TH AUGUST 2023

Satish Sangar



P.C. :

1. Heard learned Advocate Shri.Chitnis for the Applicant – Decree-Holder.

2. Both these Applications came to be dismissed for non compliance of the Office objections as per the order dated 4th May, 2012 passed by the learned Registrar / Prothonary and Senior Master, High Court, Mumbai. As per the said order, various proceedings were dismissed for non removal.

3. Present two Applications are moved for setting aside the said order and restoration of Execution Petitions. As per the order dated 11th August, 2023, additional affidavit is taken on record and marked as Annexure-X. So also, amendment is carried out in the Interim Application thereby also seeking for condonation of delay in filing present Application.

4. It is also true that this Court as per the order dated 10th January, 2023 has restored the Execution Application (Lodging) No.70 of 1998. It is claimed that the facts of that matter and present facts are similar.

5. These two Executions are on the basis of an Award dated 13th November, 1997. It is in respect of Flat Nos.201 and 202 from the



building known as 'Wembly' at Vile Parle – Mumbai. The Arbitration Appeal came to be dismissed, so also, Special Leave Petition was also dismissed. In the meantime, these two Execution Applications were filed and this Court has appointed a Receiver as per the order dated 12th October, 1998 for completing the remaining construction work. So also, an Architect and Contractors were also appointed. Certain works were also carried out.

6. In the meantime, the Advocate who is pursuing these Execution Applications expired. Thereafter, junior Advocate attached to M/s. Chitnis and Vaithy & Company attended the matter. However, he has also left the Firm. In view of that, no one has attended these Execution proceedings. In view of that, the Applicants are not aware about removal of certain Office objections.

7. It is true that there is an inordinate delay in filing Restoration Application. The Applicants were under the impression that as the Court Receiver is looking after the matter, they have also kept quiet. Certainly, they cannot be blamed for inaction on the part of Advocate appointed.

8. This Court has already restored one Execution Application (Lodging) No. 70 of 1998. The facts are similar.



9. There is a prayer to grant leave to amend the Execution Application in view of the amended High Court Original Side Rules.

The papers of Execution are not traceable. They needs to be reconstructed. Prayer clauses (a), (b) and c-1 reads as under :-

- a) That this Hon'ble Court be pleased to set aside the Order dated 4th May 2012 passed by the Registrar / Prothonotary and Senior Master, High Court, Mumbai (Original Side) under Rule 986 of the High Court Rules for dismissal of the Execution Application (L) No.71 of 1998.
- b) That this Hon'ble Court be pleased to allow the Applicant to reconstruct and substitute the Execution Application (L) No.71 of 1998 in place of the original Execution Application.
- c-1) Delay, if any, in filing Interim Application be condoned.

10. Accordingly, the Application is allowed in terms of prayer clauses (a), (b) and (c-1). The Applicant is granted liberty to file separate Applications so far as prayer clause (c) is concerned.

11. Both Interim Relief Applications are disposed of.

[S. M. MODAK, J.]