

(1983) 10 BOM CK 0007

Bombay High Court

Case No: Execution Application No. 139 of 1983 in Suit No. 1832 of 1979

Nav Digvijaya Co-operative
Housing Society Ltd.

APPELLANT

Vs

Sadhana Builders and others

RESPONDENT

Date of Decision: Oct. 7, 1983

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 148, 148A, 148A(1)

Citation: (1983) MhLj 1054

Hon'ble Judges: Sujata Manohar, J

Bench: Single Bench

Advocate: S.J. Jadhav, Shastri, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

Mrs. Sujata Manohar, J.

The defendants have filed a caveat u/s 148A of the CPC in an application for execution made by the plaintiffs under Order 21, Rule 54 and Order 21, Rule 43 of the Civil Procedure Code. u/s 148A of the Civil Procedure Code, sub-section 1 provides as follows:

148A. (1) Where an application is expected to be made, or has been made in a suit or proceeding instituted, or about to be instituted, in a Court any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof."

Under section 148A (1) therefore, any person who claims a right to appear before the Court on the hearing of an application can file a caveat under that section in anticipation of such application being made. The result of filing such a caveat is that once such a caveat is filed a notice of any application in such a suit or proceeding must be given to the caveator. The filing of a caveat prevents ex parte orders being

made in a proceedings where the caveator has ordinarily a right to be heard. The provisions of section 148A are therefore attracted in cases of such proceedings where the caveator is entitled to be heard in the ordinary course. Section 148 may also apply to those proceedings where the Court in its discretion, hears the party who has filed the caveat, before passing orders. Applications for execution under Order 21, Rule 43 or Rule 54 are not proceedings where the judgment-debtor has a right to be heard. In fact there is no provision in law for issue of a notice to the judgment-debtor in applications for execution except in specific cases enumerated in Order 21, rule 22 and Order 21, rule 37. Since the judgment-debtor is not a party who has a right to be heard or is ordinarily heard in applications under Order 21, rule 43 or Order 21, rule 54, the provisions of section 148A are not attracted to such execution applications. The defendants are therefore not entitled to file a caveat in such an application for execution of a decree, passed against them. Caveat is directed to be taken off the file. Office to proceed with the execution proceedings.

2. Mrs. Shastri applies for stay of the operation of this order.