

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6482 OF 2014

Clement Soares	..	Petitioner
VS.		
Mr. Seby S. Nayar (since deceased)		
Mrs. Bernadette Kumar & Ors.	..	Respondents

Mr. R. A. Thorat - Senior Advocate h/f. Mr. P. J. Thorat for
Petitioner.

CORAM : M. S. SONAK, J.
DATE : 24 AUGUST 2015

P.C. :-

1] This petition challenges order dated 4 March 2014 made by the Additional Chief Judge, Small Causes Court, rejecting the petitioner's application to initiate proceedings under Sections 191 and 192 of the Indian Penal Code against the respondents by invoking the provisions contained in Section 195 of the Criminal Procedure Code (Cr.P.C.)

2] The respondents, in their application dated 14 January 2011 seeking impleadment had made the following statement at paragraph 3:

"3. I say that the Applicants were not in verifiable knowledge about the pendency of the above Appeal. I say that the Applicants were put in possession of authentic knowledge of the present proceedings only after receiving certified copies of the same on 24 November 2010 from this

Hon'ble Court. The said certified copies were obtained for submission as evidence to the Hon'ble High Court in Testamentary Petition No. 12 of 2006 and Testamentary Petition No. 19 of 2008 for grant of Probate in respect of mirror image Wills allegedly left by my late mother (who expired on or about 11 March 2005) and by my late father (who expired on or about 1 December 2006)."

3] It is the case of the petitioner that the respondents had full knowledge about the pendency of appeal prior to 24 November 2010 and therefore, the aforesaid statement in paragraph 3, constitutes an offence punishable under Sections 191 and 192 of the Indian Penal Code.

4] The Division Bench of the Small Causes Court, in rejecting the application has applied the correct parameters and has not exceeded jurisdiction. It is to be noted that the statement in paragraph 3, on basis of which perjury proceedings are sought to be initiated against the respondents was an extremely guarded statement. The respondents had stated that they had no verifiable knowledge. This is different from the statement that they had no knowledge whatsoever. Further, they have stated that they obtained authentic knowledge upon receipt of certified copy on 24 November 2010. Accordingly, the Division Bench was right in rejecting the petitioner's application.

5] That apart, it is to be noted that the main proceedings have since been disposed of and the petitioners have also obtained possession of the suit premises.

6] Accordingly, there is no reason to entertain this petition. This petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka