**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**CIVIL REVISION APPLICATION NO.563 OF 2015**

**Sayed Sagir Noor & Ors. ..Applicants**
**Vs.**
**Smt. Sayed Sugrabi Noor & Ors. ..Respondents**

**Mr. A. G. Damle Senior Advocate a/w Mr. R. R. Lanjekar for the Applicants**

**CORAM : R. M. SAVANT, J.**
**DATE : 22nd SEPTEMBER, 2015**

**P.C.**

1 The Order dated 1-7-2015 passed by the Learned Judge of the City Civil Court, rejecting the Notice of Motion being Notice of Motion No.2672 of 2010 which was filed for dismissal of the Suit in question on the grounds that the same has become infructuous and that the cause of action does not survive, is taken exception to by way of the above Petition.

2 The instant Suit being S.C. Suit No.145 of 2007 has been filed simplicitor for injunction by the Plaintiff i.e. the Respondent No.1 herein seeking injunction for restraining the Defendant Nos.1 to 4 i.e. the Petitioners herein from disturbing the Plaintiff's use, occupation, possession and enjoyment of the suit premises being Flat No.C-11/10 Dudh Sagar Co-op Hsg Ltd, Siba Road, Goregaon (East) Mumbai 400 065. It appears that the Applicants herein have filed a Suit for administration of the estate of one Haji

Sayed Noor Haji Sayed Bandu in which Suit the said Flat is also the subject matter along with other properties which are mentioned in the schedule of the said Suit. In the said Suit, an order of status-quo has been passed by a Learned Single Judge of this court on 11-2-2010 in Notice of Motion No.88 of 2010 in Suit No.56 of 2010. The said order of status-quo is in operation and which is to operate pending the Suit. It is probably in view of the fact that an order of status-quo has been filed in a more composite Suit involving all the properties of the deceased Haji Sayed that the instant Notice of Motion came to be filed and the principal relief sought in the Notice of Motion is prayer clause (a) which reads thus:

> "(a) that this Hon'ble Court be pleased to dismiss the present suit on the ground that the same has become infructuous by disappearance of the cause of action."

3 The said Notice of Motion was opposed to on behalf of the Plaintiff. The Trial Court considered the said Notice of Motion and has rejected the same and the rejection is principally on the ground that it cannot be said that the cause of action for filing the earlier suit does not survive. The Trial Court in fact has observed that cause for filing the earlier Suit is distinct from the cause of action in the present Suit for administering the estate of the deceased Haji Sayed.

4 In my view, having regard to the said reason mentioned by the

Trial Court, the impugned order does not warrant any interdiction at the hands of this Court in its Revisionary Jurisdiction, the Civil Revision Application is accordingly dismissed.

5 The Learned Senior Counsel Mr. Damle appearing on behalf of the Applicants however prays that both the Suits may be clubbed together. It is not possible for this Court to pass such an order in a matter arising out of a challenge raised to an order passed by the Trial Court. It would therefore open for the Petitioner to move an appropriate application before the Learned Principal Judge of the City Civil Court, for clubbing the said Suits considering the subject matter of both the Suits. If any such application is filed, needless to state that the same would be considered by the Learned Principal Judge on its own merits and in accordance with law. The Civil Revision Application is accordingly dismissed.

**[R.M.SAVANT, J]**

**CERTIFICATE**

Certified to be true and correct copy of the original signed order