

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.23962 OF 2015

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|---|-----------------|
| 1. Indian Counter Equity Dealer |] |
| An erstwhile proprietary firm carrying |] |
| on business at 303/2, Ivory Tower, |] |
| Juhu Koliwada Beach, Santacruz (W), |] |
| Mumbai-400 049 |] |
| 2. Mrs. Shobhana Dalal (Nee) |] |
| Shobhana R. Thakkar, age:64 |] |
| Erstwhile Sole Proprietress of Petitioner |] |
| No.1, residing at 602, Greenwich, |] |
| Nyati Grandeur, Kad Nagar, |] |
| Undri Pune-411 060 |] |
| 3. Mr. Nikhil Dalal |] |
| age:73, Husband of Petitioner No.2 and |] |
| erstwhile President of Petitioner No.1 |] |
| residing at 602, Greenwich, |] |
| Nyati Grandeur, Kad Nagar, |] |
| Undri, Pune-411 060 |].. Petitioners |

Versus

- | | |
|----------------------------------|----------------|
| Ms. Shehnaz Sani |] |
| previously known as |] |
| Shehnaz Mudbhatkal |] |
| Occ: Service, residing at A/702, |] |
| Milton Apartments, Azad Road, |] |
| Juhu Koliwada, Santacruz (W), |] |
| Mumbai-400 049 |].. Respondent |

Ms. Priyanka Desai i/by M/s. K. Ashar & Co., for the Petitioners.

Ms. Shehnaz Sani- Respondent in person.

CORAM : R.M. SAVANT, J.

DATE : 2nd SEPTEMBER, 2015

ORAL JUDGMENT

1. Rule. With the consent of the Learned Counsel for the Petitioners and the Respondent in person and having regard to the nature of the challenge in the Petition is made returnable forthwith and heard.

2. The Writ Jurisdiction of this Court is invoked against the order dated 17.08.2015 passed by the Learned Judge of the City Civil and Sessions Court, Greater Bombay, by which order the Application Exh.8 filed by the Plaintiff i.e. Respondent herein came to be allowed and the Plaintiff was allowed to withdraw the sum of Rs.3,44,000/- lying in suit account upon her furnishing Bank guarantee of any nationalised Bank to the tune of said amount and also upon furnishing indemnity to redeposit the said amount in the suit account if her suit fails with interest 9% per annum.

3. The Respondent as indicated above is the original Plaintiff who has filed the suit in question invoking the summary procedure under Order XXXVII of the CPC and the claim in the suit is for recovery of the

principal amount of Rs.2,00,000/- along with interest. The said suit came to be decreed as it appears that appearance was not filed on behalf of the Respondents though the writ of summons was served. The Defendants after the decree was passed filed an application for setting aside the decree which application was allowed and the ex-parte decree came to be set aside resulting in an Appeal from Order being filed by the Petitioners herein aggrieved by one of the directions issued by the Learned Judge of the City Civil Court directing the Defendants to deposit the entire decretal amount. The said Appeal from Order came to be allowed by a Learned Single Judge of this Court and the Defendants were directed to deposit an amount of Rs.3,44,000/- in the City Civil Court as a condition for setting aside of the decree. The Defendants have accordingly deposited the said amount in the City Civil Court and which amount is presently in the suit account. The Plaintiff has thereafter filed the instant Application Exh.8 for being permitted to withdraw the said amount on furnishing of Bank guarantee and on giving an indemnity that the said amount would be redeposited with 9% interest in the event the Respondent i.e. the Plaintiff fails in the suit. The Trial Court i.e. the Learned Judge of the City Civil Court has allowed the instant application and the same is allowed on the ground that this Court had only directed the deposit of the said amount however no further direction was given as in respect of investing

the same or the Plaintiff being allowed to withdraw the same. The Trial Court was therefore of the view that in absence of the said directions, the instant application filed by the Plaintiff i.e. Respondent herein could be considered and as indicated above has accordingly allowed the application by the impugned order.

4. It is the submission of the Learned Counsel appearing on behalf of the Petitioners/Defendants that in the light of the decree being set aside the Trial Court could not have passed the order permitting the Respondent/Plaintiff to withdraw the amount even by furnishing Bank guarantee and indemnity.

5. Per contra, it is the submission of the Respondent which she has submitted by way of written submissions in which she has found faulted with Defendants not filing their written statement after the writ of summons was issued. It is further submitted in the said written submissions that the Petitioners are vehemently opposing the application as they obviously have a hidden agenda. It is submitted that they cannot have any objection to the Plaintiff withdrawing the amount on furnishing the Bank Guarantee from one of the premium Banks in the country.

6. The question that arises in the Petition is whether the Plaintiff i.e. the Respondent herein should be permitted to withdraw the amount.

In the context of the said contention, it is required to be noted that the decree which was passed in the suit in question has been set aside by the Trial Court and therefore, as on date there is no decree which is operating in favour of the Plaintiff i.e. the Respondent. If that be so, the Plaintiff obviously cannot be permitted to withdraw the amount as her entitlement to the same would have to be decided in the suit. In my view, if the Plaintiff i.e. the Respondent herein is allowed to withdraw the amount, it would unnecessarily complicate the matters in the event the suit is dismissed. The submissions urged on behalf of the Respondent are not germane for the consideration of the challenge raised to the impugned order.

7. In my view, the following directions would serve the interest of both the parties :-

I) The impugned order dated 17.08.2015 passed by the Learned Judge of the City Civil and Sessions Court, Greater Bombay is quashed and set aside.

II) The said amount of Rs.3,44,000/- in the suit account to be invested in a fixed deposit of a nationalised Bank for initial period of one year by the Learned Registrar of the City Civil Court and can be renewed if necessary for such

period as the Learned Registrar of the City Civil Court deems it appropriate.

III) Since the suit is of the year 2004 and filed under Order XXXVII of the CPC, the Trial Court is directed to hear and decide the same latest by 31.05.2016.

IV) Needless to state that the suit would be tried on its own merits and in accordance with law. With the aforesaid directions, the Writ Petition is disposed of.

[R.M. SAVANT, J]