

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.713 OF 2015

Bushra Khatun Usmanali Siddiqui ... Applicant
Vs.
Yusufali Usmanali Siddiqui ... Respondent

Mr. Shishir Joshi i/b. Ms Bhakti C. Jugal for Applicant.
Mr. Omkar Khaiyam Shaikh for Respondent.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 1, 2015

P.C. :

Heard Mr. Joshi, learned Counsel for applicant and Mr. Shaikh, learned Counsel for respondent at length. Rule. Mr. Shaikh waives service for respondent. At the request and by consent of the parties, Rule is made returnable forthwith and the Application is taken up for final hearing.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), original defendant has challenged the judgment and order dated 01.10.2015 passed by the learned trial Judge in Notice of Motion No.1550 of 2013. By that order, the learned trial Judge rejected the Motion taken out by the defendant under Order 7, Rule 11(d) of C.P.C. for rejecting the plaint on the ground that it is barred by limitation.

3. In support of this Application, Mr. Joshi invited my attention to paragraph 3 of the impugned order wherein the learned trial Judge has observed thus,

“3. ... Order 23, Rule 2 of C.P.C. contemplates that the Leave granted to file a fresh suit does not encompass the limitation prescribed under Law of Limitation. Provisions of Limitation Act states that suit for declaration in respect of the document shall have to be filed within 3 years of the denial of rights. ...”

4. He submitted that the learned trial Judge has not properly interpreted Order 23, Rule 2 of C.P.C. as also not considered Article 58 of the Limitation Act, 1963.

5. On the other hand Mr. Shaikh supported the impugned order. However, he submitted that the impugned order may be set aside by consent and by directing the trial Court to consider the applicability of Order 23, Rule 2 of C.P.C. as also applicability of Article 58 of the Limitation Act. He further states that respondent may be permitted to file reply to Motion within 2 weeks from today. Order 23, Rule 2 of C.P.C. reads thus,

“2. Limitation law not affected by first suit.- In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.”

6. Perusal of Order 23, Rule 2 clearly shows that if any suit is instituted fresh on permission granted under Order 23, Rule 1, the plaintiff is bound by the law of limitation in the same manner as if the first suit had not been instituted.

7. In view thereof, by consent of the parties, impugned order dated 01.10.2015 passed by the learned trial Judge in Notice of Motion No.1550 of 2013 is set aside and Motion is restored to the file of the learned trial Judge. Respondent shall file reply to the Motion within 2 weeks from today. The learned trial Judge will deal with the contentions recorded in this order and any other contention and pass appropriate order. All the contentions of the parties on merits are expressly kept open. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)