

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2911/2015
IN
FIRST APPEAL NO. 731/2014

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Ms. Geeta Mulekar for the applicant
Mr. Ashok B. Tajane for the respondent

CORAM : K. K. TATED, J.
DATE : FEBRUARY 10, 2016

RC.:

1. Heard. This application is for vacating the stay order dated 30/06/2014 passed by this court by which operation and implementation of common judgment and decree dated 28/04/2014 passed by II Jt. Civil Judge, Senior Division Solapur in Misc. civil Application No.212/1992 and 361/1993 was stayed.

2. The learned counsel for the applicant submits that the deceased Chandavvbai Irappa Dhanghe had executed Will dated 29/10/1992 in favour of the applicant bequeathing her entire property. He submits that though the respondent claimed probate on the basis of Will dated

26/11/1988, same was rejected by the Court. The learned counsel for the applicant submits that the deceased Chandavvabai Irappa Dhange bequeathed her entire immovable property in her favour. Therefore, this Hon'ble Court be pleased to vacate the stay dated 30/06/2014 and allow the applicant to operate locker No.67 of the Central Bank of India, Solapur which was in the name of deceased Chandavvabai Irappa Dhange. The learned counsel for the applicant submits that even if the Appellant succeeds in his first appeal holding that the deceased Chandavvabai Irappa Dhange executed Will dated 26/11/1988 in their favour, then also the Appellant is entitled to fixed deposits and jewelry which is lying in locker No.67. On the basis of this submission, the learned counsel for the applicant submits that this Hon'ble Court be pleased to allow the civil application in terms of prayer clauses (a) to (c).

3. On the other hand, the learned counsel for the respondent vehemently opposed the civil application. She submits that at this stage, the probate is not obtained by the applicant. Without probate, this Hon'ble Court may not allow the applicant to operate the locker which is in the name of the deceased including fixed deposits. She

further submits that they have no objection if the applicant renews the fixed deposits, from time to time, till hearing and final disposal of the first appeal. Hence, there is no substance in the civil application. Same be dismissed with costs.

4. It is to be noted that, in the present proceedings the applicant as well as the respondent filed miscellaneous application seeking probate of the Will executed by the deceased Chandavvabai Irappa Dhangé dated 26/11/1988 and 29/10/1992. The applicants' claim is that the deceased executed Will dated 29/10/1992 in their favour. Whereas the respondent original Appellant claims that the deceased executed Will dated 26/11/1988 in their favour. There is no dispute that till today, the probate is not granted either in favour of the applicant or the respondent. Without obtaining probate, it is not possible to the applicant to operate the locker No.67 which was in the name of the deceased till hearing and final disposal of the appeal.

5. Considering these facts, I am of the opinion that the applicant failed to make out any case to allow him to operate the locker No.67 of Central Bank of India, Solapur.

6. As the respondent original Appellant has no objection for allowing the applicant to renew the fixed deposits from time to time, same can be granted in the civil application.

7. Hence, following order is passed:

- a. The applicant is permitted to renew both the fixed deposit accounts for further period and same shall be continued till hearing and final disposal of the appeal.
- b. Rest of the prayer clauses of the civil application stand rejected.
- c. Civil application stands disposed off accordingly.

JUDGE