

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO. 12590 OF 2015

Mrs. Shashikala Uday Purushe	... Petitioner
V/s.	
Mr. Sanjiv Raghunath Date & Ors.	... Respondents

Mr. S. M. Gorwadkar, Sr. Counsel i/b Niranjan Mogre for the Petitioner.
Mr. R.S. Datar for the Respondent Nos. 1 & 2.

**CORAM : K. K. TATED, J.
DATED : 14/06/2016**

PC.:

. Heard.

2 The learned Senior Counsel for the petitioner submits that Respondent No.3 is formal party.

3 By this petition under Article 227 of the Constitution of India, the petitioner original plaintiff challenges the order passed by Trial Court dated 09.10.2015 below Exh. 45 in Special Civil Suit No. 1443 of 2014 rejecting the petitioner's review application to review the order dated 10.06.2015 passed on Exh.5 application.

4 Few facts of the matter are as under:

a) In the present proceeding, the plaintiff filed application below Exh.5 under Order 39 Rules 1 & 2 of the Code of Civil Procedure, 1908 for restraining the respondent from creating any third

party rights, title and interest in respect of suit property and also directing them to disclose the entire assets belonging to Late Mr. Raghunath Date. That application was decided by the Trial Court by order dated 10.06.2015. The Trial Court restrained Respondent Nos. 1 and 2 from creating any third party rights, title and interest in respect of suit property till the hearing and final disposal of the suit. In the said order, the Trial Court has not given any findings in respect of prayer clause (a) of plaintiff's application below Exh.5. Prayer Clause (a) reads thus:

“a) The defendant Nos. 1 and 2 be directed by the order of this Hon'ble Court to forthwith furnish on the record of the Suit, a consolidated and exhaustive inventory in respect of all money and entire Assets, movable or immovable, belonging to late Mr. Raghunath K. Date and which accrued on account of all investments made by him;”

Hence, the plaintiff filed review application below Exh. 45 for reviving the order dated 10.06.2015 below Exh. 5. The Trial Court at the time of deciding the Exh.5 application by order dated 09.10.2015, observed that there is no provision under Order 39 Rules 1 & 2 of Code of Civil Procedure, 1908 for directing the defendant to disclose the assets and/or any other property of Late Mr. Raghunath Date. The Trial Court also observed that if the particular prayer clause is ignored at the time of passing the order then that is to be treated as rejected. Hence, the present petition.

5 The learned Senior Counsel for the petitioner submits that the Trial Court erred in coming to the conclusion that plaintiff had not made out any case for reviewing the order dated 10.06.2015 below

Exh.5. He submits that Trial Court failed to consider that plaintiff specifically made prayer clause (a) in his application for directing the respondent defendant to disclose the assets of Late Mr. Raghunath Date. He submits that plaintiff specifically made averments in support of prayer clause (a) in his application below Exh.5. Hence, Trial Court ought to have decided the said prayer clause (a) on its own merits. Therefore, the impugned order passed by the Trial Court dated 09.10.2015 be set aside and/or petitioner plaintiff may be granted liberty to file a fresh application for same cause of action on prayer clause (a).

6 On the other hand, the learned Counsel for the Respondent Nos. 1 and 2 vehemently opposed the present Writ Petition. He submits that Trial Court specifically recorded in paragraph 2 of the impugned order that if prayer clause is ignored at the time of passing the order that to be treated as rejected. Hence, there is no substance in the present Writ Petition and same be dismissed.

7 I heard both the sides at length. It is to be noted that if any application made by the party for specific relief then the Court has to decide the same on its own merits. The Court cannot say that if the same is ignored that to be treated as rejected.

8 Considering this fact and without going into merits of the matter, in the interest of justice, I am of the opinion that petitioner may be permitted to file a fresh application for prayer clause (a) of application below Exh.5 and that to be decided by the Trial Court on its own merits

after hearing both the sides. All contentions of both the parties are kept open.

9 Hence, following order is passed:

- a) Writ Petition is partly allowed.
- b) Liberty granted to the petitioner plaintiff to file a fresh application for prayer clause (a) of application below Exh.5 within six weeks from today.
- c) If that application is filed, the Trial Court to decide the same on its own merits without influencing the earlier order.
- d) All contentions of both the parties are kept open.
- e) Writ Petition stands disposed of accordingly.

(K.K.TATED, J.)