

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil Application NO. 4925 OF 2016
IN
First Appeal NO. 2242 OF 2011Samuel Jonathan Samson Through P.O.W
Mrs. Zamirah Pandit And Mr. Micah Joseph

...Appellant

Versus

R P Lunkad And Ors

...Respondents

Dr. Birendra Saraf with Ms. Pooja Kshirsagar, Vijayendra Purohit i/b.
M/s. Manilal Kher Ambalal & Co., for the Applicant.

Ms. Aditi Bhat i/b. Mr. Y.R. Shah, for the Respondents.

CORAM : G.S. KULKARNI, J.**DATE : 23 DECEMBER 2016**

ORDER :

1. Not on board taken on board on a praecipe as moved on behalf of the Appellant/Applicant.
2. Heard Dr. Saraf, learned Counsel for the Applicant and Ms. Aditi Bhat, for the Respondents.
3. By this civil application, the Applicant prays that the Applicant be permitted to deposit Rs. 2,09,000/- which are in the pre-demonetisation, Rs. 500/- currency notes, in bank account No. 30464357541 of the Constituted Attorney of the Applicant with the State Bank of India, Shivaji

Park Branch, Mumbai and to permit withdrawal of the said amount from the said account and further be permitted to retain the said amount with the constituted attorney of the applicant.

4. The dispute in the First Appeal is in regard to the premises i.e. flat at Sarah Lodge, first floor, 48, Shivaji Park, Mumbai. By the impugned judgment and order dated 20 July 2011 passed by the learned Judge, City Civil Court at Bombay being subject matter of the first appeal, the Applicant's suit stands dismissed, whereby prayer for a mandatory injunction has been rejected. During the pendency of the suit, Court Commissioner was appointed to take an inventory of the articles in the suit premises. The Court Commissioner had taken an inventory of the articles in which one of the articles as noted by the Commissioner is "Cash 10 bundles of Rs.20,000/- (Rs.500/- X 40), each and one bundle of Rs.9,000/- (Rs.500/- X 18). Total cash of Rs.2,09,000/-", as seen from the report of the Court Commissioner. This report is annexed to the civil application at 'Exhibit A' and the relevant portion as noted above appears at page 16. There being no dispute on this factual position, the request of the Applicant is that in view of demonetization of the old Rs.500/- currency notes, the amount which is now lying with the constituted attorney in the same form would be rendered of no utility and therefore, the Applicant be permitted

to deposit the said amount in the bank account. It is also stated that the said amount would be made available by the Applicant at any point of time in these proceedings and to that effect, the Applicant is willing to furnish an undertaking. The learned Counsel for the Respondent does not have any objection for grant of prayers of the Applicant.

5. Having considered the submissions as made on behalf of the Applicant and on a perusal of the report of the Court Commissioner, the contention appears to be bonafide. The Applicant had preserved the amount as stated on oath by the Applicant, in view of the above appeal being sub-judice. In these circumstances interest of justice would require to permit the applicant to deposit the said amount in the bank account as prayed.

6. The application is accordingly allowed in terms of prayer clause (a), however subject to an undertaking to be filed on behalf of the respondent, in this appeal within a period of two weeks from today, stating that the Appellant shall bring back the amount as and when, ordered by the court. No costs.

Parties to act on the authenticated copy of this order.

(G.S.Kulkarni, J.)