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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.267 OF 2014
WITH
NOTICE OF MOTION NO.725 OF 2014

Mr. Subash Anand ... Appellant

Versus

Mrs. Minoti Anand and Ors. ... Respondents

Ms. Pooja Khandeparkar a/w Asfiya Cutchy i/by K.K. Associates for the Appellant.

Mr. Rohan Cama a/w Ms. Sapna Rachure for the Respondents.

**CORAM : A.S. OKA &
ANUJA PRABHUDESSAI, JJ.**

DATE : 30th NOVEMBER, 2016

PC.

1 This Court has already directed that the Appeal will be disposed of finally at the stage of admission. The Appeal is by the original plaintiff in which exception has been taken to the order dated 18th March, 2014 in Notice of Motion No.548 of 2013 along with Notice of Motion No.2879 of 2011 taken out by the Appellant – Plaintiff in Suit No.2321 of 2011.

2 The submission of the learned counsel appearing for the Appellant is that the learned Single Judge has not considered the Notice of Motion No.548 of 2013 on merits and without passing any order on the prayers made in the said Notice of Motion, by the impugned order, the learned Judge has proceeded to frame issues.

3 The learned counsel appearing for the Respondents has placed on record a copy of the order dated 15th April, 2013 passed by the learned Single Judge which shows that in Notice of Motion No.548 of 2013, the prayer for ad-interim relief was rejected and Notice of Motion was ordered to be heard finally. He has also placed on record a copy of the order dated 23rd July, 2012 which records that Notice of Motion No.2879 of 2011 has been withdrawn by the present Appellant. The said orders are taken on record and marked 'X-1' and 'X-2' for identification.

4 The learned counsel appearing for the Respondents does not dispute that Notice of Motion No.548 of 2013 has not been disposed of.

5 Perusal of the impugned order shows that the learned Judge has not dealt with the prayers made in the Notice of Motion No.548 of 2013 which was admittedly pending at the relevant time. There is no order passed disposing of the said Notice of Motion.

6 It is obvious that in Letters Patent Appeal, that part of the
impugned order by which the issues have been settled cannot be
interfered with.

7 The learned counsel appearing for the Respondents submits
that objection to the jurisdiction of this Court has been raised by the
Respondents by way of reply to Notice of Motion No.548 of 2013.

8 In view of the aforesaid factual position, we dispose of the
Appeal by passing the following order:-

ORDER

- (i) We clarify that as the Notice of Motion No.548 of 2013
is still pending, the said Notice of Motion shall be
decided in accordance with law;
- (ii) Needless to add that if the Respondents raise an
objection as regards jurisdiction of this Court to
entertain the Suit, the same will be dealt with by the
learned Single Judge in accordance with law;
- (iii) All the contentions on merits of the pending Notice of
Motion No.548 of 2013 are expressly kept open;

(iv) The Appeal is partly allowed on above terms with no order as to costs;

(v) Notice of Motion No.725 of 2014 does not survive and the same is disposed of accordingly.

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)