

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.72 OF 2015
IN
APPEAL NO.401 OF 2014
IN
NOTICE OF MOTION NO.2064 OF 2012
IN
SUIT NO.566 OF 2011**

Marvel Fragrances Pvt. Ltd.

...Applicant

Versus

Anil Madhavdas Ahuja

...Respondent

...

Mr. Zal Andhyarujina with Ms Shruti Sardesai and Mr. Deepak Shukla
i/b. Vinod Mistry and Co. for the Applicants.

Mr. Aashish Kamat i/b. Mr. Ranjit and Co. for Respondent No.1.

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

DATED : 29th NOVEMBER, 2016.

P. C. :

Heard the learned counsel for the Applicants and the
learned counsel appearing for the Respondent No.1. The Applicants
are the Appellants in the Appeal, who are the original Defendant Nos.2
to 6. The Respondent No.1 is the original plaintiff.

2. The order impugned in the appeal is the order dated 18th

June, 2014 passed by the learned Single Judge on the Notice of Motion taken out by the present Applicants. The first prayer in the notice of motion was for recording the adjustment of the suit or satisfaction of the claim of the Respondent No.1-Plaintiff in the suit. The second prayer was for dismissing the suit. In the affidavit in support of the notice of motion, the Defendant No.3 relied upon the Deed of Family Arrangement dated 31st January, 2012 as well as the Deed of Family Arrangement dated 1st March, 2012. In paragraph No.14 of the said affidavit in support, it is contended that both the Agreements are being implemented but certain disputes have arisen in respect of certain aspects of both the documents and therefore, correspondence has been exchanged. It is contended in the affidavit in support that the suit has been adjusted in whole by a lawful agreement in writing and signed by the parties to the suit.

3. By the impugned order in the present Appeal, the learned Single Judge rejected the prayer for dismissal of the suit. However, as far as the first prayer for recording adjustment is concerned, the learned Single Judge framed an issue on the basis of the plea raised by the present Applicants. In paragraph Nos.11 and 12, the learned Single Judge has observed thus:-

“11. Prayer (b) of the Notice Motion, for an immediate dismissal of the suit, is rejected. The following issue is framed in relation to prayer (a) of the Notice of Motion:

1. Whether Defendant Nos.2 to 6 prove that the suit has been adjusted wholly by virtue of the Family Arrangement dated 31st January, 2012 read with the Shareholders' Agreement dated 31st January 2012 and the Family Arrangement dated 1st March, 2012?

12. I do not propose to allow parties to waste the court's time by allowing parties to lead evidence in installments. For that reason, the hearing of the Notice of Motion on the issue framed above is adjourned to court for recording evidence, to be heard along with the suit. It is made clear that I have not 'granted' any 'adjournment' for decision on the issue framed. I have scheduled the trial or enquiry on that issue to a convenient time and propose to direct this to be done in an orderly manner. It is also clarified that this issue is a mixed question of fact and law. It cannot, therefore, be decided as a preliminary issue. It will also not be necessary for the contesting defendants to amend their written statement for raising the plea of such an adjustment. It is also clarified that

a decision on the issue will dispose of prayer (a) of the Notice of Motion.” (underlines supplied)

4. The learned counsel appearing for the Applicants submitted that in view of mandate of Rule 3 of Order XXIII of the Code of Criminal Procedure, 1908, the issue of adjustment ought to have been immediately decided by the learned Single Judge. The learned counsel appearing for the Applicants invited our attention to paragraph No.8 of the impugned order and submitted that the enquiry could not have been postponed till all other issues are decided.

5. As disclosed by the learned counsel for the Respondent No.1, the present Applicants have instituted a suit bearing lodging No.105 of 2015 in this Court for declaration that the Agreements which are relied upon by the Applicants are valid and subsisting. There is a further prayer made in the suit for enforcing specific performance of the said Agreements.

6. Even going by affidavit in support filed by the Applicants in the notice of motion, it is an admitted position that certain disputes have arisen in respect of certain aspects of the Agreements, which are relied upon by the Applicants. In paragraph No.8 of the impugned

order, the learned Judge has given reasons as to why question raised by the Applicants in Notice of Motion could not be decided in a summary manner. The learned Single Judge has noted that apart from denial of the Respondent No.1-Plaintiff, there is a specific assertion that the Defendant No.5 has not fulfilled his obligations under the Family Arrangements.

7. Considering these aspects, the learned Judge was of the view that the issue framed by him on the basis of the plea raised by the Applicants will have to be decided alongwith other issues.

8. The learned Single Judge observed that the issue raises mixed questions of law and facts. The prayer in this notice of motion is for stay of the proceedings of the suit and also for stay of the impugned order dated 18th June, 2014 till the disposal of the Appeal.

9. In our view, there is no prejudice to the Applicants if the suit is heard in as much as in view of the issue framed by the learned Single Judge in paragraph No.11, the question of adjustment raised by the Applicants will be gone into by the learned Single Judge. If the operation of the impugned order is stayed, even the part of the

impugned order framing the issue based on the plea raised by the Applicants will be stayed. There is no merit in the notice of motion. Accordingly, the same is dismissed.

(ANUJA PRABHUDESSAI, J.)

(A.S. OKA, J.)