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

APPEAL NO.505 OF 2015

Mr. Brojinder Khushbakhtraai Anand ... Appellant
Versus
Mr. Issh Kemprakash Chadha and Anr. ... Respondents

Ms. K.C. Nichani i/by Kansara & Thanekar for the Appellant.
Mr. Deepak Chitnis i/by M/s. Deepak Chitnis – Chiparikar & Co. for the
Respondent No.1.

**CORAM : A.S. OKA &
G.S. KULKARNI, JJ.**

DATE : 10th MARCH, 2016

PC.

1 Heard the learned counsel appearing for the Appellant and the learned counsel appearing for the Respondent. The Appellant is the Plaintiff in a Testamentary Suit. The application made by the Appellant for grant of Probate of last will and Testament of the Testator dated 25th March, 2003 was converted into a testamentary suit. The issues were framed on 14th January, 2008. Two material issues were framed on that date.

- “(1) Whether the Defendant proves that the Will dated 25th October 2003 executed by late Dano K. Anand is forged, fabricated fraudulent and/or manipulated or bogus?
(2) Whether the Defendant proves that late Danu K. Anand

was incapable of executing the Will and of unsound mind?”

2 In view of the peculiar issues framed by the learned Single Judge, the Respondent – Defendant was permitted to first lead the evidence. All that is done by the learned Single Judge by the impugned order is that the issues have been re-casted. The Re-casted issues read thus : -

- “1. Whether the Plaintiff proves that the writing dated 25th March 2003 was duly and validly executed and attested in accordance with law as the last Will and Testament of Mrs. Dano Khusbakhatrai Anand?
2. Whether the Plaintiff proves that at the time of the said alleged Will, the deceased was of sound and disposing state of mind, memory and understanding?
3. Whether the Defendants prove that the alleged Will is a fabricated and manipulated document?
4. Whether the Defendants prove that the alleged Will was obtained by fraud as alleged in paragraph 18 of the Affidavit in Support of the Caveat filed by Mrs. Sukhwarsha Chhadha?
5. Whether the Defendants prove that the alleged Will is unnatural as alleged in paragraph 23 of the said Affidavit in Support of the Caveat?”

3 After having heard the learned counsel appearing for the Appellant, we find no merit in the Appeal. Firstly, by the impugned

order nothing is decided against the Appellant. It is not a Judgment. There is a power vesting under Rule 5 of the Order XIV of the Code of Civil Procedure, 1908 in the Court to recast the issues at any stage of the proceedings. Relying upon Section 63 of the Indian Succession Act, 1925, the learned Judge has recorded the reasons in paragraph 3 of the impugned order for recasting the issues.

4 As by the impugned order, no issue is decided on merits and as we find no error in the reasons recorded by the learned Judge in paragraph 3 of the impugned order, there is no reason to interfere with the impugned order. We, however, make it clear that time granted to the Appellant under clause 6 of the impugned order stands extended by a period of six weeks from today.

5 Subject to the above direction, the Appeal is dismissed. We make it clear that we have made no adjudication on the merits of the controversy in the Testamentary Suit. All contentions of the parties are kept open.

(G.S. KULKARNI, J)

(A.S. OKA, J)