

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 932 OF 2017

Dhanesh Madhusudan Ruparel

...Petitioner

Versus

Hongkong And Shanghai Banking
Corporation And Anr.

...Respondents

....

Mr.Karl Tamboly a/w. Nandini Joshi i/b. Harish Joshi & Co. for
the Petitioner.

Mr. Shashank N. Fadia, Advocate for Respondent No.1.

Mr. Zacanias Joseph i/b. Khaitan & Co. for Respondent No.2.

....

CORAM : R. G. KETKAR, J.

DATE : 10th FEBRUARY, 2017

P.C.

1. Not on board. At the request of Mr. Tamboly taken up
in the production board.
2. Heard Mr.Tamboly, learned Counsel for the petitioner,
Mr.Fadia, learned Counsel for respondent No.1 and Mr.Joseph,
learned counsel for respondent No.2, at length.
3. Rule. Learned Counsel for respective respondents
waive service. Having regard to the narrow controversy raised in

this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as plaintiff, has challenged the Judgment and order dated 30.11.2016 passed by the learned Judge, City Civil Court, Greater Bombay, in Notice of Motion No. 3751 of 2016 in S.C. Suit No.1529/2016. By that order, the learned trial Judge has dismissed the Motion taken out by the plaintiff.

5. In support of this petition, Mr. Tamboly submitted that the plaintiff has instituted suit, *inter alia*, for declaration that respondent no.1, hereinafter referred to as defendant no.1, is not entitled to permit respondent no.2, hereinafter referred to as 'defendant no.2', and/or any other person to operate Demat Account, Client ID No. 10416511 with defendant no.1 and for perpetual injunction restraining the defendant no.1 and/or defendant no.2 from in any manner operating the said Demat Account without the consent in writing of the plaintiff.

6. Mr.Tamboly submitted that Sita Mehta had executed

last Will and Testament on 26.5.2015. She gave devise and bequeath all amounts in her saving accounts/demat a/c, PPF a/c as well as fixed deposit a/cs / holdings and all physical shares and all interest due thereon and all accretions thereto, to the plaintiff. He submitted that the plaintiff intends to file administration suit and, therefore, took out notice of motion for grant of leave under Order II, Rule 2 of C.P.C. By the impugned order, the learned trial Judge dismissed the Motion on the ground that the City Civil Court has no jurisdiction to try the administration suit based upon alleged last Will by Sita Mehta. It is, therefore, not necessary for the plaintiff to obtain leave of this Court under Order II, Rule 2 to file administration suit before the High Court.

7. Mr. Tamboly submitted that Order XX, Rule 13 of C.P.C. deals with decree in administration suit. Depending upon the pecuniary jurisdiction, suit can be instituted either in the City Civil Court or in this Court. He relied upon the order dated 21.10.2016 passed by another learned Judge of the City Civil Court in Notice of Motion no.2759 of 2016 in L.C. Suit no.1448 of 2016 granting leave under Order II Rule 2 of C.P.C. He, therefore, submitted that the learned trial Judge was not

justified in dismissing the motion for the reasons set out in paragraph 8 of the impugned order.

8. Learned Counsel for the respondents fairly do not dispute this position. In view thereof, the impugned order dated 30.11.2016 is liable to be set aside and is accordingly set aside. Notice of Motion No.3751/2016 is made absolute in terms of prayer clause (a) with no order as to costs. Rule is made absolute in with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)