

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L.) NO.298 OF 2018
IN
NOTICE OF MOTION (L.) NO.134 OF 2018
IN
MISC. PETITION (L.) NO.1739 OF 2018
WITH
NOTICE OF MOTION (L.) NO.646 OF 2018**

Vijay K. Sawant	...Appellant
Vs.	
Abbot Anthony Quinny	...Respondent

Mr.S.M. Gorwadkar, Senior Advocate, with Mr.Mankirat Singh, Mr.Nilesh Makwana and Mr.Sujay Gangal i/b. Mr.Niranjan Mogre for Appellant.
Mr.D.Madon, Senior Advocate, i/b. H.V. Kumarswami for Respondent.

**CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.**

DATE : 20th JULY 2018

P.C.:

This appeal is directed against the order dated 27th June 2018 passed by the learned Single Judge. Admittedly, the Miscellaneous Petition (L.) No.1739 of 2018 is pending for consideration of the learned Single Judge. The impugned order has been passed in a motion in the Miscellaneous Petition (L.) No.1739 of 2018.

2. The learned Counsel for the appellant submits that in view of the Rule 304 of the Original Side Bombay High Court Rules and in view of Section 261 of the Indian Succession Act, the Prothonotary & Senior Master, High Court, has no authority in law to interfere into the

averments, contentions contained in paragraph 4 of the Schedule of Assets annexed to the probate which was granted in the year 2003. The Will was executed on 16th April 1989. The learned Counsel for the appellant submits that he would specifically raise these issues before the learned Single Judge.

3. The learned Counsel appearing for the respondent submits that the issues raised before this Court now as stated above, were not raised for consideration of the learned Single Judge, neither they are taken up in the pleadings.

4. The learned Counsel for the appellant submits that in case the said issues are raised, the respondent would meet the same on its own merits including the appellant's locus to raise the said issues before the learned Single Judge.

5. The learned Counsel for the appellant seeks leave to withdraw this appeal for raising appropriate issues before the learned Single Judge in the pending petition.

6. Without expressing our opinion on merits of the issues which the appellant would raise before the learned Single Judge, we grant leave to withdraw the appeal.

7. All contentions of the contesting parties are kept open.
8. Needless to observe that the learned Single Judge would deal with the issues which will be raised by the appellant, without being influenced by the impugned order.
9. With the above observations, the appeal is allowed to be withdrawn. It is disposed of accordingly.

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]