

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

**APPEAL NO. 660 OF 2016
WITH
NOTICE OF MOTION (L) NO. 2661 OF 2016
IN
COURT RECEIVER REPORT 299 OF 2016
IN
TESTAMENTARY PETITION NO. 315 OF 2007**

Wasim Akhtar Mohammed Moosa Khan Appellant

Vs.

Nafis Akhtar Mohammed Moosa Respondents
Khan and others

Mr. Kamlesh P. Mali for the appellants.
Mr. Kunal Bhangre a/w Mr. Vasim Siddiqui for respondent nos. 1 & 2.
Mr. Ajay Malvankar, S.O. Court Receiver Office.

**CORAM : NARESH H. PATIL AND
NITIN W. SAMBRE, JJ.**

DATE : FEBRUARY 15, 2018.

P.C.

We have perused the record placed before us, considered submissions advanced. We have also perused the order passed by the Testamentary Court from time to time.

2 In principle, the view adopted by the learned Single Judge that appellant ought to have first approached the Court by appropriate

application seeking directions to the Court Receiver. Even if the appellant had submitted an application directly to the Court Receiver, the Court Receiver ought to have approached the Court seeking further directions in the matter. Nothing of this sort has happened. Therefore, taking into consideration the facts and the attending circumstances, the learned Single Judge imposed cost of Rs. 15,000/- on the 4th defendant. Cost was to be paid to the plaintiff.

3 The counsel appearing for the appellant submitted that it was unintentional act on the part of the appellant. After noticing that business was running in profit, appellant had made an application to the Court Receiver and accordingly after conducting surprise visit report which favours the view of the appellant was submitted. It is not a case of misleading the Court in any manner to snatch some orders from the Court. The counsel submits that defendant no. 4 is financially weak. His take home salary is just about 15000/-. It would be difficult for him to pay cost. He prayed for some leniency.

4 The counsel appearing for the respondent submits that after noticing the conduct of the appellant, the Court passed an order which is just, reasonable and proper. The counsel submits that while appellant had filed an application, he showed inclination to pay royalty

of substantial amount which shows that appellant has capacity to pay cost.

5 In the facts of the case, after perusing the record, we find that the view adopted by the learned Single Judge in respect of the merits is reasonable view. But in view of the submission regarding the financial condition of the appellant we are inclined to show indulgence to that extent only. The order of cost is modified from 15000/- to 7500/-. The said cost be paid to the plaintiff within 2 weeks from today. In case, appellant fails to pay the cost of Rs. 7500/-, appellant shall pay Rs. 15,000/- to the plaintiff accordingly. With this modification, the appeal stands disposed of.

6 In view of the disposal of the appeal, the notice of motion stands disposed of accordingly.

[NITIN W. SAMBRE, J.]

[NARESH H. PATIL, J.]