

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

NOTICE OF MOTION NO.444 OF 2015
IN
SUIT NO.304 OF 2013

Prabhavati Devi Bholanath Yadav & Ors.... Applicants
(Orig. Plaintiffs)

IN THE MATTER BETWEEN

Prabhavati Devi Bholanath Yadav & Ors.... Plaintiffs

V/S.

Rahul Radheshyam Yadav ... Defendant

Mr. Dharmendra M. Joshi for Applicants / Plaintiffs.

Mr. V.J. Mehta & Mr. J.S. Shukla I/b. Mr. Vaibhav Mehta &
Associate for Defendant.

CORAM : B. P. COLABAWALLA, J.
DATED : 30th AUGUST, 2019.

P.C.

1. This Notice of Motion has been filed by the Plaintiffs inter-alia seeking directions against the Defendant to deposit in this Hon'ble Court the sum of Rs.1,16,59,280 received by the Defendant from the Corporation Bank, Goregaon branch in his capacity as a nominee. It is the case of the Applicants/Plaintiffs that they are the only heirs and legal representatives of one Shri. Bholanath Ramjas Yadav, who expired at Mumbai on

16.10.2010. Plaintiff No.1 is the widow and Plaintiff Nos.2 and 3 are the sons of deceased Bholanath Ramjas Yadav.

2. According to the Plaintiff the said deceased during his life time deposited a total sum of Rs.1 Crore with the Corporation Bank under 10 Fixed Deposit Receipts of Rs.10 lakhs each, the particulars of which have been stated in Paragraph No.3 of the affidavit in support of the Notice of Motion. According to the Plaintiffs, sometime in the year 2012 they came to know about a Saving Bank Account being held by the deceased with the Corporation Bank, and therefore, made enquiries with reference to the same. It was at that time that the Plaintiffs became aware that the deceased was not only holding a savings account but also 10 Fixed Deposit Receipts mentioned earlier. The Plaintiffs were also informed that for all the aforesaid Fixed Deposit Receipts the name of the Defendant was mentioned as the nominee and on the death of Bholanath Ramjas Yadav, the said principle amount of Rs.1 Crore along with accrued interest of Rs.16,59,280/- was to be paid over by Corporation Bank to the Defendant. It is, in these circumstances, that the present Notice of Motion has been filed.

3. The learned advocate appearing on behalf of the Defendant submitted that no amount is payable at all to the Plaintiffs for the reasons set out in the Written Statement as well as the understanding arrived at between the Plaintiffs and the son/daughter of the deceased – Prabhavati Devi Bholanath Yadav from time to time. The learned advocate however very fairly stated that without prejudice to the Defendant's rights and contentions in the above suit, he is willing to deposit 50% of the aforesaid amount (namely Rs.58 Lakhs) to show the bonafides of the Defendant. To this effect, an undertaking has also been executed and handed over to this Court today which *inter-alia* records that the Defendant shall deposit in this Court an amount of Rs.58 Lakhs within a period of six months from today. It further records that the Defendant, until the aforesaid amount is deposited, will not permanently shift out of India. Over and above the undertaking given by the Defendant, the father of the Defendant has also given an undertaking to this Court that in case the Defendant is unable to deposit the amount of Rs.58 lakhs within a period of six months, in that event, without prejudice to his rights and contentions, the father of the Defendant shall deposit the same in this Court

within a period of one month thereafter. The said undertaking is taken on record and marked "X" for identification. As per the undertaking given by the Defendant, I am satisfied that the interest of justice will be served if the Defendant and/or his father is directed to deposit in this Court a sum of Rs.58 Lakhs as per the undertaking dated 30.08.2019 tendered before me today.

4. It is therefore ordered that the Amount of Rs.58 Lakhs shall be deposited by the Defendant within a period of six months from today. In the event, the Defendant fails to deposit the aforesaid amount, the father of the Defendant shall deposit the amount of Rs.58 Lakhs within a period of one month thereafter, namely, within a period of seven months from today.

5. The Notice of Motion is accordingly disposed of. No order as to costs.

(B. P. COLABAWALLA, J.)