

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 209 OF 2021
WITH
INTERIM APPLICATION NO. 1291 OF 2020
IN
APPEAL FROM ORDER NO. 209 OF 2021

Seema Yatin Prabhavalkar

.. Appellant

Versus

Snehal Yatin Prabhavalkar and Anr.

.. Respondents

-
- Mr. Rajendra Pai, Senior Advocate a/w. Mr. Akshay Pai i/by Mr. Manas N. Gawankar for the Appellant.
 - Mr. Rajesh Devgharkar i/by Ram Legal for Respondent No.1.
-

CORAM : MILIND N. JADHAV, J.

DATE : JULY 21, 2022

P.C.:

1. Heard learned counsel appearing for the parties.
2. Perused the impugned order dated 01.08.2019.
3. Mr. Pai, learned Senior Advocate points out that the impugned order has been passed without adhering to the basic principles of natural justice in as much as the Motion filed by the respondents was decided without according an opportunity to the appellant to file her reply and / or even without hearing the appellant.
4. Mr. Devgharkar, learned counsel appearing for respondent No.1 submitted that the appellant was served with the copy of the Motion on 26.07.2019; it was moved for ad-interim relief on 31.07.2019, and

thus the appellant had 4 days notice. However, Mr. Devgharkar in his usual fairness has accepted the fact that the affidavit-in-reply ought to have been allowed to be filed and only thereafter the adjudication should have taken place.

5. I am inclined to accept the submissions made by Mr. Pai. Every litigant deserves an opportunity to file reply to the case against him. This is an unfortunate family dispute.

6. In view of the aforesaid, I am inclined to quash and set aside the impugned order dated 01.08.2019 with the following directions:

- (i) Appellant shall file their affidavit-in-reply to the original Notice of Motion No.2871 of 2019 within a period of 2 weeks from today before the Trial Court and serve a copy of the same to the respondents / Advocate for the respondents.
- (ii) Rejoinder, if any, be filed by the respondents within a period of 2 weeks thereafter to the reply affidavit.
- (iii) The Trial Court is directed to hear Notice of Motion No. 2871 of 2019 afresh in accordance with law within a period of 2 weeks thereafter.

7. In view of the above directions, Appeal from Order disposed.

8. Interim application No. 1291 of 2020 disposed.

[MILIND N. JADHAV, J.]