

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 5586 OF 2023

Dr. Sou. Anjali Sheetal Narade

..Petitioner.

Versus

Smt. Manjusha Gajanan Latthe

..Respondent

Mr. Tejpal S. Ingale for Petitioner.

CORAM : SARANG V. KOTWAL, J.

DATE : 25 APRIL 2023

PC :

1. The Petitioner has challenged the order dated 17/10/2022 passed by 2nd Joint Civil Judge, S.D., Sangli below Exhibit-12 in Regular Civil Suit No.148 of 2021. This application was made by the Petitioner who was the original Plaintiff for recasting of the issues.

2. Heard Shri. Tejpal Ingale, learned counsel for the Petitioner.

3. The present Petitioner is the original Plaintiff and present Respondent is the original defendant in the said suit. The suit was filed by the Petitioner for recovery of Rs.3,15,439/- with

interest at the rate of 12%p.a. from the defendant. The case of the Petitioner is that the Petitioner and the Respondent were sisters. Their father Surendra Chakote passed away on 06/12/2015. He had an account with the Sangli Urban Co-operative Bank, South Shivaji Nagar branch. Both the parties met the Branch Manager for withdrawal of the amount. At that time, it was suggested that, if they did not want to obtain the Succession Certificate from the Civil Court, they had to file an Affidavit and it had to be filed by one of them. It is the case pleaded in the plaint that the Defendant was a resident of Sangli and for convenience, the affidavit was made by the defendant. It was requested to the bank that the amount be given to the defendant on behalf of both of them. It is further pleaded that the defendant did not give the half share to the plaintiff; as agreed and, therefore, this suit was filed. The written statement was filed by the defendant and the issues were framed on 03/01/2022 as follows:

1. Whether the Plaintiff proves that Surendra Chakote who was father of the Plaintiff and Defendant, was holding a bank account with the Sangli Urban Co-op. Bank Ltd., South Shivaji Nagar branch, Sangli and whether there was an

amount of Rs.1,18,230/- with interest lying in the said account?

2. Whether the Plaintiff proves that the defendant had withdrawn money for herself and had caused monetary loss to the plaintiff by ignoring her share?
3. The Plaintiff had sent notice dated 12/12/2020 and had asked for payment of Rs.2,38,798.35 with interest and in spite of receiving the notice the defendant did not make payment. Whether the plaintiff has proved this fact?
4. Whether the plaintiff is entitled to recover Rs.3,15,439/- from the defendant?, if yes, at what rate of interest?
5. What order?

4. The Petitioner-Plaintiff made an application on 07/04/2022 suggesting that the issues be recast. She requested that the Issue Nos.1 to 4 be deleted and instead two fresh issues were suggested as follows:

1. Whether the defendant proves that the property of the deceased Surendra was to be divided in equal shares.
2. Whether the defendant is entitled to receive interest @ 12% p.a.?

5. This application was considered and learned Trial Judge

partly rejected the said application and recast the issues as follows:

1. Whether the Plaintiff proves that the defendant withdrew the money from the account of deceased Surendra Chakote maintained with the Sangli Urban Co-Op. Bank Ltd., South Shivaji Nagar branch?
2. Whether the Plaintiff proves that, she had issued notice dated 12/12/2020 for payment of amount of Rs.2,38,798.35 and for interest from 16/07/2016 at the rate of 10%p.a.?
3. Whether the Plaintiff is entitled to get Rs.3,15,439/- with interest @ 12%p.a.?
4. What order?

6. Learned Trial Judge considered the application and observed that the suit was simplicitor for recovery of money and, therefore, new issues as requested by the Plaintiff could not be framed.

7. Learned counsel for the Petitioner submitted that the deceased Surendra had made a registered Will bequeathing the flat in favour of the plaintiff's son and, therefore, that issue was important. The defendant has already filed a partition suit, therefore, these two issues were necessary.

8. I have considered these submissions. However, the pleadings in the plaint makes no reference to such submission. The plaint is restricted for recovery of half an amount which was withdrawn by the defendant from the bank. The issues are framed exactly as per the contentions of the parties in the plaint, as well as, in the written statement. The dispute is reflected in the issues which are re-framed. Therefore, I do not see any reason as to how the submissions of learned counsel for the Petitioner helps the petitioner because there is no reference of such submissions in the plaint. I do not see any infirmity in the impugned order.

9. Consequently, the petition is dismissed.

(SARANG V. KOTWAL, J.)