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caa1005-17grp-corrected

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1005 OF 2017

with

CIVIL APPLICATION NO. 644 OF 2012

with

CIVIL APPLICATION (st) NO.12128 OF 2012

in

APPEAL FROM ORDER NO.1376 OF 2011

Shri.Murtimant Balkrishna Tandel & Ors.

...

Applicants/Appellants

Versus

Smt.Manjula Balkrishna Tandel & Ors.

...Respondents

Mr.Brijesh Upadhaya i/b. Mr.Vaibhav Shah & Ms.Chaitali M. Tandel, for the Appellants

CORAM: G. S. KULKARNI, J.
DATED: JANUARY 11, 2023

P.C.

1. This Civil Application No.1005 of 2017 is taken out by the Appellants/applicants for refund of the maintenance amount deposited in the Court. The appeal from order was disposed of by an order dated 3 February 2012 passed by the co-ordinate Bench of this Court. The said order is required to be noted which reads thus:

“1. After some discussion at the Bar and after taking instructions from his client who is present in Court, the learned Counsel for the appellants seeks to withdraw the Appeals as well as the Applications. He also makes a statement that the appellant No.1 has already deposited an amount of Rs.1 lakh before the trial Court towards interim maintenance and he shall deposit the balance amount of interim maintenance within three months and, therefore, he wants execution of the order about payment of interim maintenance to be stayed till then.

2. In view of the above, both the Appeals and the Applications therein stand disposed of as withdrawn. The

appellant No.1 is allowed to deposit balance amount of interim maintenance within three months from this day. Till then the execution of the order for payment of interim maintenance shall remain stayed. The amount of Rs.1 lakh, which is already deposited by the appellant No.1, shall be allowed to be withdrawn by respondent No.1 – Manjula Balkrishna Tandel, who is the original plaintiff.”

2. By the subsequent order passed by the co-ordinate Bench of this Court dated 3 May 2012, time was extended to deposit the amount of Rs.40,000/-. The said order reads thus:-

“ Heard Mr.Mishra, learned counsel for the appellants.

He invited my attention to the order dated 3.2.2012 passed by this court (J.H.Bhatia, J.) in A.O. No.1376 of 2011 and A.O. No.821 of 2011. Mr.Mishra further states that as per the said order, the appellant – original defendant has to pay Rs.2,40,000/- to respondent No.1-Smt.Manjula Balkrishna Tandel. He has already paid Rs. One lac in terms of paragraph 1 of the said order and the appellant will further deposit Rs.40,000/- on or before 7.5.2012 and he will make further statement about depositing balance amount of Rs. One lac on 10.5.2012. He further states that he will give notice of hearing of 10.5.2012 to learned counsel appearing for the respondent-mother. Statement of Shri.Mishra is accepted. The appellant shall deposit the amount of Rs.40,000/- on or before 7.5.2012.

List the Appeal from order for admission on 10.5.2012.”

3. It is informed by the learned Counsel for the applicants that the dispute in the present proceedings was between respondent No.1 – Smt.Manjula Balkrishna Tandel who was the plaintiff in Special Civil Suit No.36 of 2010 filed before the Court of Civil Judge, Senior Division, Kalyan, which is numbered as Regular Civil Suit No.96 of 2012 wherein the appellants-Mr.Murtimant B. Tandel and Mrs.Madhuri M. Tandel are the defendants in the said suit. The relationship between the plaintiff and the defendants/appellants is that the defendant no.1 is the son of the plaintiff. It is stated by the learned Counsel for the applicants that

plaintiff Smt.Manjula Tandel expired on 30 May 2015 and hence, taking such fact into consideration the Joint Civil Judge, Senior Division, Kalyan has passed an order dated 30 November 2021 a copy of which is placed on record, allowing the application filed on behalf of the appellants/applicants praying that the suit be ordered to be abated. The suit is thus dismissed as abated.

4. In the above circumstances, the appellants submits that they be permitted to withdraw Rs.40,000/- as deposited in this Court with accrued interest, as the said amount could not come to the benefit of deceased respondent No.1/plaintiff - his mother Manjula B. Tandel. It is clear from the orders passed by this Court that the said amount was to be entitled only to the deceased respondent no.1/plaintiff, thus, in my opinion, it would be appropriate that the amount is permitted to be withdrawn / refunded to the applicant. Ordered accordingly.

5. Office to do the needful within a period of four weeks from today. Civil Application No. 1005 of 2017 is accordingly disposed of in the above terms. Appeal from order No.1376 of 2011 is already disposed of.

6. Civil Application No.644 of 2012 and Civil Application (st) No.12128 of 2012 would also not survive as not only the suit is abated but also the appeal itself is disposed of. They are accordingly disposed of.

7. No costs.

(G. S. KULKARNI, J)

Corrected as per speaking to minutes order dated 03.03.2023