

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1035 OF 2022

Sana Sirajuddin Mukadam
Thr. COA Mr. Y. U. Kharkar

... Appellant

Versus

Azeem Siraj Mukadam & Ors.

...Respondents

...

Mr. M.A. Khan i/by Mr. Parth S. V. for Appellant.

Mr. Wasim R. Khan, for Respondents.

...

CORAM : SANDEEP V. MARNE, J.

DATE : NOVEMBER 09, 2023.

P.C.:

1. The challenge in the present Appeal is to the order dated 11 August 2022 passed by the City Civil Court partly allowing Notice of Motion No.1279 of 2020. The learned Judge of the City Civil Court has passed following order on 11 August 2022.

“1. Notice of Motion No.1279 of 2020 is partly allowed in following terms-

2. Defendants No.3 is restrained from withdrawing amount in fixed deposit receipts deposited by her, bearing Nos.2668401007390/10, 2668401007390/11, 2668401007390/12 till further order of the Court.

3. Defendant No.2 is restrained from operating and withdrawing any amount from her account with defendant No.1 - Bank bearing account

No.2668101107134, till she produces status of four fixed deposit receipts, which are annexed with Exh.C (Colly) with the plaint at Page Nos.17 to 20 and till further orders are obtained from this Court in that regard. Defendant No.1-Bank is directed to provide necessary information to defendant No.2 in respect of the said deposit receipts.

4. The prayer clause(a) hereby no expressly granted and prayer clause(b) of the Notice of Motion stands rejected.

5. Notice of Motion No.1279 of 2020 is disposed of accordingly.”

2. It appears that after passing of order dated 18 August 2022, the Plaintiff and Defendant No.2 have filed Consent Terms settling the dispute amongst them. Accordingly the City Civil Court has disposed of the suit qua Defendant No.2 by order dated 24 November 2022. Thus, now the suit as well as the impugned order dated 11 August 2022 survive only qua Original Defendant Nos.3 (Appellant).

3. So far as the Defendant No.3 (Appellant) is concerned, she is restrained from withdrawing the amount in the three Fixed Deposit Receipts bearing Nos.2668401007390/10, 2668401007390/11, 2668401007390/12. The learned counsel appearing would contend that no substantive prayer is sought in the suit qua fixed deposits Receipt Nos.2668401007390/10, 2668401007390/11, 2668401007390/12. However it appears that the case of the Plaintiff is that the fixed deposits which the originally stood in the name of

the father, upon their maturity, were converted into fixed deposits in the name of Defendant No.3 (Appellant). The details of such Fixed Deposit Receipts created by Defendant No.3 (Appellant) in her own name came to be disclosed before the City Civil Court during the course of hearing of the motion. It is on this count that the City Civil Court has restrained Defendant No.3 (Appellant) from withdrawing the amount in those three Fixed Deposits even though the numbers of those three Fixed Deposit Receipts are not be found in any of the prayer clauses in the suit. Therefore no fault can be found in the approach of the City Civil Court in passing restraint order against Defendant No.3 (Appellant) qua those three Fixed Deposit Receipts.

4. However, it must be observed here that the Suit filed by the Plaintiff does not contain in substantive relief for claiming share in the immovable/movable properties of his father. It appears that the suit has been filed to restrain Defendant Nos.2 & 3 from operating the accounts of the father and withdrawing the amount therefrom only on the basis of nomination in the name of Defendant Nos.2 & 3. It is Plaintiff's prayer in the suit that without production of Succession Certificate, Defendant No.2 & 3 should not operate the account of father or withdraw any money therefrom. While the Plaintiff expects Defendant No.2 and 3 to procure a Succession Certificate,

Plaintiff cannot be permitted to indefinitely freeze the accounts/ Fixed Deposit Receipts of Defendant Nos.2 & 3. So far Plaintiff has not filed any substantive proceedings claiming share in the movable/immovable properties of the father. Unless Plaintiff establishes any share in the amount of Fixed Deposit Receipts Nos.2668401007390/10, 2668401007390/11, 2668401007390/12, he cannot indefinitely injunct Defendant No.3 (Appellant) from withdrawing the amount from that Fixed Deposit Receipts. It appears that the three Fixed Deposit Receipts are going to mature on 31 March 2025. Therefore the Plaintiff is required to file substantive proceedings to claim share in the amount of the said Fixed Deposit Receipts. Accordingly, the present Appeal can be disposed of by continuing the order of interim injunction passed by the City Civil Court qua Defendant No.3 (Appellant) for a definite period of time within which the Plaintiff will have to secure necessary orders claiming share in the maturity amounts those three Fixed Deposit Receipts.

5. Accordingly the Appeal is disposed of directing that the order passed by the City Civil Court dated 11 August 2022 qua Defendant No.3 (Appellant) shall continue only for a period of one year from today.

6. In the meantime the Plaintiff shall be at liberty to file substantive proceedings to claim a share in the amounts of the Fixed Deposit Receipts

Nos.2668401007390/10, 2668401007390/11, 2668401007390/12. In the event the Plaintiff fails to secure any order claiming share in Fixed Deposit Fixed Deposit Receipts Nos.2668401007390/10, 2668401007390/11, 2668401007390/12, within one year from today, the ad-interim order passed by the City Civil Court on 11 August 2022 shall stand vacated. If any order is secured by Plaintiff qua these three Fixed Deposit Receipts within 1 year, the order passed in these proceedings would govern the rights of parties to those Deposits.

7. With the above observations, the Appeal is disposed of.

(SANDEEP V. MARNE, J.)