

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO. 69 OF 2023****WITH****CIVIL REVISION APPLICATION NO. 70 OF 2023**

Sacheen Bhagwan Khirid and Anr.

.. Applicants

Versus

Simkumar Bhagwan Khirid and Anr.

.. Respondents

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- Ms. Shirin Merchant for Applicants
 - Mr. Nitesh Bhutekar a/w. Mr. Aniket Nangave for Respondent No.1
 - Mr. Harshad Rathod for Respondent No.2- Union Bank of India
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CORAM : MILIND N. JADHAV, J.**DATE : FEBRUARY 14, 2023.****P.C.:**

1. Heard Ms. Merchant, learned Advocate for Applicants; Mr. Bhutekar, learned Advocate for Respondent No.1 and Mr. Rathod, learned Advocate for Respondent No.2.
2. Perused the order passed below Exh.5 in S.C.S. No. 785 of 2022 by the 9th Jt. C.J.S.D., Pune.
3. At the outset, an objection is raised that the C.R.A. to challenge this order is not maintainable. Ms. Merchant would therefore take appropriate instructions and decide the further course of action.
4. In so far as challenge to the order below Exh.24 is concerned, the application was filed under order VII Rule 11 of the Code of Civil Procedure, 1908 by the Applicant i.e. Defendant Nos. 1 and 2 for

rejection of the plaint and the same has been rejected by the learned Trial Court.

5. Perusal of the impugned order below Exh.24 as well as copy of the plaint would suggest that both parties have raised disputed questions of facts.

6. Be that as it may, Ms. Merchant today has argued on the issue of limitation, *inter alia*, stating that the subject fixed deposits stood in the name of the father and the Defendant No.1 originally since 2013 and it is only after the demise of the father the said amounts are now held with the bank and are required to be apportioned between the heirs. She apprehends that the application shall be made by the Plaintiff seeking withdrawal of the same from the bank to his own benefit to the exclusion of the Applicants who also have a right/share in the same.

7. Perusal of the order below Exh.5 as on date clearly injuncts the Defendants. Ms. Merchant would submit that order restraining Defendant No.3 shall be challenged by Defendant No.3 in appropriate proceedings (though C.R.A. No. 70 of 2023 has been filed in this Court and objection is raised to its maintainability).

8. Be that as it may, in so far as the impugned order passed below Exh.24 is concerned, I am not inclined to disturb the same in view of disputed questions of facts raised by either parties regarding the ownership of the fixed deposits. However, Defendant Nos. 1 and 2 are

at liberty to take out appropriate applications before the learned Trial Court for withdrawal of any of the amounts held by the Union Bank of India in the fixed deposits subject to the said applications being heard by the learned Trial Court and after hearing all parties appropriate reasoned orders passed therein after hearing all concerned parties.

9. With the above directions, C.R.A. 69 of 2023 is disposed.

10. No orders are passed in C.R.A. 70 of 2023.

11. List C.R.A. No. 70 of 2023 on board on **28th February, 2023** for directions.

[MILIND N. JADHAV, J.]

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