

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

APPEAL FROM ORDER NO. 68 OF 2023

SANTOSH
SUBHASH
KULKARNI

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SANTOSH SUBHASH
KULKARNI
Date: 2023.04.20
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Zenobia Poonawala

...Appellant

Versus

Rustom Ginwalla & ors.

...Respondents

WITH

INTERIM APPLICATION NO. 866 OF 2023

Mr. Premlal Krishnan, a/w Allan Thomas and Prashant
Bothre, i/b Pan India Legal Services LLP, for the
Appellant.

Mr. Sameer Pandit, a/w Sarrah Khambati and Anuj Jain, for
Respondent Nos.1 and 2.

CORAM: N. J. JAMADAR, J.

DATED : 19th APRIL, 2023

ORDER:-

1. Heard the learned Counsel for the parties.
2. The learned Counsel for Respondent Nos.1 and 2 seeks
leave to tender affidavits-in-reply.

Leave granted.

Affidavits-in-reply are taken on record.

3. This appeal is directed against an order dated 21st
December, 2022 passed by the learned Judge, City Civil Court
in SC Suit No.2905 of 2022, whereby by way of an ad-interim
relief the learned Judge was persuaded to grant reliefs in terms

of prayer Clauses (a) and (c) in the draft Notice of Motion till filing detail reply by the defendants.

4. The learned Counsel for the appellant submitted that the defendant has raised the ground of very tenability of the suit before the City Civil Court in view of the proceedings between the parties in the Court of Small Causes and there are other grounds which affect the tenability of the plaint in the form in which it has been presented.

5. In the intervening period the appellant has filed affidavit-in-reply to the Notice of Motion.

6. Since the impugned order is an ad-interim order, which the learned Judge considered appropriate to pass at that stage of the proceedings it may be appropriate that the Notice of Motion itself is decided on merits.

7. The learned Counsel for the appellant submitted that a time frame be fixed for hearing and decision of the Notice of Motion as the impugned order operates to the prejudice of the appellant.

8. Let the plaintiff file an affidavit-in-rejoinder in the Notice of Motion within a period of two weeks from today.

9. The learned Judge may take up the Notice of Motion for hearing after the pleadings are completed and decide the same as expeditiously as possible and preferably by end of August, 2023.

10. This Court has not entered into the merits of the matter and the learned Judge shall decide the Notice of Motion on its own merits and in accordance with law.

11. The appeal stands disposed in the aforesaid terms.

12. In view of disposal of the appeal, interim application does not survive and stands disposed.

[N. J. JAMADAR, J.]