

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 180 OF 2017
IN
NOTICE OF MOTION NO.1469 OF 2014
IN
SUIT NO.1015 OF 2014
WITH
NOTICE OF MOTION NO.798 OF 2018
IN
APPEAL NO.180 OF 2017
WITH
NOTICE OF MOTION NO.946 OF 2017
IN
APPEAL NO.180 OF 2017
WITH
INTERIM APPLICATION NO.2319 OF 2023
IN
APPEAL NO.180 OF 2017.

Fizzah Navnitlal Shah	: Appellant
W/o. Navnitlal Ratanji Shah	(Orig. Defendant No.2)
versus	
Chetan Navnitlal Shah and ors.	: Respondents.

ALONG WITH
APPEAL NO.52 OF 2019
IN
NOTICE OF MOTION NO.1469 OF 2014
IN
SUIT NO.1015 OF 2014
WITH
INTERIM APPLICATION NO.2320 OF 2023
IN
APPEAL NO.52 OF 2019

Chetan Navnitlal Shah

: Appellant/Original Respondent/
Plaintiff.

Versus

Fizzah Navnitlal Shah

W/o Navnitlal Ratanji Shah and ors. : Respondents.

Mr. Rashmin Khandekar with Ms. Kirtida Chandarana and Mr. Naozad Golwalla i/by Mr. Mahernosh Humranwala for the Appellant in Appeal No.180 of 2017 and for Respondent No.1 in Appeal No.52 of 2019.

Mr. Pradeep Sancheti, Senior Advocate, a/w Mr. Shayan Dasgupta, Ms. Nidhi Kulkarni, Mr. Devendra Orak and Ms. Khushboo Bhatt i/by Khaitan & Co. for the Appellant in Appeal No. 52 of 2019 and for Respondent No. 1 in Appeal No.180 of 2017.

**CORAM : NITIN JAMDAR, ACTING CJ. &
ARIF S. DOCTOR, J.**

DATED : 20 JULY 2023.

P.C.:

Heard the learned counsel for the parties.

2. Appeals are admitted and are taken for disposal, forthwith by consent.

3. These two are cross Appeals arising from the order under Section 9A of the Code of Civil Procedure passed by the learned Single Judge dated 31 January 2017 & 22 February 2017.

4. The learned counsel for the parties are ad-idem that considering the

legal position laid down in the decision of the Hon'ble Supreme Court firstly in the case of *Nusli Neville Wadia v/s. Ivory Properties and ors.*¹ and subsequent decisions, the last being the decision of the Appeal Bench of this Court in the case of *Sabita Rajesh Narang v/s. Sandeep Gopal Raheja and others*,² that the impugned order would be a nullity and will have to be set aside and thereafter suit will have to be proceed on its own merits.

5. In view of this consensus at Bar, both the Appeals are allowed by quashing and setting aside the impugned order. We make it clear that we have not looked into the merits of the rival contentions raised in the suit, and the same will be decided on its own merits.

6. In view of disposal of the Appeals, all pending Applications stand disposed of.

(ARIF S. DOCTOR, J.)

(ACTING CHIEF JUSTICE)

¹ (2020) 6 SCC 557

² 2023 SCC OnLine 846