

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5627 OF 1995

- | | | |
|--|---|-----------------------|
| 1. Mrs. Moti Dinshaw Irani |] | |
| 2. Mr. Jehangir Dinshaw Irani |] | .. Petitioners |
| <i>Versus</i> | | |
| 1. Mr. Phiroze Aspandiar Irani |] | |
| <i>Since Deceased – through LRs.</i> |] | |
| 1[a]. Ketty Firoze Irani |] | |
| 1[b]. Raiyomand Firoze Irani |] | |
| 1[c]. Sanober Firoze Irani |] | |
| 1[d]. Mehrooz Firoze Irani |] | |
| 2. Mr. Vinayak Shankarrao Pingle |] | .. Deleted |
| 3. Mr. Vilas Shankarrao Pingle |] | .. Deleted |
| 4. Smt. Subhadrabai T. Bhujbal |] | .. Deleted |
| 5. Smt. Sushilabai S. Dhadge |] | .. Deleted |
| 6. Mrs. Suman Vishwanath Girme |] | .. Deleted |
| 7. Mrs. Asha Prabhakar Dalvi |] | .. Deleted |
| 8. Mr. Kisan @ Krishnarao Rambhau Pingle |] | .. Deleted |
| 9. Mr. Mehmood M.H. Moledina |] | |
| 10. Mrs. Shirin Ismail Umar |] | |
| <i>Since Deceased – through LRs.</i> |] | |
| 10[a]. Riyaz Ismail Omer |] | |
| 10[b]. Zia Ismail Omer |] | |
| 11. Mrs. Hamida S. Omar |] | |
| <i>Since Deceased – through LRs.</i> |] | |
| 11[a]. Zafar Sattar Omer |] | |
| 11[b]. Zahid Sattar Omer |] | |
| 11[c]. Lubna M. Azad |] | |

12. Mr. Dara K. Irani	]	
<i>Since Deceased – through LRs.</i>	]	
12[A]. Pesi Ardeshir Chindhy	]	
12[B]. Marzban Fardoon Irani	]	.. Respondents

Mr. A.V. Anturkar, Sr. Advocate, with Mr. Tanaji Mhatugade, i/by Mr. Sugandh B. Deshmukh, for the Petitioners.

Mr. Prashant Naik, with Mr. A.R. Patil, i/by Mr. Sandeep Waghmare, for Respondent No.1[c].

CORAM : A.S. CHANDURKAR & JITENDRA JAIN, JJ

The date on which arguments were heard : 05TH JANUARY, 2024.

The date on which Judgment is pronounced : 25TH JANUARY, 2024.

JUDGMENT : [Per A.S. Chandurkar, J.]

1. In Special Civil Suit No.268 of 1978, an application below Exhibit-169 came to be moved by one Dara K. Irani, praying therein that he be joined as plaintiff no.3 in the said suit being an Executor of the Will dated 23rd March 1991, that had been executed by plaintiff no.2 during his lifetime. The Trial Court by its order dated 7th October 1995 allowed the said application and directed the plaintiffs to amend the plaint accordingly. This order passed below Exhibit-169 is the subject matter of challenge in the present Writ Petition. On 15th December 1995, the learned Single Judge directed that this writ petition be tagged with First Appeal

No.92 of 1996. Accordingly, the writ petition has been heard along with the first appeal.

2. SCS No.268/1978 came to be decided on 18th/20th December 1995 and an appeal under Section 96 of the Code of Civil Procedure, 1908 being Civil Appeal No.1022 of 2000 is pending before the District Court. The order passed below Exhibit-169 has also been objected to by raising a ground in that regard in the said appeal. Hence, for the reasons that have been indicated for not entertaining Writ Petition No.5621 of 1995, we are not inclined to entertain this writ petition that raises a challenge to the order passed below Exhibit-169. Suffice it to observe that the challenge to the correctness of the order passed below Exhibit-169 can also be raised before the District Court in Civil Appeal No.1022 of 2000. Hence, by keeping all the points raised in this writ petition open and with a liberty to the petitioners to raise a challenge to the order passed below Exhibit-169 in Civil Appeal No.1022 of 2000, this writ petition is disposed of. Rule is accordingly discharged in aforesaid terms, leaving the parties to bear their own costs.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]