

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.45 OF 2024

Imtiyaj Abdulmajid Shaikh

.. Applicant

Versus

Ruksana Rashid Mulani and Ors.

.. Respondents

-
• Mr. Vishwanth S. Talkute, Advocate for Applicant.
.....

CORAM : MILIND N. JADHAV, J.

DATE : APRIL 25, 2024

P.C.:

1. Mentioned. Not on Board. Taken on Board.
2. Heard Mr. Talkute, learned Advocate for Applicant.
3. Perused the praecipe dated 25.04.2024 and the Civil Revision Application.
4. The impugned order dated 16.10.2023 below Exhibit-25 in Regular Civil Suit No.786 of 2022 rejects the Application under Order VII Rule 11 of the Civil Procedure Code, 1908 (for short '**CPC**') filed by the Defendants. Plaintiff is sister of the Defendants.
5. She maintained challenge to a *Hibbanama* of the year 2008 executed by her father in favour of Defendant in the year 2021 for the first time. Application under Order VII Rule 11 of CPC is filed on three counts namely that challenge to the *Hibbanama* can be filed by the Executor and not by any third party; secondly on the ground of

limitation and thirdly on the ground of inadequate payment of Court fees. In so far as the first and third grounds are concerned, I may *prima facie* agree with the findings returned by the learned Trial Court, but on issue of limitation a *prima facie* case has been made by Mr. Talkute.

6. An arguable case has been made out by Mr. Talkute for issuance of notice to Respondents and stay of the suit proceedings before the Trial Court.

7. Hence, issue notice to the Respondents. Humdast permitted. In addition to Court's notice, Applicant is directed to serve the Respondents a copy of this order and copy of the Civil Revision Application and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof. Respondents are directed to file Affidavit-in-Reply to the Civil Revision Application within a period of four weeks. Rejoinder, if any, to be filed within two weeks thereafter.

8. Since substantive challenge is maintained to rejection of Application under Order VII Rule 11 of CPC, suit shall not proceed until Writ Petition is decided on merits.

9. Stand over to **12th June, 2024.**

H. H. SAWANT

[MILIND N. JADHAV, J.]

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HANUMANT
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