

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4803 OF 2024

Halima Sultan Alowais

.. Petitioner

Versus

Hussain Mohammed Humaid Shattaf & Ors.

.. Respondents

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- Mr. Aayush Kedia for Petitioner
- Mr. Ashwin Shetye a/w Ms. Nandita Shah i/by M/s. Jayakar & Partners for Respondent Nos. 1 to 3
- Ms. Disha P. Chaurasia for Respondent No. 4
- Mr. Hamid Mulla, AGP for Respondent No. 15 – State

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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 14, 2024

P. C.:

1. Heard learned Advocates appearing for the parties.
2. Present Writ Petition is filed by Plaintiff No. 3 (Petitioner herein) challenging the order of dismissal of her Application filed under O. VII, R. 11 of the CPC seeking disposal of the suit plaint itself. On a pointed question being asked by the Court, Mr. Kedia in his usual fairness would inform the Court that it is Plaintiff No. 3's case that she was not instrumental in filing the suit plaint along with 11 other Plaintiffs. However, Plaintiff No. 3 does not support the suit plaint as filed. In that view of the matter, being aggrieved Plaintiff No. 3 filed an Application under O. VII, R. 11 of the CPC before the learned Trial Court. For the reasons mentioned in the impugned order, the

Application was rejected resultantly leading to filing of the present Writ Petition.

3. I have impressed upon Mr. Kedia that if Plaintiff No. 3 does not ascribe to the suit plaint, remedy in law available to her is to seek transposition by filing an appropriate Application before the learned Trial Court and thereafter Plaintiff No. 3 can file appropriate Application seeking dismissal of the suit plaint on the ground as available to her in law. That should be the right course of action. Though the Application across the bar is made by Mr. Kedia seeking transposition which can be allowed in a Writ Petition under the extraordinary jurisdiction, Mr. Shetye, learned Advocate for Defendant Nos. 1 to 3 (Respondent Nos. 1 to 3 herein) would oppose such an Application across the bar. Even if such Application is opposed by Mr. Shetye, this Court cannot be precluded from passing such an order in the interest of justice as also to avoid multiplicity of proceedings before the learned Trial Court. Be that as it may appropriate instructions shall be obtained by Mr. Kedia and informed to the Court accordingly on the next adjourned date.

4. Ms. Chaurasia, learned Advocate appears for Respondent No. 4 and Mr. Mulla, learned AGP appears for Respondent No. 15 – State. They would complain the Court that copy of the Petition has not been served on them. Learned Advocate for Petitioner is directed to serve

copy of the Petition on all Respondents within two days from today and file appropriate affidavit of service to that effect.

5. Mr. Shetye would submit that affidavit-in-reply was required to be filed. He has served the copy of the same on Petitioner but the same is required to be filed in the Court. Registry is directed to accept the same. Copy of the affidavit shall be served on all other Respondents to complete the pleadings.

6. If Advocates are required to file their Vakalatnama to represent the parties before the Court, the same shall be done before the next date.

7. It is clarified that this Petition shall be disposed of on the next adjourned date without awaiting presence of the parties. If any of the parties do not remain present on the next date, in view of the limited controversy involved and taken cognizance of this Court, this Petition shall be disposed of on the next date.

8. Learned Trial Court is requested by this Court to defer the hearing before it scheduled on 20.06.2024 to a future date i.e. beyond 25.06.2024.

9. At the request of Mr. Kedia, Petition is adjourned to **25th June, 2024 at 2:30 p.m.**

[MILIND N. JADHAV, J.]