

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1809 OF 2024

WITH

INTERIM APPLICATION NO. 14688 OF 2024

IN

FIRST APPEAL NO. 1809 OF 2024

Nazia Saifullah Mhate & Anr

...Appellants

Versus

Zahira Ali Mhate & Anr

...Respondents

SHEPHALI
SANJAY
MORMARE

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SHEPHALI SANJAY
MORMARE
Date: 2024.11.22
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Mr AV Bukhari, Senior Advocate, with BV Bukhari, i/b Fauzia Bukhari,
for the Appellants.

Mr AS Peerzada, i/b Iqbal Shaikh & Sudhakar P, for the Respondents.

CORAM: ARIF S. DOCTOR, J

DATED: 21st November 2024

PC:-

1. By consent, the present First Appeal is taken up for hearing and final disposal.

2. The present Writ Petition impugns an Order passed by Commissioner for Employees Compensation and Judge, Fifth Labour

Court, Mumbai, by which an Application under Section 8 of the Employees Compensation Act 1923 for distribution of an amount of Rs. 86,93,689/- filed by Respondent No.1 (Mother of the deceased) came to be allowed. The grievance of the Learned Counsel for the Appellants (Wife and minor Daughter of the deceased) is that the said Order was passed without framing of the necessary issues despite the fact that an Application for this purpose was made before the Trial Court essentially on the ground that issues are not been framed.

3. Learned Counsel appearing on behalf of the Appellants has also invited my attention to the Affidavit in Reply filed, in which it is specifically stated that in Affidavit in Reply to the said Application was filed by the Appellants herein in which one of the contentions raised was that the Appellants would have to discharge an amount of Rs.64 lakhs towards a home loan, which was taken by the deceased. It is submitted that this factor ought to be considered when deciding the said Application. Further, it is submitted that the Respondent has two other sons who are supporting the Respondent and thus this also is a factor to be taken into consideration when apportionment was being made.

4. After this matter was argued at some length, Learned Counsel appearing on behalf of the Respondent invited my attention to the Affidavit of evidence filed by the Appellants and pointed out that the same made no mention of the fact that an amount of Rs.64 lakhs had to be discharged by the Appellants. He submitted that this amount was in fact paid by the Insurance Company and, therefore, there was no liability on the Appellants to discharge this amount as claimed.

5. In this background, however, when the Court was inclined to 'Admit' the Petition, Learned Counsel fairly submits that the matter may be remanded back to the Trial Court for consideration afresh after issues have been framed. In view of this, the impugned order is hereby quashed and set aside.

6. That the Trial Court to frame the issues as per Rule 28 and decide the matter after the issues are framed and both sides have led their evidence in support.

7. I am informed that the interest amount was directed to be paid over to Appellant No.1. However, the said amount has not yet been withdrawn by Appellant No.1. Learned Counsel for the Appellants submits that until the disposal of the Application, interest amount shall not be withdrawn.

8. Both Learned Counsel today request that the Application for compensation be disposed of by the Commissioner expeditiously. Hence, I direct the Commissioner to dispose of the Application as expeditiously as possible and preferably within a period of four months from today.

9. Both sides are at liberty to file additional documents, as may be required for the effective hearing of the said Application.

10. The First Appeal and the Interim Application are thus disposed of in these terms. No costs.

(ARIF S. DOCTOR, J)