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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 402 OF 2024
WITH
INTERIM APPLICATION NO. 9127 OF 2024
WITH
APPEAL FROM ORDER NO. 402 OF 2024**

Hemlata Harsh Shah ...Appellant
Versus
Sudeep Saha And Anr ...Respondents

Mr. Nishant Sasidharan a/w. Ms Gauri Mestha i/b. L. J. Law for the
Appellant/Applicant
Mr. Anil Sakhare, Senior Advocate i/b. Mr. Shivam R. Dubey for the
Respondents

CORAM : M. M. SATHAYE, J.

**DATED : 29 MAY 2024
(Vacation Court)**

P.C.:

1. Heard learned Counsel for the parties.
2. By this Appeal from Order, the Appellant/Original Defendant has challenged the ad-interim order passed on 11.05.2024 in Notice of Motion (Stamp) No. 4780 of 2024 by Holiday Judge of the Civil Court at Dindoshi. By the impugned order, prayer clause (a) is granted by way of ad-interim relief, which reads thus:

“(a) That the pending the hearing and final disposal of the

present Suit, this Hon'ble Court be pleased to impound the Original Will dated 26.08.2019, of the deceased Harsh Rajnikant Shah, alias Harsh Shah alias H.R. Shah alias Harsh R. Shah, (Exhibit "H" herein) forthwith and refer the same for forensic analysis to investigate the veracity and authenticity of signatures of the deceased Harsh Rajnikant Shah, alias Harsh Shah alias H.R. Shah alias Harsh R. Shah to Directorate of Forensic Laboratories situated at Kalina, Mumbai; and in the meantime the Defendant be restrained by an Order of Injunction of this Hon'ble Court from acting in any manner whatsoever, upon the probate granted by the Hon'ble High Court, Bombay on 27th November 2020, of the Will dated 26.08.2019, of the deceased Harsh Rajnikant Shah, alias Harsh Shah alias H.R. Shah alias Harsh R. Shah, (Exhibit "H" herein)"

3. Therefore, it is clear that impounding of will, referring the same to forensic analysis for investigation veracity as well as restraining the Appellant/Defendant from acting upon the probated Will dated 26.08.2019, all is granted at once, by way of ad-interim relief, without full hearing of the Notice of Motion.

4. Learned Counsel for the Appellant submits that the Appellant was served on 10.05.2024 late night with the notice of hearing on 11.05.2024 and she did not have sufficient opportunity to oppose the interim or ad-interim prayer. Learned Counsel for the Respondent/Original Plaintiff contends that the Appellant was served even earlier by email on 10.05.2024.

5. Learned Senior Advocate Mr. Sakhare appearing for the Respondents / Original Plaintiffs, submits that the impugned order will have to be read in

three parts including not only impounding of will and sending it for forensic analysis but also injunction against the Appellant/Defendant from acting on the said will. He submits that injunction must continue in view of the averments in the plaint.

6. Perused the impugned Order, which notes that the learned Judge has perused the Plaint. It is clear from paragraph 23 of the plaint that the Respondents/ Plaintiffs were aware way back from July 2021 that the present Appellant was asserting the claim based on the will that was probated on 27.11.2020.

7. In such circumstances, it is obvious that the suit is filed after waiting for almost 3 years. In such circumstances, in my *prima facie* opinion, the present Appellant/Defendant ought to have been heard before passing the order in terms of prayers indicated above. There is no mention in the impugned order about this aspect.

8. In that view of the matter, case is made out for grant of urgent ad-interim relief.

9. Place the matter for further hearing on **19.06.2024** before the regular Court. In the meantime and till the next date, the impugned order dated 11.05.2024 passed by Holiday Judge of the Civil Court at Dindoshi in Notice

of Motion (Stamp) No. 4780 of 2024, is stayed.

10. All concerned to act on authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)