
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO.83 OF 2024
IN
NOTICE OF MOTION NO.210 OF 2019
WITH
INTERIM APPLICATION NO.1273 OF 2024
IN
APPEAL NO.83 OF 2024**

Sukumar Bhoja Shetty

.. Appellant.

Versus

Gunapal Bhoja Shetty

.. Respondent.

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Adv. Aanand Bhatia, for the Appellant.

Adv. Vishal Kanade i/b. Adv. Satish Raut with Adv. Tanmay M. Shembavanekar, for the Respondent.

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

DATE: FEBRUARY 27, 2026

P. C.

1 The above Appeal challenges the Order passed the learned Single
Judge dated 13th June, 2023.

2 By the impugned Order, a Notice of Motion filed by the Appellant (the Original Plaintiff in the above Testamentary Suit) was dismissed by the learned Single Judge for the reasons more particularly set out in the impugned Order.

3 The reasoning of the learned Single Judge for dismissing the Notice of Motion can be found in paragraphs 7, 8 and 9 of the impugned Order.

4 The above appeal was originally admitted by this Court vide its Order dated 8th April, 2024. As can be seen from the said Order, the Appeal was admitted to try and see if the parties could settle their disputes amicably and, therefore, was referred to Mediation of a practicing lawyer of this Court.

5 It now transpires that the Mediator has furnished his Report stating that Mediation has failed. Hence, we have proceeded to hear the Appeal.

6 We find that the prayers sought in the above Notice of Motion are itself misconceived. The reliefs sought by the Appellant (the Original Plaintiff) were for directions that the Defendants be restrained from proceeding in Execution Application No. 151 of 2018 now pending before the learned Court Commissioner for Taking Accounts for partition of residential

Flat No. 7 in Sapna Building, New Asha Nagar Co-operative Housing Society Ltd., Road No.3, Chembur, Mumbai 400 089 and for taking accounts of Swagat Lunch Home, Shop Nos.10 and 11 and Room No.68 in Amar Mahal, Mumbai as mentioned in the decree passed by the Bombay City Civil Court, dated 6th May, 2017, in LC. Suit No. 5256 of 2007.

7 We fail to understand how these reliefs can ever be granted in a Testamentary Suit. Admittedly, L. C. Suit No. 5256 of 2007 was filed by the Respondent to this Appeal. By a decree passed in the said Suit, partition of the suit property belonging to the deceased has been directed as more particularly set out in the said decree. That decree has not been challenged till date by the Appellant.

8 In such a scenario, there is no question of the Appellant seeking a stay of the execution of that decree and that too in a Notice of Motion filed in a Testamentary Suit. In our view, the learned Single Judge correctly dismissed the above Notice of Motion.

9 In view of the foregoing discussion, we find no merit in the above Appeal. It is, accordingly dismissed. However, there shall be no order as to costs.

10 In view of the dismissal of the above Appeal, nothing survives in Interim Application No. 1273 of 2024, seeking an injunction restraining the learned Court Commissioner for Taking Accounts from proceeding with the execution proceedings and the same is disposed of accordingly.

11 This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]