

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION

APPEAL FROM ORDER (L) NO. 30840 OF 2025
IN
NOTICE OF MOTION NO. 3414 OF 2025
IN
SUIT NO. 1302 OF 2025

Kamarunissa Noor Ali Ansari & Ors. .. Appellants

Versus

Sameer Vazeer Khan & Ors. .. Respondents

-
- Mr. Mohd Zain Khan a/w Mr. Danish Ansari i/by One Legal, Advocate for Appellants

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 26, 2025

P. C.:

1. Not on board. Mentioned by way of filing a praecipe dated 26.09.2025.
2. Heard Mr. Khan, learned Advocate for Appellants.
3. Present AO is filed in the last week. Case of the Appellants who are Defendants in the Suit is that Notice of Motion was initially listed on 04.07.2025 when Advocates for both parties appeared. On that date, leave to register the Notice of Motion was granted and matter was adjourned to 21.07.2025. On 21.07.2025, matter was adjourned to 04.09.2025 for replying to the Notice of Motion. However thereafter the matter was preponed and listed on 30.07.2025 when Advocate for Plaintiffs appeared and filed affidavit in reply to the

Notice of Motion filed by Defendants for dismissal of the Suit. It is stated that later on Advocate for Defendants is also shown to be present but his name was not stated in that order. Advocate for Defendants who are Appellants before me informs me that this has been done clandestinely as Advocate for Defendants was not present. Roznama of the Trial Court thereafter states that matter was thereafter adjourned to 06.08.2025 for hearing of Notice of Motion. However once again the matter was preponed and taken up for hearing on 02.08.2005 when Advocate Mr. Ashok Saraogi appeared for Plaintiffs and none appeared for Defendants. Advocate for Defendants informs the Court that no notice of preponement of the matter either on 30.07.2025 or 02.08.2025 was ever given to him.

4. Mr. Khan, learned Advocate for Appellants - Defendants would submit that Defendants were all along carrying the belief that the matter was adjourned to 04.09.2025 since presence of Advocate for Defendants was noted on 21.07.2025. He would also point out the fact that on 21.07.2025, none appeared for Plaintiffs. What has happened on 02.08.2025 is that without hearing the Defendants, interim relief is allowed to Plaintiffs without hearing the Defendants in the Plaintiffs' Notice of Motion.

5. Grievance of Mr. Khan is that without hearing Defendants a restraint is placed on Defendants by virtue of the order dated 02.08.2025.

6. An arguable case is made out by Mr. Khan for issuance of notice on the basis of the aforesaid timeline which is *prima facie* evident from the roznama (appended at page Nos. 26-31 of AO) placed before this Court. The aforesaid timeline is in fact taken from the said roznama.

7. In view of the above, the order dated 02.08.2025 is an *ex parte* order passed without hearing the Defendants. It is therefore stayed. Needless to state that Plaintiffs shall undoubtedly be heard by this Court.

8. Issue notice to the Respondents made returnable on 09.10.2025. Humdast permitted. In addition to Court's notice, Appellants are directed to serve copy of the AO along with copy of this order on the Respondents (Plaintiffs) 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 on or before the next date. After receiving the notice, Respondents to file affidavit-in-reply on the aforesaid issues which are noted by Court and accordingly apprise the Court on the next date, if so desired with an advance copy to the Advocate for Appellants.

9. Respondents are directed to remain present either themselves or through their Advocate on the next adjourned date. It is made clear that if Respondent remains absent despite service on the next adjourned date, this AO shall be heard and disposed of at the stage of admission by passing appropriate directions.

10. Stand over to **9th October, 2025.**

[MILIND N. JADHAV, J.]

Amberkar

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2025.09.26
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