

Ajay / S.S. Kllaje

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INTERIM APPLICATION (L) NO. 14578 OF 2022
IN
SUIT (L) NO. 14207 OF 2022
WITH
APPEAL NO. 54 OF 2023
WITH
INTERIM APPLICATION (L) NO. 33985 OF 2022
WITH
INTERIM APPLICATION (L) NO. 33988 OF 2022
WITH
INTERIM APPLICATION (L) NO. 33983 OF 2022

Sabina Lakdawala

Applicant

.. (Orig. Plaintiff)

Versus

Feroz Lakdawala and Ors.

.. Defendants

WITH
INTERIM APPLICATION (L) NO. 2422 OF 2023
IN
SUIT (L) NO. 14207 OF 2022

Sana Achwa

.. Applicant

IN THE MATTER BETWEEN

Sabina Lakdawala

.. Plaintiff

Versus

Feroz Lakdawala and Ors.

.. Defendants

-
- Mr. Mathews Nedumpara a/w. Ms. Hemali Kurne and Ms. Neha Mishra i/by Nedumpara & Nedumpara for the Plaintiff.
 - Mr. Asadali Mazgoanwala a/w. Ms. Tanvi Shah for Defendant Nos.1, 2 and 4 to 7.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 09, 2023.

P.C.:

1. Heard Mr. Nedumpara, learned Advocate for the Applicant /

Plaintiff and Mr. Mazgoanwala, learned Advocate for Defendant Nos.1, 2 and 4 to 7. None appears for the remaining Defendants.

2. The present Suit is for partition of the properties of deceased, one Mr. Yusuf M. Lakdawala. Plaintiff is his widow (wife). Defendant Nos.1 to 4 are his children whereas Defendant Nos.5 to 7 are his grandchildren. Defendant No.8 is his Chartered Accountant and Defendant No.9 is his Accountant, who according to Plaintiff have dealt with his estate. There are several properties. There are several allegations of fraud. Partition Suit was instituted in the year 2022.

3. Be that as it may, Defendant No.4 has filed Interim Application (L) No.2422 of 2022 in the present Suit proceeding seeking rejection of plaint under Order VII Rule 11(d) of the Civil Procedure Code, 1908 (for short “CPC”). This Interim Application though filed in the Registry in January 2023, was not served by Defendant No.4 on the Plaintiff or her Advocate. Copy has been given to the Advocate for Plaintiff today at 12:00 noon.

4. Mr. Nedumpara, Advocate for Plaintiff would submit that he has received the copy of the above Interim Application in his office at 12:00 noon. This Court put to Mr. Nedumpara whether he would consider the Interim Application and after obtaining instructions file would like to file Affidavit-in-Reply if the Plaintiff desires, so that this Court can take up the Interim Application for hearing on next

Thursday i.e. 16.03.2023. Mr. Nedumpara would however on taking instructions from Plaintiff present in Court submit that the Interim Application filed by Defendant No.4 amounts to adopting delaying tactics and he would not like to file any Affidavit-in-Reply and would like to make his submissions in reply to the same without filing Affidavit-in-Reply. He has urged the Court that the Interim Application be taken up for hearing today itself and that he would proceed on denial.

5. Interim Application is hence taken up for hearing. However before that, it is clarified that this Court has given an opportunity to the Plaintiff to file her Affidavit-in-Reply to the Interim Application and the same has been rejected by the Plaintiff.

INTERIM APPLICATION (L) NO. 2422 OF 2023

6. Interim Application (L) No. 2422 of 2023 is heard by this Court and after hearing submissions of Mr. Mazgoanwala this Court was not inclined to grant any relief and reject the Application, upon which Mr. Mazgoanwala sought leave of this Court to withdraw the said Interim Application and take out appropriate proceedings as may be available to the Defendant No.4 in law.

7. Hence, Interim Application (L) No.2422 of 2023 is disposed as withdrawn.

INTERIM APPLICATION (L) NO. 14578 OF 2022

8. Mr. Nedumpara has prayed for hearing of Interim Application (L) No. 14578 of 2022. I am informed by both Advocates present today that pleadings are completed. Hence issue notice to the Respondents / Defendants not present today. Mr. Mazgoanwala waives service for Defendant Nos.1, 2 and 4 to 7. The said Interim Application shall be heard on 16.03.2023 at 2:30 p.m. It is clarified that no adjournment shall be granted on that date.

9. Plaintiff desires to file rejoinder in the above Interim Application. Registry is directed to accept the rejoinder of the Plaintiff. The Rejoinder shall be served on the Defendants / Respondents in advance. All Respondents are directed to take cognizance of this order. Advocate for Plaintiff shall serve a copy of this order on all Respondents by any permissible mode of service and shall file Affidavit of service on or before the next adjourned date.

10. Stand over to **16th March, 2023 at 2:30 p.m.**

[MILIND N. JADHAV, J.]