

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO. 35460 OF 2023

IN

COMMERCIAL SUIT NO. 33 OF 2024

Vipul G Patel ...Applicant

***IN THE MATTER BETWEEN***

Vipul G Patel ...Plaintiff

***Versus***

Viral Kantilal Rathod & Ors ...Defendants

SHEPHALI  
SANJAY  
MORMARE

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SHEPHALI  
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Date: 2024.06.25  
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**Mr. Nishant Chotani**, with Vishal Thaker & Anjali Trivedi, for the  
*Applicant/Plaintiff.*

**Mr. Chirag Mody**, with Yassh Momaya & Tirtha Mukherjee, i/b AMR  
*Law, for Defendants Nos. 1 to 4.*

**Ms. Vishakha Patel**, i/b IR Joshi & Co, for Defendants Nos. 5 to 7.

CORAM: ARIF S. DOCTOR, J

DATED: 25th June 2024

**PC:-**

1. Pursuant to the circulation have been granted, this matter was on board today. Learned Counsel appearing on behalf of Defendants Nos. 1 to 4 seeks some time since he seeks time to put in a Reply since he got a notice that the matter was on board only this morning. He submits that

there are serious objection as to the maintainability of the Suit including on eh ground that the Suit is barred by limitation. He points out that Defendants Nos. 1 to 4 are the legal heirs of Kantilal Rathod and the Suit in their capacity as such.

2. Mr Modi additionally points out that the claim against the legal heirs is passed on an order by the Magistrate in a Section 138 of the Negotiable Instruments Act 1881. He submits that the said order has bee challenged in an Appeal, which is pending. Additionally, he also points out that the prayers in the Suit itself appear to be contrary and self-defeated. In as much as in prayer Clause (a), the Plaintiff itself recorded that the Plaintiff is unaware of the exact nature of the transaction between the parties and in prayer Clause (b), it is stated that the transaction is fraudulent and, therefore, the Learned Counsel appearing on behalf of the Defendants sought time to file Affidavit in Reply.

3. Affidavit in Reply to be filed and served by 3rd July 2024.  
Affidavit in Rejoinder, if any, to be filed and served by 10th July 2024.

4. List the matter for hearing on 22nd July 2024.

**(ARIF S. DOCTOR, J)**