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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**INTERIM APPLICATION (ST.) NO. 9764 OF 2021
IN
FIRST APPEAL (ST) NO. 9761 OF 2021**

Shri. Babuji Rawji Shah Applicant

Vs.

S. Hussain Zaidi And Ors. Respondents

Mr. Narendra Dubey for Applicant in both IA.

Mr. Madhu Gadodia and Sujoy Mukherji i/by Naik Naik & Co. for
Respondent Nos. 1 and 2.

Mr. Mayur Khandeparkar a/w Mr. Parag Khandhar & Ms. Prachi Garg,
i/by DSK Legal for Respondent Nos. 3 to 5.

Coram : NITIN W. SAMBRE, J.

Date : 30TH JULY, 2021

P.C.:

1. Heard.

2. The Appellant-Plaintiff initiated S.C. Suit (L) No. 6401 of
2020 against the Respondent/Defendant praying decree of permanent
injunction restraining Respondents/Defendant No.1 and 2 from printing,
publishing, advertising, selling, alienating, assigning and/or creating any

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third party rights and/or holding any press meets, promoting the Novel namely “The Mafia Queens of Mumbai “ and/or writing any other story on the life of mother of the Plaintiff. Similar other ancillary relief are also claimed in the said Suit.

3. After the Respondents/Defendants were served with the Suit summons, Defendant No. 5 and Defendant Nos. 3 and 4 took out Notice of Motion under Order VII, Rule 11 Code of Civil Procedure seeking rejection of plaint. Both these Notice of Motions are allowed vide order dated 17th February, 2021. As a consequences, the Plaint preferred by the Appellant-Plaintiff came to be rejected under Order VII, Rule 11(d) of the Code of Civil Procedure. As such, this First Appeal.

4. Learned Counsel appearing for the Appellant- Original Plaintiff would urge that the Novel authored by the Defendant Nos. 1 and 2 was published in the year 2011, however, the Appellant has no knowledge about the same. According to him, the Appellant is the adopted son of late Gangubai Harjivandas @ Kathiawadi. Relying on the

entries in the Ration Card of said deceased, it is claimed that the Appellant is shown as her son. According to him, the Appellant has gone in adoption to late Gangubai Kathiawadi during her lifetime and such adoption of the Appellant is prior to Hindu Adoptions and Maintenance Act, 1956. His contention are publication of defamatory contents against deceased Gangubai Kathiawadi, his adoptive mother has prompted him to file suit for continuous cause of action within the meaning of Section 22 of the Limitation Act. It is also claimed that the act of Respondent Nos. 3, 4 and 5 of producing the movie is a continuous cause of action and that being so, the Suit claim at the behest of the Appellant is within limitation and very much maintainable. Apart from above, he would urge that the issue of limitation is a mixed question of law and fact and cannot be gone into at the stage of deciding the application of return of plaint, particularly based on the defence raised by the Defendant Nos. 3 to 5 in the Notice of Motion.

5. In the aforesaid background, the Appellant has pressed his prayer for grant of temporary injunction thereby restraining the

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Respondents/Defendants from publishing the movie Gangubai Kathiawadi.

6. While opposing the aforesaid claim, learned counsel appearing for the Respondents would urge that as the suit at the behest of legal heir of person alleged to be defamed is not maintainable, the plaint was rightly rejected. It is also claimed that as the injunction was not in operation during the Suit, even during pendency of this Appeal, the injunction should not be granted as the Petitioner is not likely to suffer irreparable loss. It is also claimed that no legal injury suffered by the Appellant particularly in the light of absence of legal rights. As such, the submissions are prayer for injunction is liable to be rejected.

7. Considered rival submissions.

8. The law on the principle of Torts that an action dies with the person, in a defamation proceedings is required to be appreciated. The contents of defamatory nature against so called adoptive mother of the Appellant dies with her death. Apart from above, it is for the

Appellant to demonstrate that he is adoptive son of deceased-Gangubai Kathiawadi, which he has prima facie failed to. The Appellant-Plaintiff has not claimed the relief of declaration that he is adoptive son of deceased Gangubai Kathiawadi and as such he has suffered a legal injury.

9. The aforesaid principle of law based on the judgment of the Apex Court in the matter of **Melepurath Sankunni Ezhuthassan Vs. Thekittil Geopalankutty Nair**, reported in **(1986) 1 Supreme Court Cases, 118** and **Luckumsey Rowji Vs. Hurbun Nursey and Others**, reported in 1881 SCC Online Bom 39 : ILR (1881) 5 Bom 580 : ID (1880-1882) 5 Bom 382 rightly so considered by the learned City Civil Court while passing the order of rejection of plaint. In a case of claim for defamation, action can be brought by a person in Court of law provided he claimed to be defamed. Merely because the Appellant is claiming to be son of such person cannot be prima facie inferred to have the legal right to show indulgence.

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10. In that view of the matter, temporary injunction as prayed cannot be granted and as such prayers stand rejected. The application stands disposed of.

(NITIN W. SAMBRE, J.)