

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 352 OF 2015****IN****DRAFT NOTICE OF MOTION NO. OF 2015****IN****SUIT NO. 299 OF 2015****ALONGWITH****CIVIL APPLICATION NO. 452 OF 2015****IN****APPEAL FROM ORDER NO. 352 OF 2015****IN****DRAFT NOTICE OF MOTION NO. OF 2015****IN****SUIT NO. 299 OF 2015****ALONGWITH****CIVIL APPLICATION NO. 451 OF 2015****IN****APPEAL FROM ORDER NO. 352 OF 2015****IN****DRAFT NOTICE OF MOTION NO. OF 2015****IN****SUIT NO. 299 OF 2015****Dinesh Sevantilal Shah****..... Appellant/
Original Plaintiff No.1****VERSUS****Shree Malad Swetamber Murtipukjak
Jain Sangh & Ors.****..... Respondents**

Mr.R.S.Apte, Senior Advocate, i/b. Mr.Dharmesh S.Jain for the Appellant.

Mr.P.M.Shah, a/w. Mr.M.K.Tanna for Respondent Nos. 1 to 7.

Mr.D.H.Mehta, i/b. Mr.Girish Paryani for Respondent Nos. 8 to 12.

CORAM : R.D. DHANUKA, J.**DATED : 20th NOVEMBER, 2015**

P.C.

By this appeal, the appellant has impugned the order dated 7th February, 2015 refusing to grant ad-interim relief in favour of the appellant.

2. Apart from various other reasons rendered in the impugned order passed by the learned trial judge, the learned trial judge has also considered the fact that in view of the appellant (original plaintiff) not having obtained permission of the Charity Commissioner under section 51 of the Bombay Public Trust Act, the suit itself is not maintainable. The said order dated 7th February, 2015 is in force and has not been stayed by this court till date.

3. Mr.Shah, learned counsel for the original defendant and respondent nos. 1 to 7 in this appeal states that the defendants have already filed affidavit in reply as well as written statement before the trial court. The election as already proposed is scheduled to be held on 22nd November, 2015. In my view at this stage thus no interim relief can be granted in favour of the appellant.

4. It would be in the interest of justice if the notice of motion itself can be disposed of expeditiously. I, therefore, pass the following order :-

(a) The trial court is directed to dispose of the application filed by the defendants under section 9A of the Code of Civil Procedure within two months from today and shall dispose of the notice of motion based on the outcome of such disposal of the application under section 9A within two months from the date of such disposal.

4. The appeal is disposed of in the aforesaid terms.
5. In view of the disposal of the appeal from order, civil application filed by the applicant does not survive and is accordingly disposed of.
6. It is made clear that the observations made by the learned trial judge in the impugned order are prima facie.

[R.D. DHANUKA, J.]