

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4380 OF 2015

Jhelum Anand Ratna & Anr.	..	Petitioners
VS.		
Ann Zarir Patel & Anr.	..	Respondents

Mr. V. Y. Sanglikar for Petitioners.

Mr. Y. Cheda h/f. Bharucha & Partners for Respondents.

CORAM : M. S. SONAK, J.
DATE : 30 JULY 2015

P.C. :-

1] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

2] This petition is directed against order dated 23 August 2014 made by the appellate bench of the Small Causes Court partly allowing the appeal instituted by the respondents, directing the petitioners to maintain *status quo* and further directing the trial Court to dispose of injunction application at Exhibit 28 within three months after giving opportunity to both parties.

3] In this case, the Court is really not concerned with the ultimate decision dated 23 August 2014, but more concerned with the decision making process. The order dated 23 August 2014 itself

records that the same has been made without any notice whatsoever to the petitioners. No doubt, the appellate bench proceeds to give lengthy justification for the following of this course of action. The justification, in the facts and circumstances, is unacceptable.

4] It is cardinal principle of natural justice that no adverse orders be made against any party, without afford of sufficient opportunity to such party to put-forth its case. This is not a case where the appellate bench has granted an *ex parte ad interim* order. This is a case where the appellate bench has proceeded to dispose of the entire appeal, in the absence of the respondents to the appeal. This is clearly not permissible. The impugned order, in the present case, runs into almost 9 pages. Considerable time is devoted to justifying why no notice was required to be given to the respondents in the appeal. Once again, it needs to be noted that this is not a manner in which the entire appeal could have been disposed of. The appellate bench, has decided on the issue of maintainability of the appeal. Further, proceeded to decide as to whether the order made by the trial Court in favour of the respondents in the appeal warrants interference. All these matters could obviously not have been decided without any notice to the respondents in the appeal. The respondents had obtained a favourable order from the trial Court. If

such order has to be upset, the same cannot be without any notice to them. On this short ground, the impugned order is required to be set aside and is hereby set aside.

5] This Court, in its order dated 28 April 2015 had already made it clear that the trial Court ought not let itself to be influenced by the order dated 23 August 2014 in deciding the injunction application at Exhibit 28. Now that the order dated 23 August 2014 is set aside, it is once again reiterated that nothing in the order dated 23 August 2014 should influence the trial Court in deciding the application at Exhibit 28.

6] The learned counsel for the respondents, submitted that the injunction application is posted for hearing before the trial Court on 1 August 2015. The trial Court, to proceed with the hearing upon the same, after afford of opportunity of hearing to both the parties. The predecessor-in-title of the petitioner, in his reply to the application for injunction, has already denied that any attempt is being made to create third party rights in so far as the suit property is concerned. At least *prima facie* stage, this was sufficient protection to the respondents in the present petition.

7] Accordingly, Rule is made absolute in terms of prayer clause

(a). It is once again clarified that this Court has not considered the merits of the controversy between the rival parties and therefore it shall be open to the trial Court to consider the same in accordance with law.

8] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka