

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5402 OF 2015**

1. Zaid Naim Shaikh and Ors. Petitioners
Vs
1. Saheblal Ahmed Saheb
Valsangkar and Ors. .. Respondents

Ms. I.M.Khairdi i/b Ms. Chaitrali Deshmukh, Advocate for
Petitioners.

Mr. T.D.Deshmukh, Advocate for Respondents..

CORAM :	R.G.KETKAR,J.
RESERVED ON:	26/06/2015.
PRONOUNCED ON:	07/07/2015.

ORDER:

1. Heard Mr. I. M. Khairdi, learned counsel for the petitioners and Mr. T. D. Deshmukh, learned counsel for the respondents at length.
2. Rule. Mr. Deshmukh waives service on behalf of the respondents. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up finally.
3. By this Petition under Article 227 of the Constitution of India, original defendants no. 1 to 3 have challenged the Judgment and order dated 26.5.2015 passed by the learned Civil Judge, Sr. Dn., Solapur, in an Application for grant of injunction in Regular Civil Suit No.558 of 2014. By that order, the learned trial Judge directed the defendants to maintain status-quo till hearing of the suit.

4. Mr. Deshmukh raised preliminary objection about maintainability of the Petition instituted under Article 227 of the Constitution of India. He submitted that the petitioners have an equally efficacious alternate remedy of filing an Appeal under Order, 43 Rule 1 (r) of C.P.C.. He submitted that since the petitioners have an equally efficacious alternate statutory remedy, this Court will decline to exercise its powers under Article 227. It is no doubt true that the petitioners have an equally efficacious alternate statutory remedy of filing an Appeal under Order 43, Rule 1 (r) of C.P.C. The question is whether, in the facts and circumstances of the case, this Court should invoke its power of superintendence under Article 227 of the Constitution of India. In order to deal with the objection raised by Mr. Deshmukh, it is necessary to consider in what circumstances the impugned order came to be passed.

5. Respondents, hereinafter referred to as 'plaintiffs', instituted R.C.S. No.558 of 2014 for perpetual injunction restraining the petitioners, hereinafter referred to as 'defendants', from appointing any teachers in any school, college of M.A.Pangal Anglo Urdu High School, Solapur or of any school run by Union Education Society. The suit is instituted on or about 28.6.2014. On the same day, the plaintiffs took out application for temporary injunction at Exhibit-5 praying for an injunction restraining the defendants from appointing any teacher in

primary school, high school or college of M.A. Pangal High School, or any school run by Union Education Society, Solapur till the decision of the suit. On 30.6.2014 show cause notice was issued to the defendants as to why temporary injunction should not be granted against them.

6. Defendants filed their Written Statement resisting the suit as also Say to application Exhibit-5 on or about 2.7.2014. One of the contentions raised by the defendants is that in view of provisions of the Maharashtra Public Trusts Act, Civil Court has no jurisdiction to entertain and try the suit. By order dated 19.1.2015, the learned trial Judge framed the following preliminary Issues:-

1. Whether this Court has jurisdiction to try and decide the suit in view of provisions of Maharashtra Public Trusts Act?

2. What order?

7. By order dated 31.1.2015, the learned trial Judge held that Civil Court has jurisdiction to entertain and try the suit. It is not necessary to deal with other developments that took place pending the suit. What is material to note is that on 2.5.2015 the suit was on daily board. It was adjourned to 7/5/2015. On 7/5/2015, the matter was on daily board under the caption "notice unready". On 25.5.2015 the plaintiffs filed application Exh.33 for taking matter on board and for passing orders on the application and affidavit. On 25.5.2015, the plaintiffs filed Purshis

Exhibit 34 requesting the Court to fix the matter on 26.5.2015. On 26.5.2015, the learned trial Judge passed the impugned order directing the defendants to maintain status-quo till hearing of the suit.

8. Mr. Khairdi submitted that when Purshis Exhibit 34 was filed by the plaintiffs for taking the matter on board on 26.5.2015, neither the defendants nor their Advocate were issued any notices informing them that the matter will be taken up in vacation. The learned trial Judge also did not deem it appropriate to issue notice at least to the advocate representing the defendants. In the absence of any exigency or urgency, the matter was taken up on board and interim relief was passed.

9. Mr. Khairdi submitted that on 2.5.2015 the suit was on daily board. It was adjourned to 7.5.2015. On 7.5.2015, the matter was on daily board under the caption 'notice unready'. The suit was adjourned to 17.6.2015. In other words, between 7.5.2015 and 17.6.2015, the suit was not on daily board of the trial Court. He relied upon daily boards of the trial Court dated 2.5.2015, 7.5.2015 which are enclosed along with affidavit Shri Zaid Naeem Shaikh dated 26.6.2015. He also relied upon Cause List of District Courts in Maharashtra. He submitted that the suit is having registration No.200558/2014. On 2.5.2015, it was on the daily board of 6th Jt. Civil Judge, Jr. Dn., Solapur. It was adjourned to 7.5.2015 and under column of 'purpose of hearing', the remark

was 'notice unready'.

10. On 7/5/2015, it was adjourned to 17/6/2015 and again under the column of 'purpose of hearing', remark was 'notice unready'. He has also produced certified copy of Roznama of R.C.S. No.558 of 2014. In particular he submitted that on 2.5.2015, the suit was adjourned to 7.5.2015. Below date of 7.5.2015 another date, i.e. 25.5.2015 was written. He also invited my attention to Roznama dated 7.5.2015. The date '7.5.2015' is changed so as to make it '25.5.2015'. He submitted that if at all really the suit was adjourned from 7.5.2015 to 25.5.2015, it was not necessary for the plaintiffs to file application and Purshis Exhibits 33 and 34, on 25.5.2015 requesting Court to take matter on board for passing orders on application and affidavit of the plaintiffs. He submitted that perusal of the purshis dated 25.5.2015 Exh.34 shows that there is insertion of sentence which translated in English is to the following effect.

“Matter may be fixed on 26.5.2015”

The learned trial Judge, however, passed the order on that purshis 'filed'. He submitted that Roznama of 25.5.2015 was initialed on 11.6.2015 or 19.6.2015 which is not clear. He submitted that Roznama of 25th and 26th May, 2015 was not signed by Presiding Officer who passed orders on 25th and 26.5.2015 but next Judge had signed the same who passed orders on 10.6.2015 below Exh.37. He submitted that the

defendants applied for certified copies on 11.6.2015 and the same were received on that day itself.

11. Mr. Khairdi submitted that from the Roznama it appears that the matter was again listed on 26.5.2015 when the impugned order was passed. He submits that he has applied for certified copies of daily boards dated 25.5.2015 and 26.5.2015. He further submitted that Solapur Court is digitally connected to Central Board Computer System attached to this Court. He submitted that no daily board was found on Internet either for 25th or 26th May 2015 in the daily cause list of trial Court functioning during vacation. He submitted that in these circumstances the impugned order came to be passed without issuing any notice to the defendants and consequently without hearing that. In other words, he submitted that in surreptitious circumstances the impugned order came to be passed.

12. With the assistance of learned counsel appearing for the parties, I have carefully gone through the affidavit dated 26.6.2015 made by Zaid Naim Shaikh as also annexure to that affidavit as also certified copy of Roznama in R.C.S. No.558 of 2014. Prima facie, I find substance in the submission of Mr Khairdi that there are surreptitious/suspicious circumstances and possibly even interpolations in the court record. It is, therefore, necessary to hold thorough in-depth inquiry for finding out whether there was any attempt on the part of either court's staff

or even by Presiding Officer in maintaining the Roznama as also for finding out whether the Presiding Officer was justified in passing the order on 26.5.2015.

13. In the case of Surya Dev Rai Vs. Ram Chander Rai (2003) 6 Supreme Court Cases 675, the Apex Court has dealt with powers of High Court under Articles 226 and 227 of Constitution of India. It is held that it is settled law that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be, by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. Supervisory jurisdiction under Article 227 of the Constitution is

exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High court dictates it to act lest a gross failure of justice or grave injustice should occasion.

14. In the case of Nivedita Sharma Vs. Cellular Operators Association of India, (2011) 14 Supreme Court Cases 337, the Apex Court held that an alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute are under challenge.

15. Applying the tests laid down by the Apex Court in the aforesaid decisions, in my opinion, this is a fit case for invoking

Article 227 of the Constitution of India. I have already indicated the manner in which proceedings are conducted before the trial Court and also the manner in which the impugned order came to be passed. At the cost of repetition, there is reason to believe that the Roznama is not properly maintained by the Courts staff or possibly even by the Presiding officer. There is interpolation and/or manipulation in the Roznama. As noted earlier, the matter was on daily board of 2.5.2015. It was adjourned to 7.5.2015. On 7.5.2015 it was adjourned to 17.6.2015. From perusal of application Exhibit-33 and Purshis Exh.34, the matter was sought to be taken on board on 25th and 26th May 2015 without giving notice to other side. Prima facie, without hearing the defendants, the learned trial Judge passed the impugned order. In view thereof, notwithstanding the defendants have an equally efficacious alternate statutory remedy by filing an appeal under Order 43 Rule 1(r), in my opinion, this is a fit case for invocation of powers under Article 227 for exercising the power of superintendence so as to ensure that subordinate court acts within bounds of their jurisdiction. In my opinion, this is the appropriate case where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. The impugned order is passed in violation of principles of natural justice. In view thereof, the preliminary objection raised by Mr. Deshmukh that since the defendants

have an equally efficacious alternate statutory remedy, this Court should decline to exercise its power of superintendence under Article 227 of the Constitution of India is overruled. On merits, Mr. Deshmukh fairly stated that he is not in a position to defend the impugned order. Hence, the impugned order is quashed and set aside and the application for grant of injunction is restored to the file of the trial Court. It is also necessary to issue following directions:

- (i) Learned Principal District Judge, Solapur shall seal the Record and Proceedings of Regular Civil Suit No.558 of 2014 pending before the Civil Judge, Jr. Dn., Solapur and forthwith transmit the same to this Court.
- (ii) Registrar (Vigilance) shall conduct thorough inquiry and submit report within two months to Registrar General, High Court, Mumbai. In the meantime, if any appointment is made, the appointment shall specifically state that the appointment so made, is subject to further orders on the application for interim relief/suit and that the appointee shall abide by orders passed on the application for interim relief/suit and that the appointee shall not claim any equity in case any adverse order is passed against him/her.
- (iii) Office shall forthwith send copy of this order to Registrar General, High Court and Principal District Judge, Solapur.
- (iii) Rule is made in the aforesaid terms with no order as to costs.

(R.G.Ketkar,J.)