

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**CIVIL APPLICATION NO. 2543 OF 2014
IN
FIRST APPEAL NO. 1591 OF 2003**

Vasantrao Namdeo Jadhav (deceased) & Ors. ... Applicants
V/s.
Govind Laxman Pujari & Ors. ... Respondents

Mr. S.G. Deshmukh for the applicant.
Mr. Dilip Bodke for the respondent nos. 1 to 4.

**CORAM : K. K. TATED, J.
DATED : 14/08/2015.**

PC.:

. Heard learned Counsel for the parties.

2 This application is preferred by appellant for restoration of First Appeal as well as interim orders passed by this Court. The First Appeal was dismissed in view of conditional order dated 15.04.2014 passed by this court in Civil Application no. 1361 of 2014.

3 The learned Counsel for the applicant submits that as soon as they learnt that the First Appeal stands dismissed in view of conditional order dated 15.04.2014, they immediately preferred present Civil Application on 14.07.2014 for restoration and continuation of interim order passed by this court on 01.10.2004 (Coram : P. V. Kakade, J). He submits that, Civil Application was served on Advocate for the respondent immediately. The respondent filed their affidavit-in-reply dated 21.08.2014. He submits that during the pendency of the present

Civil Application for hearing on its own merits, the respondents filed application bearing Misc. Application No. 335 of 2015 in the month of March, 2015 before the Assistant Charity Commissioner, Solapur for showing their names as the trustees of trust known as Shidha Sarana Shrikshetra Machnur, Brahmanpuri, Tal Mangalwedha, Dist. Solapur. He submits that in the said application neither applicants made party, nor disclosed the fact that the present Civil Application is pending for hearing and final disposal on its own merits. He submits that the Assistance Charity Commissioner, Solapur without issuing any notices to the applicants passed order dated 30.04.2015. He submits that as soon as, they learnt about the application filed by the respondents before the Assistant Charity Commissioner, they immediately made application no. 335 of 2015. That application was rejected by the Assistant Charity Commissioner by order dated 27.05.2015 which reads thus :

“ **ORDER**

Present applicant has not produced any documents in support of his contentions. Further entries on P. T. R. are already made only signature of O. C. and A.C.C. are to be made thereupon. Hence, application is rejected.”

4 The learned Counsel for the applicants submits that thereafter, the Assistant Charity Commissioner made endorsement on the schedule on 01.06.2015 showing the following names as trustees 1) Govindrao Laxman Pujari, 2) Jayantrao Baburao Jakkal, 3) Rambhau Nana Dhanave (Dead Person) and 4) Shripad Shankar Vibhute.

5 The learned Counsel for the applicants submits that the respondenst with malafide intention without disclosing the fact about

the pendency of the present application, obtained the said order and started acting as the trustee of the said trust. He submits that in view of order passed by the Asst. Charity Commissioner dated 30.04.2015 and entries made in Register on 01.06.2015, the respondents started interfering day-to-day activities and the administration of the trust. He submits that in the interest of justice, this Hon'ble Court be pleased to restore the First Appeal no. 1591 of 2003 alongwith all interim orders passed by this Court particularly the order dated 01.10.2004 (Coram : P. V. Kakade, J) in Civil Application no. 3090 of 2004. He further submits that if present Civil Application is not allowed, irreparable loss and injury will be caused to the applicant.

6 The learned Counsel for the respondents vehemently opposed the present Civil Application. He submits that on the date of filing application before the Asst. Charity Commissioner, the First Appeal was not restored. Hence, it was not binding on the respondents to disclose the pendency of the present Civil Application in their application being Misc. Application No. 335 of 2015. He further submits that applicant filed application below Exh.2 in Misc. Application No. 335 of 2015 on 08.05.2015. He submits that the applicant failed to produce any order passed by this Court for restoration of First Appeal no. 1591 of 2003. Hence, the Assistant Charity Commissioner by order dated 27.05.2015 rejected the applicants' application below Exh.2 and thereafter, the respondents' names were shown in the Register on 01.06.2015 as Trustee of the said Trust. He submits that the order passed by the Asst. Charity Commissioner was according to law because on that date, there was no stay in operation. Hence, there is no substance in the Civil

Application and same to be dismissed with cost.

7 I heard both the sides at length. It is to be noted that in the present proceeding, though the present Civil Application was duly served on the respondents and they filed their reply dated 21.08.2014, the respondent failed and neglected to disclose these facts in their application being Misc. Application No. 335 of 2015 which was filed before the Asst. Charity Commissioner in the month of March, 2015. Not only that neither the respondents made the applicants as party in that application nor they served the copy of the same on applicants. By suppressing the pendency of the Civil Application, the respondents moved before the Asst. Charity Commissioner and succeeded in obtaining the order dated 30.04.2015 and consequently their names were entered in the register as the Trustees on 01.06.2015.

8 Considering the fact that the respondents without disclosing the pendency of the present Civil Application and without serving the copy on the applicants moved before the Asst. Charity Commissioner, I am of the opinion that applicants have made out case for allowing Civil Application.

9 Hence, the following order is passed:

a) First Appeal no. 1591 of 2003 is restored on file alongwith all interim reliefs passed by this Court including the order dated 01.10.2004 in Civil Application no. 3090 of 2004.

b) Applicants to remove all office objections as per order

dated 15.04.2014 passed by this Court in Civil Application no. 1361 of 2014 within six weeks from today.

c) The Asst. Charity Commissioner, Solapur is directed to rectify the entries made by them in the Register on 01.06.2015 showing the names of respondents as trustees i.e. to delete their names from the register, till the hearing and final disposal of First Appeal.

d) The respondents to pay cost of Rs.10,000/- to the applicants within four weeks from today.

e) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)