

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

Amk

APPEAL FROM ORDER (ST) NO. 22284 OF 2015  
WITH  
CIVIL APPLICATION (ST) NO. 22286 OF 2015

Mr. Rajan Prabhu

.. Appellant

Vs.

Mr. Manish Waman Ambre & Ors.

.. Respondents

Mr. Dinyar Madon, Sr. Advocate a/w. Mr. Farhan Dubash i/b Ajay Basutkar  
for the Appellant.

Mr. Milan Desai for the Respondents.

**CORAM** : **MRS. ROSHAN DALVI, J.**  
**DATE** : **4<sup>th</sup> SEPTEMBER, 2015.**

P.C.

1. Rule. Returnable forthwith.
  
2. The appellant who was defendant No.1 in the suit has challenged the ad interim order of injunction restraining the defendants from using the “Deed of Admission-cum-Retirement in partnership” marked Exhibit E to the plaint.
  
2. 8 plaintiffs in the suit who were some of the partners of defendant No.1 showed how the suit firm consisted of earlier partners who had commenced certain construction. The plaintiff showed further construction that the firm carried out in paras 2(q), (r) & (s).
  
3. The plaintiffs were to retire from the firm. Defendant No.1 was to carry on business with certain new incoming partners. The plaintiffs must be paid their share of the firm at the time of retirement. The Deed of Admission-cum-Retirement does not show any share to be given to the plaintiff. The agreement is, therefore, void for want of consideration.

4. The plaintiffs claim that a MOU was executed. The MOU was made on a stamp paper. The MOU showed consideration of Rs.108 Cr payable to the plaintiffs. The plaintiffs claim that the said MOU is in custody of defendant No.1 kept upon the trust & confidence that the plaintiffs had. Defendant No.1 claims that the MOU was not executed and remained a draft.

5. Both the parties claim that the Deed of Admission-cum-Retirement was prepared. The plaintiffs do not have the original Deed of Admission-cum-Retirement. The plaintiffs were given a copy. The plaintiffs have relied upon that copy in an earlier suit. The plaintiffs claim to be paid consideration as retiring partners. The plaintiffs claim that the Deed of Admission-cum-Retirement shown by defendant No.1, which shows no consideration, is not the correct document and that there was another Deed of Admission-cum-Retirement executed by the parties.

6. Defendant No.1 has been called upon to produce the original Deed of Admission-cum-Retirement which the plaintiffs claim to restrain defendant No.1 from acting upon. It is on a stamp paper bearing No. L996443 issued to one Bimal Agarwal who is shown to carry on business at Sakeria Industrial Estate on 29.03.2011. All the pages of the documents carry initials and the execution clause carries the signatures of the partners along with their respective witnesses. The first page containing the stamp paper of Rs.500 shows completely different signatures of most of the parties. The defendants cannot carry on business as the new or incoming partners in the name of the firm under such a document before consideration is paid to the retiring partners. On that ground alone the ad interim injunction granted by the learned Judge is merited.

7. Of course, the parties have a lot of dispute about the extent of

work of construction that have been carried out by the plaintiff. That would be required to be seen in the suit upon the documents of completion and occupation certificates produced by the parties and upon the report of the Slum Authority which might reflect the plaintiffs' work as also the work of the earlier partners. Pending the Notice of Motion the injunction must continue.

8. The defendants have filed their affidavit-in-reply. They have raised plea of limitation. The preliminary issue would be required to be framed by the trial Court.

9. The original Deed of Admission-cum-Retirement in partnership is seen by this Court. It is prima facie seen to be fabricated as stated above. The document otherwise deserves to be impounded. However Mr. Madon on behalf of the appellant states that that prayer has not been granted in the ad interim order and that order has not been challenged by the plaintiffs. Hence at present that document is not impounded. It is returned to the appellant. Mr. Madon on behalf of the appellant states that the appellant's advocate shall give colour photocopy of the Deed of Admission-cum-Retirement in partnership dated 01.04.2011 to the plaintiffs' Advocate.

10. Mr. Madon makes an application that the original plaintiffs shall not act as partners or hold themselves out as partners pending the Notice of Motion. That is not the relief applied for in the appeal and hence is not granted.

11. The Appeal from Order is disposed of accordingly.

12. The Civil Application is also disposed of accordingly.

**(ROSHAN DALVI J.)**