

APPEAL FROM ORDER (St.) NO. 25471 OF 2015

left behind a will dated 6th April, 2012. A Special Civil Suit No. 1091 of 2015 was filed before the Court of Joint Civil Judge Senior Division, Pune by respondent no. 1/plaintiff and number of reliefs are sought in the said suit. In the said suit, Application Exhibit 29 was moved for interim injunction against defendant no. 1/appellant. Respondent no. 1/plaintiff had apprehension that the appellant is likely to dispose of the shares and assets of the companies due to unequal distribution made by the executors, i.e., respondent nos. 2 to 5 in the Special Civil suit No. 1091 of 2015. In the Special Civil Suit, mainly unequal distribution was challenged and that is the main issue before the Court. In the said suit, the appellant has filed caveat on 16th July, 2015 and on 3rd September, 2015. On 2nd September, 2015 while hearing Application Exhibit 29, the trial Court issued notice to defendant nos. 1 to 4 as to why the temporary injunction should not be granted against them. Notice was served by pasting. Defendant no. 1/appellant did not appear and order of status quo was passed against the defendants.

5. The learned counsel for the appellant raised number of objections especially in respect of service of notice and the manner in which the matter was heard when the caveat was filed by the defendants. He submitted that the notice was never served on the defendant no 1, as it was necessary when the caveat was filed. He referred to bailiff's report dated 5th September, 2015 and pointed out that as per the report,

defendant no. 1/appellant was not present when bailiff went to her farmhouse. He met the servant of appellant and the appellant was contacted by bailiff. As the appellant agreed to accept the service, the bailiff pasted the notice on the door of the house of appellant and accordingly he filed his report and also affirmed it. The learned counsel submitted that this report is false. The appellant was not in India. She was out of the country from 3rd September till 9th September and so it was not possible for the bailiff to contact the appellant. He submitted that the notice can be served only on the adult member of the family and as per Explanation in Rule 15 Order 5 of the Code of Civil Procedure, a servant in the family is not a family member. He further submitted that in order to serve by pasting, bailiff requires the order of the Court and then only it can be served under Rule 17 Order 5 of the Code of Civil Procedure. He further submitted that bailiff should not of his own pasted the notice on the door of appellant. He argued that the order has affected on the working of the companies and the companies are not made party before the Court. He further submitted that as per the order dated 2nd September, 2015, the learned Judge felt that defendant nos. 1 to 4 are to be heard and therefore, notice was given to them for their appearance and to give them opportunity of hearing. If this was the case, the learned Judge ought not to have passed the order of the status quo ex-parte without good service on appellant/defendant no. 1. He pointed out the

prayers of respondent no. 1 in Special Civil Suit No. 1091 of 2015 and submitted that in prayer clause (s) the prayer is made for permanent injunction and there is no specific prayer in respect of what should be the nature of injunction and so also no prayer of interim relief. Despite the absence of these prayers, the trial Court has erred in passing the order of status quo in favour of the plaintiff/respondent no. 1.

6. The learned senior counsel for the respondents while opposing this Appeal has submitted that at the time of hearing of Application below Exhibit 5 on 2nd September, 2015, Advocate for defendant no. 3 appeared suo motu of which the Court has taken note. Thereafter the Court issued notices to defendant nos. 1 to 4 and then on 9th September, 2015 he filed Application Exhibit 29 and below that this order is passed. He submitted that on 9th September, 2015 defendant nos. 2 and 3 appeared but sought time to file say and written statement. He submitted that defendant no. 3 is deliberately keeping defendant no. 1 away and trying to plead and argue on behalf of her. Defendant no. 3 is the executor and the main contention of the plaintiff/respondent no. 1 is that executors are partial and bias and giving additional share to the appellant. He further submitted that service by bailiff on appellant is a good service and considering these facts, the Court has rightly passed the order of status quo. He further submitted that defendants are required to file say to the Application Exhibit 5 which is pending before the Court. He submitted

that the order of the learned trial Judge is not to be disturbed.

7. Heard the submissions. The companies are not made party to the suit, however, the issue of non-joinder can be looked into by the trial Court at the time of hearing of Exhibit 5. However, the appellant is one of the directors of the company and she is a legal heir of Late Ramesh Garewar and has control over the property including the assets and shares in the company. It is to be noted that the order dated 2nd September, 2015 was passed below Exhibit 5. Today Exhibit 5 is pending before the Court and all these contentions are open and can be raised before the trial Court while hearing Application below Exhibit 5, after defendants file their say or written statement before the Court, which will enable the Court to adjudicate all these issues properly. Admittedly two caveats was filed by the appellant on 16th July, 2015 and 3rd September, 2015. After going through the order dated 2nd September, 2015, it is found that in paragraph 4 of the order, the trial Court has mentioned the fact of the caveat and also that Court is empowered to grant ad-interim injunction without giving notice to the caveator subject to the reasons. However, the trial Court did not pass order of injunction ex-parte but gave notice to defendant nos. 1 and 4 as to why temporary injunction shall not be granted against them and the matter was fixed on 9th September, 2015. So far as the service by bailiff is concerned, the bailiff report dated 5th September, 2015 discloses that bailiff went to the

address which is given as residential address by the party. The appellant was admittedly not found so he has mentioned that after contacting her, he pasted the notice. However, whether he himself contacted her or whether he contacted her through her servant is not clear. Therefore, the bailiff is directed to file affidavit to that effect . Further he has mentioned that he secured the assurance that defendant no. 1 was going to accept the service, so he pasted the notice on the door of the house and accordingly he submitted the report. The report shows that the bailiff did not serve the notice on the servant of appellant, however, as he could not find defendant no. 1, he affixed copy of the summons/notice on the outer door of the house. Rule 17 Order 5 states that the serving officer, i.e., bailiff is empowered to affix the copy, if at all he is satisfied that the person is not available for personal service. On bare perusal of Rule 17 Order 5 and Rule 15 Order 5, I am of the view that a serving officer has to be satisfied about finding out whether the person is available in that house or not. Thus, at this stage, I *prima facie* do not find deviation from the procedure by the learned trial Judge. It is true that there is no specific prayer in the suit of interim injunction, however, there are prayers in clauses (s) and (t) regarding permanent injunction and interim injunction. In Application Exhibit 5 which is statutory Application wherein interim relief is prayed and so Application Exhibit 29 is an handwritten Application wherein interim relief is prayed. The Court is empowered to

grant such ad-interim relief. On perusal of the impugned order dated 9th September, 2015 though the Court has not given detailed reasoning as to why the Court has formed opinion to grant ad-interim injunction, the learned Judge has given the reason in one line of the said order that defendant no.1 is dealing with the shares and assets of the company of Late R.B. Garewar and therefore, the order is passed. It is to be noted that this order is passed till further orders. It is noted that Application Exhibit 5 is pending. This order is passed till further orders and which is to be construed that till hearing and disposal of Exhibit 5. Therefore, I am not inclined to interfere with this order. The trial Court to proceed with the matter and after filing of reply to Exhibit 5 by all the defendants, the trial Court to give hearing and all contentions including the objections on service of bailiff are kept open. The trial Court not to be influenced by the observations made by this Court.

8. At the end, it is suggested by this Court that if the working of the companies which are mentioned in the order is standstill for want of funds, then the appellant may make statement tomorrow how much funds can be realized or she can be allowed to generate and operate the funds of the respective companies to enable the companies to function.

16th September, 2015

9. Today, the matter is called out on Board. Mr.Thorat, the learned Senior Counsel appearing for Appellant submitted that the party is unable to make a statement in respect of the expenditure of the company and, therefore, no amount can be stated as on today. He further submits that defendant No.1 i.e., the appellant, will file its reply latest by 21st September, 2015.

10. In view of the above, Rejoinder, if any, to be filed on or before 29th September, 2015. The trial Court may endeavour to hear and decide the application below exhibit 5 within three weeks from the date of filing of rejoinder. The parties to cooperate with the trial Court.

11. The Appeal from Order stands disposed of.

(MRS.MRIDULA BHATKAR, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.