IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 466 OF 2013
IN
SECOND APPEAL NO. 153 OF 2013

Pradeep Kashinath Kamalapurkar
& ors. … Applicants
v/s
Smt.Usha Vishwanath Kamalapurkar
& ors. … Respondents

Mr.Jaydeep Deo for the applicants/appellants.

Mr.S.S.Kanetkar for Respondent Nos.1 and 2.

Coram: N.M. Jamdar, J.

Dated: 8 July, 2016

P.C.:

The civil application is placed on board today for hearing as to the interim relief. On 6 February 2014, the following order was passed in the civil application :

'P.C.

Heard. Issue notice to the respondents returnable on 4th March, 2014.

Learned Counsel Shri. S.S. Kanetkar waives notice of hearing on behalf of the respondent Nos. 1 and 2.

> *Since the Second Appeal is admitted on the substantial questions of law and since the applicants have made out a strong primafacie case, clauses 4 and 5 of the operative part of the judgment are stayed, till the returnable date.*
>
> *Clause 6 of the operative part of the judgment is not stayed but the applicants-appellants are directed to tender the accounts of the partnership firm, as directed by the first appellate Court, in sealed envelopes in the trial Court, from time to time.'*

2 Heard learned counsel for the parties on the issue, as to whether the order dated 6 February 2014 be continued, modified or vacated, pending hearing of the appeal. As regards the stay to the operation of Clauses 4 and 5 of the operative part of the order is concerned, those direct the Appellants to join the Respondent/Plaintiff Nos.1 and 2 as partners in the Defendant No.6 firm in place of deceased Vishwanath for 25% share.

3 Considering the nature of the dispute, I am not inclined to vacate the stay granted to Clauses 4 and 5 of the impugned judgment and order.

4 Accordingly, till the disposal of the appeal, Clauses 4 and 5 of the order passed by the first appellate Court, will continue.

5 As regard to Clause 6 is concerned, it appears that, by virtue of

direction of the accounts in sealed envelope, the order directing the Appellants to pay 25% share in profit has also been stayed by an ad-interim order. Learned counsel for the Respondents/original Plaintiffs makes a grievance that, in case the Respondents/original Plaintiffs succeed in their claim that they are entitled to become partners in Defendant No.6 firm in place of Vishwanath, it will be difficult to secure the 25% share. This grievance is justified. By merely filing accounts in sealed envelope in the District Court, which accounts are not even audited, the rights of the Respondents/ Plaintiffs who have succeeded in the Court below, cannot be secured.

6 Though I am not inclined to continue the direction to the Appellants to pay proportionate amount of 25% of profit to the Respondents/ Plaintiff Nos.1 and 2 pending the appeal, it is necessary to secure the amount. Accordingly, it is directed that the Appellants shall file periodical audited accounts in the sealed envelope before the Trial Court. The Respondents/Plaintiff Nos.1 and 2 will be entitled to take inspection thereof. After the inspection is taken, the accounts be re-sealed. The Appellants will deposit 25% proportionate share in the profit of Defendant No.6 firm in the Trial Court, which amount will be invested in fixed deposit in any nationalized bank, subject to the final orders to be passed in the appeal.

7 It is informed that audit of the firm takes place in October every year, therefore, the Appellants will file their audited accounts in

the first week of November every year and also deposit the proportionate amount to 25% of the profit shown in the audited accounts, at the same time of filing the audited accounts.

8 As regard the arrears are concerned, time is granted to the Appellants to deposit the same, subject to adjustment of the earlier amount already deposited, on or before 31 December 2016. Learned counsel for the Appellants submits that the Appellants be permitted to liquidate the bank guarantee which is filed pursuant to the order of the Trial Court. Once the Appellants comply with the direction to pay all the arrears as directed by 31 December 2016, it will be open to the Appellants to seek liquidation of the Bank guarantee.

9 The civil application is accordingly disposed of in above terms.

(N. M. Jamdar, J.)