

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3599 OF 2016
WITH
CIVIL APPLICATION NO.801 OF 2016 IN WP/3599/2016**

Shri Kiran Raghunath Thengadi
Vs
Shri Anilkumar P Sanghvi and
Ors

Petitioner

.. Respondents

Mr.Abhijeet Marathe, Advocate for Petitioner.
Mr.Rohaam Cama, Advocate i/b Dastur Kalambi and Associates for Respondents.

CORAM : R.G.KETKAR,J.
DATE : 30/03/2016

PC:

1. Heard Mr. Abhijeet Marathe, learned counsel for the petitioners and Mr. Rohaan Cama, learned counsel for respondents no. 1 and 2 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the order dated 6.2.2016 passed by the learned Ad-hoc District Judge-3 staying order dated 3.1.2015 passed by the learned trial Judge below Exh.5 in R.C.S. No.2037 of 2013 subject to defendants no. 1 and 2 not creating third party interest or transferring shares till disposal of the delay condonation application.

3. The petitioner, hereinafter referred to as 'plaintiff', has instituted suit for declaration that the alleged transfer of the plaintiff's shares as mentioned in paragraph 2 (C) of the plaint by respondent no.3, hereinafter referred to as 'defendant no.3'

company in favour of respondents no. 1 and 2, hereinafter referred to as 'defendants no.1 and 2,' be declared as bad in law, void ab-initio, illegal and inoperative and hence not binding on the plaintiff and for perpetual injunction restraining defendants no.1 and 2 from claiming to be owners of the shares mentioned in paragraph 2(C) of the plaint to the public at large.

4. During the pendency of the suit, the plaintiff took out application Exhibit-5. By order dated 3.1.2015, the learned trial Judge allowed the application. Aggrieved by that decision, defendants no.1 and 2 preferred Misc. Civil Appeal in the District Court. Since there is delay of 26 days in filing the appeal, they took out Misc. Application No.240 of 2015 for condoning the delay. Along with that, they took out application for stay of the trial Court's order dated 3.1.2015. By the impugned order, the learned District Judge stayed order dated 3.1.2015 below Exhibit 5, subject to defendants no. 1 and 2 not creating third party interest or transferring shares till disposal of the delay condonation application.

5. Mr. Marathe states that as there is delay of 26 days in filing appeal, same may be condoned. In view thereof, Misc. Application No.240 of 2015 filed by defendants no.1 and 2 for condoning the delay stands allowed. Mr. Cama states that order dated 6.2.2016 may be continued during the pendency of the appeal and the Appellate Court may be directed to dispose of the

appeal in a time bound manner.

6. In view thereof, without prejudice to the rights and contentions of the parties, the order dated 6.2.2016 is continued during the pendency of the appeal. It is clarified that continuation of this order shall not be construed as an expression of opinion on merits of the case either way. The learned District Judge will now proceed with hearing of the Misc. Civil Appeal after its registration and shall dispose of the said Appeal as expeditiously as possible and preferably within three weeks from production of the authenticated copy of this order. All contentions on merits in the Civil Application are expressly kept open.

7. In view of disposal of Petition, Civil Application No.801 of 2016 for stay does not survive and the same is disposed of.

(R.G.KETKAR, J.)