IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.657 OF 2014

ALONGWITH

CIVIL APPLICATION NO.793 OF 2014

IN

APPEAL FROM ORDER NO.657 OF 2014

Ghanshyam Dharma Chirankar .. Appellant/Applicant

Versus

Mahatma Phule Education Society .. Respondent

Mr. Shashank Choudhary i/by Mr. S. V. Masurkar for the Appellant/ Applicant.

Mr. H. R. Pawar for the Respondent.

CORAM : R.M. SAVANT, J.
DATE : 16th JUNE 2016

P.C.

1. The above Appeal from Order challenges the order dated 23/24/27.01.2014 passed by the Learned Judge of the City Civil Court and Sessions Court, Greater Mumbai, by which order, the Notice of Motion being No.1813 of 2013 filed by the Respondent No.1 herein came to be allowed in terms of prayer clauses (a) and (b) and came to be disposed of. The said prayer clauses (a) and (b) are reproduced hereinunder for the

sake of ready reference :-

> "(a) Pending the hearing and final disposal of the present suit, this Hon'ble Court be pleased to restrain the Defendant by an order of temporary injunction from representing, impersonating and signing on behalf of the Plaintiff and using the name of the Plaintiff in any manner whatsoever:
>
> (b) Pending the hearing and final disposal of the suit this Hon'ble Court be pleased to restrain the Defendant, his agents, servants hirelings and persona claiming through him by an order of temporary injunction of this Hon'ble Court from entering into the suit premises and disturbing, obstructing and interfering with the peaceful use, occupation, enjoyment and possession of the suit premises viz. Shed near Chawl No.13A-14A and Shed near Chawl No.3A admeasuring about 3000 sq.ft. constructed of brick masonry wall with A.C. sheet roof, situated at B.D.D. Chawls, Naigaon, Mumbai-400 014 till final decision of the suit."

2. The Respondent No.1 herein is the original Plaintiff, whereas the Appellant/Applicant herein is the original Defendant in Short Cause Suit No.1970 of 2013. The Plaintiff is a public trust registered under the Bombay Public Trust Act, 1950. The said suit has been filed by the Plaintiff for a declaration that the representation made by the Defendant on behalf of the Plaintiff was without any authority, illegal, bad in law etc. By prayer clause (a), the Plaintiff has sought an injunction to restrain the Defendant from representing, impersonating and signing on behalf of the Plaintiff and using the name of the Plaintiff in any manner whatsoever and by prayer clause (b) to restrain the Defendant, his agents, servants, hirelings

and persons claiming through him by an order of temporary injunction of this Hon'ble Court from entering into the suit premises and disturbing, obstructing and interfering with the peaceful use, occupation, enjoyment and possession of the suit premises being Shed near Chawl No.13A-14A and Shed near Chawl No.3A totally admeasuring about 3000 sq.ft. constructed of brick masonry walls with A.C. sheet roof, situated at B.D.D. Chawls, Naigaon, Mumbai-400 014 till final decision of the suit. In the said suit, the Plaintiff has filed the instant Notice of Motion.

3. The cause of action for filing the suit was on account of the various acts of omission and commission of the Defendant, amongst which act was the act of misrepresenting himself as being the representative of the Plaintiff. The structures in question i.e. the two sheds have been originally leased out to the Plaintiff by the BDD/PWD Government of Maharashtra for conducting educational activities. The two sheds as indicated above are totally admeasuring 3000 sq.ft. It seems that the lease was originally granted in respect of the said two sheds by the Government on Maharashtra on 22.11.1960 and has been extended from time to time and that the Plaintiff has been paying the lease rent. It seems that the Plaintiff was running a Marathi medium school in the said sheds which the Plaintiff had to close down on account of the dwindling response. It seems that the Defendant who is an ex-student of the Plaintiff had approached

the Plaintiff and offered to conduct educational activities in the said sheds of the Plaintiff. The Plaintiff accordingly permitted the Defendant to conduct educational activities in the said two sheds, but it was clarified to the Defendant that he would not be authorized to sign, to decide, to correspond on behalf of the Plaintiff and it was also a condition that fees collected from the students must be deposited in the bank accounts of the Plaintiff, but it was the case of the Plaintiff that Defendant did not abide by the said condition though he initially paid Rs.3,00,000/- he did not deposit student fees in the account of Plaintiff and on the contrary illegally allowed some outsiders to run coaching classes in the suit premises without seeking any permission and collected huge amounts. It was also the case of the Plaintiff that the Defendant committed fraud by opening bank account in the Allahabad Bank, Dadar (West) Branch, Mumbai 400 014 in his name and operating the same by himself. It was also the case of the Plaintiff that the Defendant also prepared letter heads and rubber stamps of the Plaintiff without any written/oral permission from the Plaintiff and on the said basis has used the said letter heads to address letters to the governmental authorities. It was also the case of the Plaintiff that Defendant not only allowed outsiders but the outsiders were allowed to run commercial activities like decorators, printing press and caterers apart from the nursery and other courses but also other professional

courses to be conducted in the suit premises and has collected huge amounts therefrom. It is the case of the Plaintiff that on account of the aforesaid acts of the Defendant a joint meeting was called in the month of March 2012 which later on was held on 01.04.2012. It is the case of the Plaintiff that in the said meeting the Defendant had accepted his misdeeds and had tendered unconditional apology and had vacated and removed himself from the premises. It is the case of the Plaintiff that Defendant signed the report prepared in the said meeting and requested for further opportunity to carry out educational activities and gave a written undertaking that he would follow the instructions of the Plaintiff in future and thereby accepted the fact that the Plaintiff is in exclusive use, occupation and possession of the suit premises. It is also the case of the Plaintiff that after the said meeting, the Defendant had given cheques of Rs.25,00,000/- but all the cheques were dishonoured on account of which proceedings have been adopted against the Defendant under Section 138 of the Negotiable Instruments Act. It is also the case of the Plaintiff that the Defendant had also played fraud on the banks by recommending fake employees for bank loan in Allahabad Bank, Dadar Branch and Mane Master Patpedhi, Bhoiwada, Mumbai and has signed the documents of loan as disbursement officer and used a fake designation as office bearer of the Plaintiff. It was therefore the case of the Plaintiff that the Defendant

has misconducted himself and by playing a fraud intends to grab the property belonging to the Plaintiff and therefore the Plaintiff had filed the instant Notice of Motion for the relief sought.

4. On behalf of the Defendant a reply came to be filed and it was his case that the sheds in question were handed over to him since the year 2005-2006. The said sheds were handed over to him to conduct educational activities and it was his case that after taking over the said sheds he has been conducting educational activities like coaching classes, teaching classes, computer classes, nursery, K.G. and other related educational activities from the said suit premises and also paid honorarium to the Plaintiff trust. This was in view of the mutual understanding between himself and the Plaintiff. It was his case that he had carried out repairs to the sheds for which he has incurred huge expenses. He also claimed to have opened a separate bank account in the name of Mahatma Phule Educational Knowledge Point (MPEKP) and all the accounts are operated, maintained and looked after only by him. It was his case that initially the Plaintiff did not object but thereafter since there was a good progress on account of the said progress the attitude of the Plaintiff changed and the Plaintiff started raising a false hue and cry. It was the case of the Defendant that the office bearers of the Plaintiff started harassing him so as to throw him out of the suit premises and with

an ill motive filed a complaint with the local police station. It was further his case that to resolve the issues he gave an undertaking on 01.04.2012 with some observations.

5. The Trial Court considered the said Notice of Motion and as indicated above has by the impugned order allowed the same in terms of prayer clauses (a) and (b) which have been adverted to hereinabove. The Trial Court whilst granting injunction in favour of the Plaintiff has observed that the Plaintiff in his reply has nowhere stated as to in what capacity he claims to hold the suit premises. The Trial Court adverted to the fact that Defendant had given an undertaking in the meeting dated 01.04.2012. The Trial Court has also adverted to the several acts committed by the Defendant such as not depositing the fees of the students, not paying honorarium as also opening of account in various banks as also using the seal and stamp of the Plaintiff trust which acts were detrimental to the interest of the Plaintiff trust. The Trial Court also considered the fact that the Defendant had also given the premises to some other persons for use for which he did not seek any permission from the Plaintiff and that he did not deposit Rs.25,00,000/- with the trust. The Trial Court also adverted to the fact that the Defendant by his letter dated 19.01.2009 had requested the IDBI Bank to change the title of the account and the authorisation signature which is in the name of the Plaintiff trust

to that of the Defendant. The Trial Court also adverted to the fact that in the suit filed by the Defendant being SC Suit No.827 of 2012 which suit was filed against the Plaintiff herein, the Trial Court had refused to grant any ad-interim relief. This was on the basis of the undertaking which was given by the Defendant in the meeting dated 01.04.2012. The Trial Court also adverted to the fact that the suit filed by the Defendant being SC Suit No.827 of 2012 came to be withdrawn by the Defendant. The Trial Court did not countenance the submission of the Defendant that the said undertaking given in the meeting dated 01.04.2012 was under duress when the Defendant had not placed any material on record complaining against the said undertaking. The Trial Court ultimately on the ground that the Defendant is neither claiming himself to be a sub-lessee, licensee or claiming any other status on the basis of which he may claim some right or interest in the suit property and also on the ground that Defendant is now challenging the very title of the Plaintiff to the suit property, deemed it appropriate to allow the Notice of Motion in terms of prayer clauses (a) and (b).

6. The thrust of the submissions of the Learned Counsel appearing on behalf of the Appellant was on the fact that possession of the said sheds was granted to the Defendant by the Plaintiff itself to run educational activities and which possession of sheds the Plaintiff was

having at the time of filing of the suit. It was therefore the contention of the Learned Counsel that the Plaintiff could only be removed by the Defendant by following the due process of law. In my view, it is not possible to accept the said contention, in view of the fact that the Plaintiff having got knowledge of the Defendant's activities has filed the suit in question for the reliefs which are sought. There is no dispute about the fact that the lease of the said sheds has been granted to the Plaintiff by the BDD/PWD Government of Maharashtra. It is pertinent to note that the Defendant does not claim any right except claiming to be in possession. What is significant to note is that the Defendant in the meeting dated 01.04.2012 which was held to resolve the issues between the parties has apologized, handed over possession, requested for being given a chance in future and has given an undertaking that he would be conducting educational activities as per the directions of the Plaintiff and thereby has accepted the fact that the possession is that of the Plaintiff. In view of the fact that the Defendant committed various acts of omission and commission that the Plaintiff was required to file the suit and claim the relief as sought in the Notice of Motion. The Trial Court as indicated above, has deemed it appropriate to grant the relief in view of the fact that the Defendant has no vestige of title or any right in respect of the two sheds.

7. In my view, therefore, the order passed by the Trial Court granting injunction to the Plaintiff especially having regard to the fact that it is a public trust cannot be found fault with. There is therefore no merit in the Appeal from Order. The same is accordingly dismissed.

8. In view of the dismissal of the Appeal from Order, the Civil Application does not survive and to accordingly stand disposed of.

[R.M. SAVANT, J]