

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 5208 OF 2016

Shwesh Co-operative Housing Society
And Anr. .

..Petitioners

Versus

Lakhmidas Vallabji Bhanushali
(HUF) And Ors.

...Respondents

....

Mr. Mayur Khandeparkar, Advocate for the Petitioners.

Mr. Manmohan Bhadra @ Bhanushali, son of respondent No.2
present in person.

Respondent Nos.3 and 4 present in person.

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CORAM : R. G. KETKAR, J.

DATE : 29th APRIL, 2016

P.C.

1. Not on board. At the request of Mr. Khandeparkar,
taken up for admission.

2. Heard Mr. Khandeparkar, learned Counsel for the
petitioners, Mr. Manmohan Bhadra @ Bhanushali (son of
respondent No.2), Mr. Madhusudan Lakhmidas Bhanushali
(respondent No.3) and Mr. Prahalad Lakhamidas Bhanushali
(respondent NO.4) in person.

3. Rule. Respondents appearing in person waives service.
At the request and by consent of the parties, Rule is made
returnable forthwith and Petition is taken up for final hearing.

4. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the order dated 15.4.2016 passed by learned Judge, presiding over Court room No.14 Bombay City Civil Court at Bombay in Notice of Motion No.1740/2016 in Suit No.3378/2010. By that order, learned trial Judge rejected the ad-interim relief prayed for by the petitioners, hereinafter referred to as the 'plaintiffs'.

5. Mr. Khandeparkar invited my attention to the rozanama of the suit and in particular rozanama of 23.12.2015, 19.1.2016, 13.2.2016 and 13.4.2016. He submitted that the matter was referred to Mediation and thereafter the matter was kept before the Lokanyalaya and was adjourned to 13.2.2016. On 13.2.2016 as the matter was not settled, it was adjourned to 29.2.2016. On 29.2.2016, the Court was on leave and the matter was adjourned to 13.4.2016. On 13.4.2016 both the parties and their Advocates were absent. Learned trial Judge dismissed the motions, namely, Notice of Motion Nos.821/2010, 1380/2010 and 2651/2011. He submitted that the learned trial Judge dismissed the motions on the ground that last chance was granted to the parties to press these motions. As none pressed these motions, they were dismissed in default. He,

therefore, submitted that learned trial Judge committed error in dismissing the motions on 13.4.2016 on the ground that last chance was given earlier. He, therefore, prayed for restoration of the motion.

6. Respondent Manmohan Bhadra @ Bhanushali, son of respondent No.2 is present in Court. Respondent Nos.3 and 4 are also present in the Court. Upon making enquiries with them, they stated that they do not wish to engage Advocate and submitted that as the parties are exploring the possibility of settlement, the motions may be restored. Mr. Manmohan Bhadra @ Bhanushali and respondent Nos.3 and 4 have tendered photo copy of their identity Cards which are taken on record and marked 'X' collectively, for identification. In view thereof, by consent of the parties, the impugned order is set aside and Notice of Motions Nos.821/2010, 1380/2010 and 2651/2011 are restored to the file of the learned trial Judge along with interim relief operating if any. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)