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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 6145 OF 2016

Jaishil Ganapayya Shetty.

... Petitioner.

V/s.

The Sangli Gymkhana Reg. Public
Trust through its Trustees & Ors.

.... Respondents.

Mr. N.V. Walawalkar, Sr. Advocate a/w. S.M. Sabrad for the
Petitioner.

Mr. Umesh Manakapure for Respondent 1.

CORAM : N.M. Jamdar, J.

31 August, 2016.

Oral Order :-

By this Petition the Petitioner challenges the order passed by the District Judge, Sangli in Misc. Civil Appeal No. 89 of 2016 dated 10 May 2016 and the order passed by the learned Civil Judge, Junior Division, Sangli dated 18 April 2016, whereby the application taken out by the Petitioner for temporary injunction has been rejected by both the Court.

2. The Petitioner has filed a Suit bearing No. 107 of 2016 on 23 March 2016 for a declaration that the compromise decree which was arrived at between the parties before the Lok Adalat on 30 June 2013 be declared as null and void. It is in this Suit an application for temporary injunction was taken out, which was rejected by the learned Civil Judge. Misc. Appeal filed has been dismissed by the learned District Judge.

3. The Petitioner was running a restaurant in a club maintained by the Respondent - trust. Regular Civil Suit No. 321 of 2013 for recovery of possession from the Petitioner was instituted by the Respondent in the Civil Court, Sangli. These proceedings were referred for compromise before the Lok Adalat.

4. Before the Lok Adalat, parties entered into a compromise and a compromise decree was passed. The gist of the compromise is as follows : the Respondent has filed a suit for recovery of possession. The Respondent is a public trust. The Respondent requires the area in possession of the Petitioner for its own purpose. The Petitioner is aware that the area available to the Respondent is not sufficient, however the Petitioner is constructing a hotel at Pushpraj Corner and all relevant sanctions have been obtained. However, it will take atleast two years for completion of its construction and therefore, the Petitioner has sought two years' time to vacate the premises. This

extension has been agreed upon by the Respondent on certain monetary terms. After two years at the most extension can be granted upto 1 July 2016. Thereafter, the Petitioner would vacate the premises. The compromise has been signed by all concerned including the Advocates.

5. In the present Suit it is contended by the Petitioner that the Petitioner was led into signing the consent terms because in the earlier suit the Respondents had stated that they want the possession for starting of sports activities. However, the Petitioner has come to know that the sports activities are not being carried out and also that the Petitioner was not aware of the implications of signing such consent terms. It was contended that the Respondents had given notice on 16 October 2015 calling for tenders in respect of the restaurant and therefore, the case of the Respondents in the original suit was not bonafide. Various other contentions were also raised. In the Application for temporary injunction taken out, the learned Civil Judge considered rival contentions and the case law relied upon by the parties. The learned Civil Judge held that the prima-facie case to re-open the proceedings concluded before the Lok Adalat was not made out and that the Petitioner having taken advantage of the time granted is not willing to vacate the premises and since the Petitioner has constructed the new hotel, no loss will be caused to the Petitioner. In the Appeal, the learned District Judge confirmed the

finding of the learned Civil Judge in addition holding that such suit is barred.

6. Heard the learned Counsel for the parties.

7. Firstly, the nature of the proceedings will have to be kept in mind before considering the grant of temporary injunction. This is not a usual suit alleging fraud nor it is proceedings coming up for adjudication for the first time. The dispute was referred to Lok Adalat under the Legal Services Authorities Act, 1987. The Lok Adalat is constituted under Section 19 of the Act. The Lok Adalats are presided over by responsible judicial officers. Lok Adalat has jurisdiction to determine and arrive at a compromise. Section 20 deals with the procedure to be followed by the Lok Adalat. Rules have been framed for the procedure to be adopted. In the Lok Adalat parties are made aware of their rights. Parties are also made aware of the implications of the compromise they enter into. In many cases the parties are assisted by the Advocates. Under Section 21(2) the award is final.

8. In the present case, the Petitioner is not illiterate or a rustic villager. The Petitioner is a businessman who has set up a hotel in the city. He was assisted by an Advocate in the earlier suit. It is not possible to believe that he is such a naive person that he was

not aware of the implications of the compromise. While considering the case of fraud as alleged the status of the Petitioner in the society and level of understanding cannot be lost sight of. In the compromise there is no reference to any catering activities. All that the parties have agreed is that the Petitioner will be given time of two years and in addition one year. At that time, the Petitioner was constructing a hotel and he needed time. The Suit was filed by the Respondent – public trust. Under the provisions of the relevant Rent Law, the bonafides of the need of the public trust, are presumed. Therefore, there is no substance in the contention that the Petitioner accepted the case as pleaded in the plaint. Such acceptance is superfluous, in view of presumption of the need of the trust. Therefore, considering the eminent eviction, the Petitioner sought time, which was granted. Furthermore, it is difficult to believe that the Petitioner will be completely ignorant. The Petitioner was running a restaurant in the club and it is impossible that he will not interact with the staff or the members of the club. The case is put up as if the Petitioner was innocent victim of the devious designs of the Respondent – club and he naively entered into a compromise. This case is not believable at all.

9. The learned Senior Advocate for the Petitioner relied upon the decision in the case of *Horil v/s. Keshav and Anr. (2012) 5 SCC 525*, wherein the Apex Court has considered the scope of

proceedings instituted to challenge a compromise decree on the ground of fraud. It is his contention that the learned District Judge has only referred to legal position and not to factual position. The submission cannot be accepted. Firstly, the proceedings which are sought to be assailed on the ground of fraud were held before Lok Adalat. All parties had ample opportunities to reflect over their decision. Even though the learned District Judge has primarily based its conclusion on the tenability of the suit, the learned District Judge has confirmed the findings of the learned trial judge in which factual aspects have also been considered. Both the Courts therefore rightly came to the conclusion that no prima-facie case for fraud was made out.

10. Apart from this position, the balance of convenience is also not in favour of the Petitioner. The Petitioner has availed of the period of extension under the compromise decree. During this period is over, no grievance is made. Though the learned Senior Advocate for the Petitioner has restricted his argument to the subsequent opening of tender as a ground of deceit, the averment made by the Petitioner in the plaint cannot be lost sight of. The Petitioner has denied even the basic positions. In the plaint, the Petitioner has gone to the extent of stating that the Petitioner does not even recognize the Advocates engaged by the Respondent. The Petitioner has also denied that the Court passed the order on 28 June

2013 recording in the order dated 3 June 2013 that the Advocates of both sides were present. The Petitioner had denied that the suit was filed on 28 June 2013 and that the permission of the Petitioner was not sought for compromise. All this wisdom has dawned upon the Petitioner after the entire period of three years has been availed by the Petitioner. Both the Courts have recorded that the Petitioner has now constructed the hotel and has fully taken advantage of the period of extension.

11. The matter was adjourned to find out whether it could be settled and offer was made by the learned Counsel for the Respondent on certain terms which is not agreeable to the learned Counsel for the Petitioner. There is no error whatsoever committed by both the Courts in not granting any temporary injunction. If compromises entered into before the Lok Adalat are permitted to be casually reopened, especially after a party has taken advantage, it will defeat the very purpose of the Act.

12. No interference is warranted in the impugned orders. The Writ Petition is rejected. The impugned orders being interlocutory, the Suit will be considered on its own merits.

(N.M. Jamdar, J.)