

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER STAMP NO.16375 OF 2016

ALONGWITH

CIVIL APPLICATION STAMP NO.16378 OF 2016

Mr. Kishor K. Mehta and another

.. Appellants/Applicants

Versus

Justice J. N. Patel (Retd) and another

.. Respondents

Mr. Karl Tamboli a/w Mr. N. Rizvi, Mr. Abhishek Prashu i/by M/s. Thakore Jariwala & Associates for the Appellants/Applicants.

Mr. Prateek Seksaria a/w Ms. Jyoti Shah, Ms. Jesal Shah i/by Daru Shah & Co., for the Respondent No.2.

CORAM : R.M. SAVANT, J.

DATE : 29th JUNE 2016

P.C.

1. The order dated 13.06.2016 passed by the Learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai is taken exception to by way of the above Appeal from Order.

2. By the said order, the application for interim relief filed by the Plaintiffs came to be rejected. The Appellants herein are the original Plaintiffs who have filed the suit in question for a declaration that the meeting held on 30.04.2016 by the Defendants and the Appellant No.2 be

declared as illegal in view of the order dated 12.04.2016 passed by the Apex Court. They have also sought interim relief of staying the execution and implementation of the resolution which was passed in the meeting dated 30.04.2016.

3. It is not necessary to burden this order with unnecessary details. Suffice it would be to state that on the trust in question i.e. Lilavati Kirtilal Mehta Medical Trust an interim board was appointed by the Apex Court for the management of the Lilavati Hospital. This course of action was required to be followed in view of the inter-se disputes between the trustees of the said trust. By order dated 12.04.2016 passed by the Apex Court in SLP No.3772 of 2014 the said interim board was disbanded. It appears that the interim board and the Appellant No.2 herein held a meeting on 30.04.2016 wherein various resolutions were passed thereby various decisions were taken in the matter of administration of the said Lilavati Hospital. The instant suit came to be filed a month thereafter and the instant Notice of Motion came to be filed for the reliefs which have been adverted to hereinabove. The Trial Court has rejected the application for interim reliefs inter-alia on the grounds mentioned in the impugned order. One of the grounds is that the challenge to the resolution pertains to the administration of the trust and resultantly has opined whether the jurisdiction of the Civil Court could be invoked, thereby impliedly

referring to the mechanism provided for redressal under the Maharashtra Public Trust Act, 1950 (For short “the Public Trust Act”). During the course of the hearing of the above Appeal from Order, the Learned Counsel appearing on behalf of the Respondent No.2 Mr. Prateek Seksaria drew this Court's attention that the Appellants herein have in fact filed an application under Section 41E of the Public Trust Act questioning the holding of the meeting dated 30.04.2016 and the resolutions passed therein on the ground that such a meeting could not be held in view of the fact that the interim board already stood disbanded by virtue of the order dated 12.04.2016 passed by the Apex Court. The Learned Counsel pointed out that the said application was being heard at the same time when this Court was hearing the above Appeal from Order on 23.06.2016. Upon this, the Learned Counsel appearing on behalf of the Appellants had sought time to take instructions in that regard.

4. Today, the Learned Counsel appearing on behalf of the Appellants Mr. Karl Tamboli states that through inadvertence in the application filed under Section 41E of the Public Trust Act, challenge is raised to the meeting dated 30.04.2016 and that an application is being moved for amendment of the said application filed under Section 41E of the Public Trust Act.

5. As indicated above, one of the grounds which has weighed with the Trial Court in rejecting the application for ad-interim reliefs is that the matter pertains to the administration of the trust and therefore the issue arises as to whether the Civil Court would have jurisdiction in the light of the statutory provisions as contained in the Public Trust Act for redressal of the grievances.

6. In my view, having regard to the fact that the challenge to the decisions taken in the meeting dated 30.04.2016 relate to the decisions that are taken in the interest of the administration of the trust, the Trial Court was right in coming to a conclusion that no interim reliefs could be granted on the said basis. Since the Appellants have already invoked the jurisdiction of the Learned Charity Commissioner under the Public Trust Act, it is for them to proceed with the said proceedings filed before the Learned Charity Commissioner. In that view of the matter, no case for interference is made out. The Appeal from Order is accordingly dismissed.

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

8. Needless to state that the observations made in the instant order are only for the purposes of considering the impugned order. The

(903) -A0ST-16375-16.doc

proceedings before the Learned Charity Commissioner would be tried on their own merits and in accordance with law.

[R.M. SAVANT, J]