

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 9797 OF 2016

Mr. Manoj Shetty	...Petitioner
<i>Versus</i>	
Mr. Ritesh Shetty and Ors	...Respondents

WITH
Writ Petition NO. 10064 OF 2016

Corgift and Anr	...Petitioners
<i>Versus</i>	
Mr. Ritesh Shetty and Anr	...Respondent(s)

....
Mr. Pradeep J. Thorat and Mr. Ravi Kotian, Advocate for the
Petitioners in both Petitions.
Mr. Vinay J. Bhanushali, Advocate for Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 23rd NOVEMBER, 2016

P.C.

1. Heard Mr. P.J. Thorat, learned Counsel for the petitioners and Mr. Vinay Bhanushali, learned Counsel for respondent No.1, in both the Petitions.

2. These Petitions were extensively heard on 10.10.2016 and thereafter at the request of learned Counsel for the petitioners were adjourned to 13.10.2016. The petitions were ordered to be placed under the caption 'Directions'. On

13.10.2016, the matter was heard and after considering the submissions advanced by the learned Counsel appearing for the parties, in paragraphs-4 and 5 of the order, it was observed thus :

“4. Considering the fact that none of the arguments which are advanced in this petition were advanced before the learned City Civil Court Judge, it was indicated to the learned Counsel for petitioner that in case petitioner deposits the amount as directed, the impugned order can be set aside to give opportunity to the petitioners to file their say, and the proceedings for grant of leave can be considered on its own merits. The learned Counsel had taken time to take instructions. The matter was kept today.

5. The learned Counsel for the petitioner submitted that the husband of the petitioner no.2 namely Surendra Shetty was also erstwhile partner has expired on 10 October 2016 and seeks further time to take instructions. It was made clear to the learned Counsel that if the petitioner deposits the amount as directed, then the Court will consider for giving opportunity to the petitioners of being heard before deciding the application for leave and the deposit will be subject to the orders passed. In case the petitioner is not

ready to deposit the amount, then it is already indicated that there is no error in the impugned order.”

3. The matter was thereafter heard before this Court on 22.11.2016 and was adjourned till today so as to enable Mr.Thorat to take instructions as to in what period the defendants will deposit the amount as per the impugned order. By the impugned order, the learned trial Judge granted conditional leave to defend to the defendants subject to depositing Rs.35 Lakhs with the Court within eight weeks from the date of order.

4. After taking instructions from Advocate Shri Ravi Kotian, Mr.Thorat states that defendant No.3 will deposit the amount of Rs.35 Lakhs in the trial Court within 12 weeks from today, under intimation in writing to the plaintiff's Advocate. He assures that the defendants will not seek further extension of time for depositing the amount in the trial Court. He further submits that the learned trial Judge may be directed to dispose of the Summons for Judgment as expeditiously as possible and the amount so deposited may be invested in any Nationalized Bank for a period of three months from the date of deposit.

5. Mr.Bhanushali invited my attention to the assertions made in the plaint. The plaintiff came with the case that defendant No.1 was earlier a Proprietary Concern run by defendant No.2. In April, 2013 said Proprietary Concern was converted into a Partnership Firm as defendant No.1. Defendant No.1, a Partnership Firm, is registered under the provisions of the Indian Partnership Act, 1932 (for short, 'Act'). Defendants No.2 & 3 are the Partners of defendant No.1. Defendants No.2 & 3 through defendant No.1 are jointly and severally liable for liability of defendant No.1, as it was earlier a Proprietary Concern now converted into a Partnership Firm. The defendants are involved in the similar business i.e. supplying gifts for corporate enterprises and other ancillary clients. The plaintiff has instituted Summary Suit under Order XXXVII of C.P.C. against the defendants for recovery of Rs.70,05,224.83 paisa along with further interest @ 18% per annum on Rs.70,05,224.83 from the date of the suit till payment and/or realization and costs of the suit. Mr.Bhanushali submitted that only defendant No.2 filed reply to Summons for Judgment *inter alia* contending that he executed Retirement Deed on 22.7.2013. Defendant No.3 is joined as a new Partner. By impugned order dated 6.5.2016, the learned

trial Judge granted conditional leave to defend to the defendants subject to depositing sum of Rs.35 Lakhs in the Court within eight weeks from the date of the order. In other words, the learned trial Judge issued direction of deposit against all the defendants and not only against defendant No.3. He invited my attention to the order dated 13.10.2016 passed by this Court and in particular paragraph-3 thereof. In paragraph-3, this Court noted that the reply was filed only by defendant No.2. As regards other defendants, the explanation given by them that they were not served with the suit was not accepted as defendants No.2 & 3 carry on business from the same premises. This Court also did not accept the case set up by defendant No.2 that he retired from the Partnership firm. This Court referred to Section 32 of the Act and observed that in a given case the liability can continue even of the Partner who has retired or resigned. He submitted that it may be internal matter amongst defendants as to who should deposit the amount as per the impugned order.

6. In view thereof, the impugned order is set aside subject to the defendants depositing Rs.35 Lakhs in the trial Court within 12 weeks from today. It is made clear that no further extension shall be sought and granted for depositing this

amount. If the amount is deposited, the learned trial Judge will invest it initially for a period of three months in any Nationalized Bank and will consider renewing said deposit for a suitable period. In case, the defendants fail to deposit the amount, the impugned order would stand revived without further reference to the Court. The learned trial Judge is requested to decide the Summons for Judgment within three months from production of the authenticated copy of this order. Writ Petitions are disposed of in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)