

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

APPEAL FROM ORDER (ST.) NO. 20648 OF 2016

Mr. Kishor K. Mehta & Ors.

...Appellants

Versus

Mr. Ajaykumar Pande & Ors.

...Respondents

Mr. Zubin Behramkamdin, i/b M/s. Thakore Jariwala & Asso., for the Appellants.

Mr. Prateek Sakseria, a/w Mr. Ranjeet Vaghani, i/b Juris Peritus, for Respondents.

CORAM : R.M. SAVANT, J.

DATE : 8th August 2016

P.C. :

1. The above Appeal from Order takes exception to the order dated 29th June 2016 passed by the learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai, by which order, the Application for ad-interim reliefs filed by the Appellants/original Plaintiffs came to be rejected.

2. The Appellants, as indicated above, are the original Plaintiffs and are the permanent Trustees of the Trust known as

Lilavati Kirtilal Mehta Medical Trust. The said trust is running the hospital known as Lilavati Hospital in Mumbai. Insofar as the Trust is concerned on account of the interse disputes between the Trustees the matter had reached the Apex Court and an interim board headed by Justice J.N. Patel, retired Chief Justice of the Calcutta, High Court was appointed by the Apex Court by order dated 20th May 2016 to look after the day-to-day affairs of the Trust especially having regard to the fact that the Trust was running the hospital in question wherein various facilities are available for the treatment of patients. The said interim board came to be disbanded by the Apex Court by its order dated 12th April 2016 and it was directed that the Trust and its Trustees would look after and manage the affairs of the Trust. It seems that the Chairman of the interim board Justice J.N. Patel held a meeting on 30th April 2016 to handover the charge of the affairs of the Trust to the Trustees. The said meeting was attended by all the Trustees. It seems that in the said meeting, Resolutions were passed which concerned the continuation of the Respondents No. 2 who is the Defendant No. 2 which decision was to the effect that he is continued upto 31st December 2016. The Resolutions passed by the Board of Trustees in the meeting dated 30th April 2016 are taken exception to by the present Appellants by filing Suit No. 1498 of

2016 in the City Civil Court, Mumbai in which Suit, the Notice of Motion for interim reliefs came to be filed by the Plaintiffs therein i.e. the Appellants herein, wherein no reliefs were granted to the Plaintiffs. The matter was thereafter carried out to the Apex Court and the Apex Court by an order dated 19th July 2016 disposed of the Special Leave Petition by granting liberty to the Plaintiffs to make a fresh Application for interim directions before the City Civil Court. It seems that a fresh Application for interim directions has been filed by the Plaintiffs in the said Suit which is pending. The instant Suit and the instant Notice of Motion has been triggered of on account of the fact that it is the case of the Plaintiffs that the Defendants No. 1 to 5 are interfering in the smooth running of the hospital and by their acts have created a situation where there is chaos and pandemonium in the hospital. The instant Suit has been filed in the background of the letters addressed by the Plaintiffs terminating the services of the Defendants No. 1 to 5 i.e. the Respondents No. 1 to 5 to the above above Appeal. The said letters are dated 12th May 2016 and 13th May 2016, by which the services of Defendants No. 1 to 5 are sought to be terminated.

3. Insofar as the Defendant No. 1 is concerned, he was

appointed as Deputy Director Operations of the Lilavati Hospital on retainership basis by the Lilavati Hospital and Research Centre in August 2016. His services have been thereafter extended from time to time. In August 2013 he was appointed as Director Operations and Supply Chain and Hospital his appointment has been extended till 31st December 2016. It seems that during the currency of the interim board headed by Justice J.N. Patel, other responsibilities of other departments, and other additional work was assigned to him. At least that is the case of the Defendant No. 1 in the Affidavit in Reply filed by him to the Notice of Motion.

Insofar as the Defendant No. 2 is concerned, he was appointed as the Chief Operating Officer by the interim board of Trustees of the Trust in question. A letter of appointment was issued to him on 16th November 2015 and his appointment for a period, co-terminus with the tenure of the interim board whichever was earlier was made. It seems that the outgoing Chairman of the Interim Board Justice J.N. Patel recommended that the services of the Defendant No.2 be continued till December 2016. Accordingly, the Board of Trustees passed a Resolution that all personnel /Consultants who have been appointed by the interim board or during its tenure, their

services are extended on the same terms and conditions till 31st December 2016 or till further orders, which ever is earlier. His appointment is accordingly, upto 31st December 2016. Insofar as the case of the Defendant No. 3 is concerned, it seems that his services are to continue till 30th September 2016 and the other Defendants i.e. the Defendants No. 4 and 5 are the employees of the Trust in question. At this stage, it is required to be noted that the Legal Advisor of the Trust Shri. Anupam Dholakia has issued a note dated 14th May 2016 in the context of the letters dated 12th and 13th May 2016 of the Plaintiffs. It is stated in the said note that the Trustees individually would not take a decision in respect of the appointment/termination of the services of any employee of the Trust. The President of the Association of Consultants has addressed letters dated 13th May 2016 and 20th May 2016 to the Chairman of the Board of Trustees making allegations against the Defendants No. 1 and 2. It is also required to be noted that one of the permanent Trustees Mrs. Rekha Sheth has filed an Affidavit in the instant Notice of Motion supporting the case of the Defendants No.1 to 5.

4. The Trial Court considered the application for ad-interim reliefs in the instant Notice of Motion and as indicated above by the

impugned order dated 29th June 2016 has rejected the Application made for ad-interim reliefs by the Plaintiffs. Reasons for which the said Application has been rejected, find a place in the impugned order, which reasons are *inter alia* to the effect that the services of the Defendants No. 1 and 2 are to continue only upto 31st December 2016, that in the letters dated 13th May 2016 and 20th May 2016 addressed to the Trustees by the President of the Association of Consultants of Lilavati Hospital, there is no specific name of any employee or misbehaviour of any employee or the Defendants, and hence the said letters are vague and ambiguous, that one of the permanent Trustees Mrs. Rekha Sheth has filed an Affidavit in support of the Defendants, that the Plaintiffs' case that the Board of Trustees consists only of the Plaintiffs No. 1 and 2 and Mrs. Rekha Sheth could not be accepted and that the Plaintiffs have terminated the services of the Defendants without approval or authority of the Board of Trustees.

5. The learned Counsel appearing on behalf of the Appellants/original Plaintiffs Shri. Behramkamdin would seek to contend that after the interim board was disbanded in terms of the order passed by the Apex Court, it is only the Plaintiffs No. 1 and 2

and Mrs. Rekha Sheth who constitute the Board of Trustees and are therefore, entitled to take a decision as regards the termination of the Defendants No. 1 to 5. The learned Counsel sought to refer to the orders passed by the Apex Court whilst the proceedings were pending before it.

6. Per contra, the learned Counsel appearing on behalf of the Respondents/original Defendants Shri. Sakseria would support the impugned order. The learned Counsel would in the context of the submission of Shri. Behramkamdin would seek to draw this Court's attention to the Applications made on behalf of the Plaintiffs whilst the proceedings were pending in the Apex Court being IA No. 22 of 2016, IA No. 31 of 2016 and IA No. 32 of 2016 in which Applications according to the learned Counsel, specific prayers to the effect that the Board of Trustees would consist only of three persons i.e. the Plaintiffs No. 1 and 2 and Mrs. Rekha Sheth were sought, but were not granted.

7. Having heard the learned Counsel for the parties, I have considered the rival contentions, it is required to be borne in mind that the instant proceedings have arisen out of the rejection of the application for ad-interim reliefs. The Notice of Motion as is yet

pending adjudication by the City Civil Court. The question that arises is whether at the ad-interim stage reliefs in the nature sought by the Plaintiffs can be granted to them especially having regard to the conspectus of facts which have been narrated hereinabove, especially when the tenure of the Defendants No. 1 to 3 is as yet to come to an end and where Defendants No. 4 and 5 are the regular employees of the Trust in question, the fact that the Plaintiffs have filed an independent Suit challenging the decisions taken in the meeting dated 30th April 2016 of the Board of Trustees also cannot be lost sight of, as also the fact that one of the other permanent Trustees Mrs. Rekha Sheth is supporting the Defendants No. 1 to 5. The finding recorded by the Trial Court in respect of the letters dated 13th May 2016 and 20th May 2016 of the President of the Association of Consultants at the *prima facie* stage cannot be said to be a view which could not be taken having regard to the text of the said two letters. The question also arises as to whether the Plaintiffs No. 1 and 2 could act unilaterally so as to terminate the services of the Defendants No. 1 to 5 without their being any decision of the Board Trustees of the Trust in question. The issue as to whether the Plaintiffs No. 1 and 2 and said Mrs. Rekha Sheth constitute the Board of Trustees or whether the other persons who claim to be Trustees

and in respect of whom the change reports are pending are entitled to call themselves as Trustees is a matter which this Court is not required to go on into, at this stage, in view of the fact that the proceedings by way of a separate Suit as also the instant Notice of Motion is pending. *Prima facie* a reading of the order passed by the Apex Court dated 6th May 2016 passed in IA No. 31 of 2016 and IA No. 32 of 2016 does not bear out the contention as regards the composition of the Board of Trustees as sought to be urged on behalf of the Plaintiffs. It is required to be noted that inspite of the specific prayers made in the said three IA's, the Apex Court as rightly contended on behalf of the Respondents has not acceded to the request of the Plaintiffs and by issuing the clarification as contained in its order dated 6th May 2016 has disposed of the IAs.

In passing one would have to observe that the letters issued by the Plaintiffs to the Defendants No.1 to 5 are reflective of the fact that all is not well in so far as the affairs of the trust are concerned.

8. No case for interference is therefore, made out. The Appeal from Order is accordingly, dismissed.

9. The observations and findings recorded by the Trial

Court can be said to be only for the purposes of consideration of the application for ad-interim reliefs. Needless to state that the said Notice of Motion would be tried on its own merits and in accordance with law.

[R.M. SAVANT, J.]