

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (L) NO. 391 OF 2016
IN
CONTEMPT PETITION NO. 72 OF 2012
IN
SUIT NO. 254 OF 2011
WITH
APPEAL (L) NO. 390 OF 2016
IN
NOTICE OF MOTION NO. 341 OF 2011
IN
SUIT NO. 254 OF 2011
WITH
NOTICE OF MOTION (L) NO. 3031 OF 2016
WITH
NOTICE OF MOTION (L) NO. 3032 OF 2016
WITH
NOTICE OF MOTION (L) NO. 3029 OF 2016
IN
APPEAL (L) NO. 391 OF 2016
WITH
CHAMBER SUMMONS (L) NO. 2155 OF 2016
WITH
NOTICE OF MOTION (L) NO. 3030 OF 2016
IN
APPEAL (L) NO. 391 OF 2016
WITH
NOTICE OF MOTION (L) NO. 3031 OF 2016
IN
APPEAL (L) NO. 390 OF 2016
WITH
NOTICE OF MOTION (L) NO. 3032 OF 2016
IN
APPEAL (L) NO. 390 OF 2016
WITH
CHAMBER SUMMONS (L) NO. 2155 OF 2016
IN
NOTICE OF MOTION (L) NO. 3029 OF 2016**

Shree Sai Shradda Mandal

.. Appellant

versus

Jethabhai Charitable Trust & Ors.

.. Respondents

Mr. Rajiv Chavan – Senior Advocate with Mr. Rahul Singh i/b. M/s. Legal Catalyst for Appellants.

Mr. Jayesh Bhatt for Respondent No. 3.

Mr. A. Y. Sakhare – Senior Advocate with Mr. Sandeep Patil for Corporation.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.**

DATE : 19 DECEMBER 2016

P.C.:

1] Appeal (L) No. 391 of 2016 is filed challenging the order dated 24th June 2016. On perusal of records, the order dated 24th June 2016 refers to order dated 17th July 2014 which is also placed on record in the notice of motion at page no. 14. On 17th July 2014, the respondent contemnor's counsel represented on the instructions of his client Sachin Ravindra Rahate, who was present before the court, that they will remove all articles, belongings and things from the passages and other areas of the building premises, remove lock from the toilet block and water tank room on the first floor and also remove their belongings and articles therefrom within one week. When a complaint was made that those undertakings were not complied with, on 24th June 2016, learned Single Judge directed the Municipal Authorities to remove all articles, belongings and things from the passages and other areas of the building premises, remove lock from the toilet block and water tank room on the first floor and also remove their belongings and articles therefrom within two weeks of receiving a copy of the said order.

2] At this stage, we do not know whether articles are removed as undertaken by the first respondent contemnor before the learned Single Judge.

3] Learned Judge did not stop at that but proceeded to direct that if there is no permission for the temple to be constructed or erected or maintained in the premises from the Municipal Authorities, the Municipal Authorities shall also demolish the temple within two weeks of receiving a copy of the order. There seems to be another order dated 28th September 2016, on which date, learned counsel appearing for Municipal Corporation for Greater Mumbai appeared before learned Single Judge and submitted that Junior Engineer of MCGM states that at-least their record does not show any permission being granted for construction of the temple. However, learned Judge opined that there was no permission as on date produced before the court, therefore, learned Judge simply directed the Corporation to take action in terms of order dated 24th June 2016. Being aggrieved by the same, a Special Leave Petition was filed before the Apex Court challenging the order dated 28th September 2016 directing to proceed with the directions of the court's order dated 24th June 2016. Before the Apex Court again the issue of permission to construct the temple by the MCGM came up and Apex Court observes as under:

“It has been submitted by the learned senior counsel appearing for the petitioners that the petitioner has permission to put up construction of the temple.

If it is correct, the Municipal Corporation shall not demolish the same. The petitioner shall show the sanctioned plan to the concerned Authority as well as to the High Court.

In view of the above clarification, the learned counsel seeks permission to withdraw this petition with liberty to approach the learned Single Judge of the High Court.

Permission is granted.

The petitioner shall place on record a copy of the sanctioned plan before the High Court.

The special leave petition stands disposed of as withdrawn.”

4] Reading of the Apex Court's direction, the petitioner who approached the Apex Court, is none other than the appellant before us who was directed to approach learned Single Judge with the permission of the Municipal Corporation to put up the construction of the temple. We do not know whether such an attempt is made by special leave petitioner to approach the learned Single Judge.

5] However, they are before us challenging two orders in two appeals i.e. Appeal (L) Nos. 390 and 391 of 2016. In Appeal (L) no. 390 of 2016, the order dated 2nd February 2012 on Notice of Motion No. 341 of 2011 in Suit No. 254 of 2011 is the subject-matter. In this order dated 2nd February 2012, the defendant Mr. Rahate categorically stated that they are not concerned with any portion of the plaintiffs' property except room no. 3 in any manner whatsoever or with the temple and the management thereof. It is also mentioned that the temple is being managed by a trust and that none of the defendants is a trustee or officer or agent of the said trust. The defendants further undertook not to deal with the temple or any part of the property of the plaintiffs' trust in any manner except room no. 3 which was the property tenanted to the defendant by the plaintiffs' trust. It is also observed by the learned Single Judge that the statement made by the defendants that they are in occupation of room no. 3 by virtue of the right of the original defendant who said to be the tenant of the plaintiff. Since room no. 3 was not the subject-matter, learned Judge recorded the statement of the defendants that they will not deal with any part of the suit scheduled property except room no. 3.

6] Now, the whole trouble seems to be other than room no. 3. When the special leave petition came to be filed, there is a clear undertaking to produce the permission of the Municipal Corporation to

construct the temple portion in the suit scheduled property. Now, the appellants in these two matters are trying to say that they are the tenants in respect of the portion where the temple is constructed. When the court seeks documents in respect of this property, they have shown to us the receipts towards payment of rent in respect of room no. 3 and not other portion of the property. If they have any independent right in respect of other portions of the property of the plaintiffs' trust, they have to establish independently such right. So far as the directions of the Apex Court directing them to produce the Corporation's permission to construct the temple, learned senior counsel Mr. Chavan fairly admits that there is no such permission except one assessment order of the building where the temple is housed. We are not concerned with those orders either. So far as the order dated 2nd February 2012, the defendants in the suit have made it clear that they are not concerned with the trust or the temple where the appellants are claiming rights and interest. We do not know why the appeal is now being filed challenging the order dated 2nd February 2012 where no prejudicial order whatsoever is forthcoming so far as the present appellants. Even if they are genuinely prosecuting these appeals, we are of the opinion that there is no reason why they challenge this order dated 2nd February 2012 since no remarks whatsoever are forthcoming so far as their interest is concerned. This is in respect of Appeal (L) No. 390 of 2016.

7] Then coming to other Appeal (L) No. 391 of 2016, on perusal of the orders dated 24th June 2016 and 17th July 2014, we are of the opinion that they refer to the stand of the defendants that is an undertaking by the defendants that they will remove all articles, belongings and things from the passages obstructing toilet block, water tank on the first floor and other areas of the building premises,

other than room no. 3. The order dated 28th September 2016 is also with reference to construction of the temple vis-a-vis the permission of the Municipal Corporation for construction of such temple. All along, the grievance of the appellants seems to be that they were not party to the suit but there is a direction to demolish construction where the alleged temple is situated. It is brought to our notice that in chamber summons no. 1412 of 2016, one Mr. Ashok Dhanuka was representing the applicant who is none other than the present appellant-trust. Therefore, it is clear that the order dated 28th September 2016 was passed in the presence of the present appellants who took responsibility of challenging said order before the Apex Court in the special leave petition. The special leave petition came to be disposed of on 7th October 2016 directing the present appellants to approach the learned Single Judge and produce the permission for constructing the temple.

8] It is also brought to our notice that Suit No. 1591 of 2016 is filed by these appellants against the present respondent trust. None of the observations made by us will have any impact on the merits of the said suit.

9] Under these circumstances, we are of the opinion, though learned counsel arguing for the appellants contends that the subject-matter of these two appeals is different from the order which was taken before the Apex Court i.e. order dated 28th September 2016, the order dated 28th September 2016 is the consequence of all other earlier orders referred to above and not an independent order. In that view of the matter, we decline to intervene in the present matters and the recourse open to the appellants is to approach the learned Single Judge with the permission of the Municipal Corporation, if any, as

undertaken by them before the Apex Court.

10] Appeals are disposed of. In view of disposal of the appeals, all pending applications do not survive and are disposed of accordingly.

CHIEF JUSTICE

(M. S. SONAK, J.)

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