

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2035 OF 2017
IN
FIRST APPEAL NO. 1277 OF 2011

Nanjibhai Khimjibhai Thakkar ...Applicant
Versus
Maharashtra Vidya Vikas Mandal & Anr ...Respondents

Mr SM Oka, *i/b Sagar A Joshi, for the Applicant.*
Mr CS Joshi, *for the Respondents.*

CORAM: G.S. PATEL, J
DATED: 27th July 2017

PC:-

1. An application was moved urgently saying that the Plaintiff trust was about to conduct or was conducting some public functions and that the Respondents had blocked or put under lock and key the gents toilet attached to the venue hall where the functions were to be held.

2. It appears now that the hall is a part of a building that houses a school from classes primary to the Xth standard. There are about 5,000 to 6,000 students in the school, of which 400 alone are on the ground floor. A complaint of the Respondents, whose Advocate Mr

Joshi was served only 7.30 p.m. yesterday and who has had no time to file an affidavit, is that these sanitary facilities on the ground floor are being misused. The Appellants have allowed rank outsiders, including street vendors, to use the toilets. The appellants have also allowed a 'manager' to reside on the ground floor of the school building with his family.

3. The Appellants' case is founded on an agreement. The trial court *prima facie* found there to be interpolations in a part of the agreement. Mr Oka says the rest of the agreement — without the interpolations — binds, and effect must be given to it. I disagree. I can make no such assumption. If there be an interpolation in one part of the agreement, it must be seen whether the entire agreement is vitiated as a result. All this will have to be examined. Ad-interim reliefs were refused as long ago as in 2011, *inter alia* for this reason.

4. The request today is that I allow the appellants' and their guests at the function the use of the gents' toilets in the ground floor hall in the school building for today and tomorrow while the appellants' function is going on. The application must be rejected, and I refuse to grant any such leave. In my experience, apart from anything else, once granted, this kind of permission becomes a template or precedent for future requests. My concern is not with these two trusts at all, but with the safety and security of the students. We have seen more than our fair share of reports of horrific incidents involving school children. I will not permit the slightest risk to them by making the kind of order the appellants want today.

5. The appellants will not hold any function in this hall until the final hearing of the appeal, which is expedited. Whether or not they have any rights will be decided at the final hearing of the appeal.

6. No prejudice can be caused to the Appellants by this order. They are at liberty to hold their functions elsewhere. There is no doubt that the interests of the students is paramount and overrides every other consideration.

7. At this stage, Mr Joshi seeks to withdraw the civil application. The civil application is dismissed as withdrawn.

8. For now, no costs.

(G. S. PATEL, J)