

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 458 OF 2014
WITH
CIVIL APPLICATION NO. 536 OF 2014

Mr. Shankarprasad S/o. Dukhi Gupta .. Appellant
vs.
Mrs. Savitridevi w/o. Shankarprasad Gupta .. Respondent

Ms Devaki Sahu i/b. Mr. A. M. Saraogi for Appellant.
Mr. U. V. Singh for Respondent.

CORAM : M. S. SONAK, J.
DATE: 01 FEBRUARY 2017

P.C :

- 1] Heard learned counsel for the parties.
- 2] The challenge in this appeal is to the order dated 21 February 2014, by which the learned trial Judge had declined ad interim relief to the appellant – plaintiff.
- 3] From 2014 onwards, there is no ad interim relief in operation in favour of the appellant – plaintiff. At this stage, it is too late, to consider grant of any ad interim relief.
- 4] Mr. Singh, learned counsel for the respondent however hands in order dated 19 August 2016 made by the trial court, which reads thus :

“Adv. Kanchan Singh for plff. present. Deft absent. K.B.L.O. Same appearance. No pursis filed by other side disclosing the status of the matter before the Hon'ble High Court. As per rozanama ad-interim relief has been refused on 21/2/14. N. M. No. 601/14 is hereby tagged the main suit. Deft failed to file written statement, hence proceed without w.s. Matter to 21/9/16 is suo-moto adjd for evidence of plff / status report.”

5] From the aforesaid, it appears that the main notice of motion taken out by the appellant is tagged in the main suit. This is not proper. The notice of motion will have to be considered and disposed of in accordance with law and the same, cannot be tagged to the main suit. The purpose of the notice of motion is to seek interim reliefs pending the suit. Such purpose, cannot be defeated by taking the notice of motion along with the main suit.

6] That apart, learned counsel for the respondent states that the respondent has filed notice of motion no. 1652 of 2014 seeking leave to file written statement on record. He submits that such written statement could not be filed within the prescribed period, on account of certain health issues concerning the Advocate for the respondent.

7] Accordingly, this appeal is disposed of with direction to the learned trial Judge to first dispose of notice of motion no. 1652 of 2014 within a period of 30 days from the date of production of

authenticated copy of this order and thereafter, to take up and dispose of the appellant's notice of motion no. 601 of 2014 and dispose of the same within a period of two months thereafter.

8] It is made clear that this court has not examined the merits of this matter and therefore all contentions of all parties are left open for determination by the learned trial Judge.

9] The appeal is disposed of in the aforesaid terms. In view of dismissal of appeal, civil application does not survive and is disposed of accordingly. All concerned to act on basis of authenticated copy of this order.

10] The parties to appear before the trial Court on 18 February 2017 which is the date fixed by the learned trial Judge in the matter and to produce authenticated copy of this order.

(M. S. SONAK, J.)