

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO. 7653 OF 2017
WITH
CIVIL APPLICATION (STAMP) NO. 7656 OF 2017

Mr. Anant Jatin Modi	..	Appellant
VS.		
All India Institute of Local Self-Government & Ors.	..	Respondents

Mr. N. G. Samant i/b. Mr. Sandeep Mahadik for Appellant.
Mr. Prasad Dhakephalkar with Mr. R. A. Shaikh for Respondents.

CORAM : M. S. SONAK, J.
DATE : 24 MARCH 2017

P.C :

- 1] Upon production, taken on board.
- 2] Heard learned counsel for the parties.
- 3] The challenge in this appeal is to the order dated 3 March 2017, by which, learned Trial Judge has returned the plaint to the appellant for presentation before the appropriate forum after holding that the civil court has no jurisdiction to try and entertain the suit.
- 4] The impugned order states that as against the order of suspension, the appellant has remedy of instituting an appeal before the appellate authority under the All India Institute of LSG (Conduct, Discipline & Appeal) Rules, 1987 (Service Rules) which govern the service rules between the appellant and respondent no. 1. On these basis, learned Trial Judge has held that jurisdiction of the civil court stands ousted. This finding is unsustainable. On basis of service rule no. 23, it cannot be said that the jurisdiction of the

civil court is ousted. On this short ground, the impugned order is liable to be set aside and is hereby set aside.

5] Mr. Dhakephalkar, learned Senior Advocate for the respondents, however submits that the suit was instituted only to question the order of suspension of the appellant. Pending the suit however, services of the appellant have been terminated on account of unsatisfactory completion of the probation period. He therefore submits that the suit itself has been rendered infructuous.

6] Learned counsel for the appellant points out that the chamber summons has been taken out in the suit, seeking for leave to amend the plaint on the basis of subsequent developments. Upon a query from the court as to why the chamber summons should not be allowed, as otherwise, there is possibility of the matter dragging on, Mr. Dhakephalkar, learned Senior Advocate for the respondents states that the respondents will not object to the proposed amendment, subject however, to all their rights and contentions are kept open in that regard. Accordingly, with the consent of learned counsel for the parties, chamber summons is taken on board and is allowed only to the extent of amendment of the plaint and notice of motion, in order to challenge the subsequent suspension. The learned Trial Judge to permit the appellant to carry out the amendment within a period of two weeks from today and furnish copies of the amended plaint to the respondents.

7] The learned Trial Judge is directed to dispose of the appellant's Notice of Motion No. 319 of 2017 seeking interim reliefs as expeditiously as possible and in any case within a period of six weeks from today. Until the disposal of the notice of motion, Mr. Dhakephalkar, learned Senior Advocate for the respondents states

that the statement made before the learned trial Judge that the appellant will not be dispossessed be continued. He however states that such statement is made on the basis that even the appellant reciprocates the same by filing an undertaking before the learned trial Judge that in case the Notice of Motion is dismissed and if, in the Appeal against the same, no ad interim or interim relief is obtained within a period of four weeks, the appellant will vacate the suit premises and hand over the vacant and peaceful possession of the same to the respondents. Learned counsel for the appellant, on basis of instructions from the appellant, who is present in the court, states that such an undertaking will be filed before the learned Trial Judge within a period of two weeks from today.

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

9] The Appeal is disposed of accordingly. The Civil Application does not survive and the same is also disposed of.

(M. S. SONAK, J.)