

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.456 OF 2014  
IN  
CIVIL REVISION APPLICATION NO.816 OF 2016

|                                                                                   |    |                               |
|-----------------------------------------------------------------------------------|----|-------------------------------|
| Jiten Pravin Sheth & Another                                                      | .. | Applicant                     |
| In the matter of<br>Gospel Literature Service                                     | .. | Applicant/<br>Orig. Plaintiff |
| v/s.<br>The Asst. Commissioner<br>The Brihan Mumbai Municipal Corpn.,<br>& Others | .. | Respondents.                  |

WITH  
CIVIL APPLICATION NO.370 OF 2014  
IN  
CIVIL REVISION APPLICATION NO.816 OF 2016

|                                                                                  |    |              |
|----------------------------------------------------------------------------------|----|--------------|
| Gospel Literature Service                                                        | .. | Applicant    |
| v/s.<br>The Asst. Commissioner<br>The Brihan Mumbai Municipal Corpn.<br>& Others | .. | Respondents. |

AND  
CIVIL REVISION APPLICATION NO.816 OF 2014

|                                                                                  |    |              |
|----------------------------------------------------------------------------------|----|--------------|
| Gospel Literature Service                                                        | .. | Applicant    |
| v/s.<br>The Asst. Commissioner<br>The Brihan Mumbai Municipal Corpn.<br>& Others | .. | Respondents. |

Mr. Piyush Shah, Advocate with Mr. Rajan Pillai, for the Applicant in all the matters.

Mr. Pradeep Patil, for Respondent Nos.1 & 2 in all the matters.

Mr. Rajesh Shah, Sr. Advocate with Mr. Chetan Yadav i/b. Markand Gandhi & Co., for Respondent No.3 in all the matters.

Mr. Dileep Nevatia, Respondent No.3-in-person.

**CORAM: M.S.SANKLECHA, J.**

**DATE : 25<sup>th</sup> SEPTEMBER, 2017.**

**P.C.:-**

This Civil Revision Application (CRA) under Section 115 of the Code of Civil Procedure, 1908 (Code), challenges the order dated 7<sup>th</sup> November, 2012 passed by the City Civil Court at Mumbai. By the impugned order, the Trial Court allowed the notice of motion moved by Respondent No.3 herein represented through Mr. Dileep Nevatia. Consequent to the notice of motion being allowed, the decree dated 10<sup>th</sup> June, 2011 passed in the L. C. Suit No.3621 of 2007 was set aside. Primarily on the ground that the Respondent No.3 herein who is Defendant No.3 in the suit as represented by Mr. Dileep Nevatia had not been served the writ of summons.

2 Being aggrieved with the impugned order dated 7<sup>th</sup> November, 2012, the Applicant herein (the Original Plaintiff) has filed this CRA. According to the Applicant, (the Original Plaintiff), Mr. Dileep Nevatia is not entitled to represent Respondent No.3 (Original Defendant No.3) and consequently, an order dated 10<sup>th</sup> June, 2011, inter alia, setting aside the notice under Section 351 of the Bombay Municipal Corporation Act, could not have been set aside at his instance.

3 On 29<sup>th</sup> April, 2014, the Civil Application No. 283 of 2013 for condonation of delay in taking out the CRA came up for consideration,

Respondent No.3 herein (Original Defendant No.3) was sought to be represented by Mr. Dileep Nevatia. in-person, claiming to be Director of Respondent No.3 having the Power of Attorney to represent Respondent No.3. On the other hand, Mr. Amol Joshi, Advocate appeared for Respondent No.3, on a Vakalatnama signed by two other persons, claiming to be Director of Respondent No.3. Therefore, the issue arose as to which of the parties claim to be a proper representative of Respondent No.3. Therefore, this Court by an order dated 29<sup>th</sup> April, 2014 directed the Registrar (Judl.I) of this Court to consider who of the two, for convenience called Dileep Nevatia or the Shah Group, would be the appropriate person to represent Respondent No.3-Company.

4 By an order dated 8<sup>th</sup> May, 2014, the Registrar (Judl.I) held that Mr. Dileep Nevatia is the proper person to represent Respondent No.3 in the present CRA.

5 Being aggrieved by the order dated 8<sup>th</sup> May, 2014, passed by the Registrar (Judl.I) persons (Shah Group) claiming to be a Directors of Respondent No.3 have taken out the Civil Application No.456 of 2014 in the CRA. This Civil Application inter alia, seeks to set aside the order dated 8th May, 2014 passed by the Registrar (Judl.I).

6 Mr. Rajesh Shah, learned Counsel appearing for the Applicant in the Civil Application, challenging the order dated 8th May, 2014 passed by the Registrar (Judl.I), submits that the impugned order has failed to consider the various annual reports filed by Respondent No.3 with the Registrar of Companies, which indicates that Mr. Dileep Nevatia. and/or his family members (except his mother) had ceased to be Directors of Respondent No.3 since 2003-2004. In particular, he invites my attention

to the Annual Returns filed with the Registrar of Companies, Balance Sheets etc. All of the above documents, he submit which were produced before the Registrar (Judl.I) but completely ignored, would establish beyond any shadow of doubt that Mr. Dileep Nevatia is not entitled to represent Respondent No.3.

7           On the other hand, Mr. Dileep Nevatia very fairly points out that Respondent No.3 had filed through him a Suit being Suit No. 450 of 2009 in the City Civil Court at Mumbai, seeking to restrain the Shah Group from claiming control of Respondent No.3 by relying upon and/or acting upon the documents, such as Annual Returns, Balance Sheet, Form 32 etc. filed by with the Registrar of Companies as the above suit seeks to declare these documents as fraudulent. The result of the above suit on taking of evidence would decide who is in control and management of Respondent No.3. Mr. Dileep Nevatia further states that Suit No.450 of 2009 has progressed far as his examination on behalf of the Plaintiff therein (Respondent No.3 herein)is over. The result of the aforesaid Suit No.450 of 2009 would determine whether or not, the documents on which the Shah Group is placing reliance to claim that Mr. Dileep Nevatia is not entitled to represent Respondent No.3, are correct and true or fraudulent documents.

8           In the above view, it is an agreed position between the parties before me that the decision rendered in Suit No.450 of 2009 would determine, who is the appropriate person to represent Respondent No.3 in the present proceedings. The Suit No. 450 of 2009 has been pending since 2009 and am informed that the City Civil Court hearing it has itself expedited the hearing of the suit.

9 In the above view, the Civil Application which has been taken out by the Shah Group, claiming to be the appropriate representative of Respondent No.3, for setting aside the order dated 8th May, 2014 passed by Registrar (Judl.I), is by consent of the parties, set aside.

10 The issue of who would represent Respondent No.3 in the present suit would be decided by the Trial Court after the decision in Suit No.450 of 2009. Mr. Rajesh Shah, learned Counsel appearing for the Shah Group, representing Respondent Nos. 1 to 3, Mr.Piyush Shah, learned Counsel representing the Original Plaintiff and also the Trustee of the Plaintiff Mr. A.T.G. Kurian, who are Defendant Nos.1,2, 3 and 4 in Suit No. 450 of 2009 claiming to be a Director of Respondent No.3-Company, states that they would co-operate for the early disposal of the Suit No.450 of 2009.

11 In the above circumstances, it is an agreed position between the parties that so far as the order dated 7th November, 2012 is concerned, it calls for no interference, at this stage.

12 Parties before me are all agreed that suit No.450 of 2009 be taken up on day-to-day basis for an early disposal of the case. The Trial Court would consider such an application to be made by the parties. It is an agreed position between the parties that the decision rendered in Suit No.450 of 2009 would decide the appropriate person who represent the Respondent No.3 in the present proceedings before the City Civil Court at Mumbai. In that behalf, for an early disposal of the Suit No.450 of 2009, the parties therein are also parties before me, (save and except Mr. Gala, Chartered Accountant) have stated that they would file joint application before the Court for taking up Suit No.450 of 2009 for early disposal and

if possible, on a day-to-day basis, before the City Civil Court. The application when made would be appropriately considered by the City Civil Court.

13 Mr. Piyush Shah, learned Counsel appearing for the Plaintiff prays that the ad-interim relief which was granted earlier, restraining the BMC from demolishing the unauthorized construction in the Petitioner's premises be continued. I see no reason to continue the same. Petitioner is at liberty to file a fresh application for interim relief in the pending suit and the same would be decided by the Trial Court on its own merits.

14 Mr. Patil, learned Counsel appearing for the Corporation states that for a period of six weeks from today, they would not take any coercive proceedings. This to enable the Petitioner to move an appropriate application for interim relief from the Trial Court in respect of notice dated 17<sup>th</sup> October, 2006 under Section 351 of the Act.

15 Both CRA as well as Civil Application No.456 of 2014 therein are disposed of in the above terms. So far as Civil Application No.370 of 2014 for interim relief taken out by the Applicant in the CRA is concerned, is also disposed of as infructuous. No order as to costs.

**(M.S.SANKLECHA,J.)**