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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 1155 OF 2015
WITH
CIVIL APPLICATION NO. 1446 OF 2015

Dr Atulkumar Premchand Shah	...Appellant
<i>Versus</i>	
Vidya Vijay Ghag & Ors	...Respondents

Mr Sudhir Talsania, *with Vishal Talsania, Viwita Muly, & A Nile,*
i/b Ghanshyam K Tripathi, for the Appellant.
None for the Respondents.

CORAM: G.S. PATEL, J
DATED: 10th July 2017

PC:-

1. The Respondents are absent though served. The contesting Respondent, being Respondent No. 1, who is original Plaintiff is served. Affidavit of Service is taken on file.

2. The order of 28th July 2015, is challenged in this Appeal, will have to be set aside. Defendants Nos. 4 and 5 to the Suit are in Appeal against that order. They filed Notice of Motion No. 647 of 2015 to set aside an order of injunction that was passed on 10th September 2014 in the Plaintiff's Notice of Motion No. 4300 of 2009. That injunction restrained the Appellants from creating third

party rights in the suit property. Whether or not that injunction was justified is not the issue. The point is that it was passed without hearing Defendants Nos. 4 and 5, and in circumstances that are truly peculiar.

3. Defendants Nos. 4 and 5 did engage an Advocate. The Suit was first filed on the original side of this Court and was then transferred along with several thousand other matters to the Bombay City Civil Court on an increase in that court's pecuniary jurisdiction.. The name of the Appellants' Advocate was not shown on the cause list. When the Plaintiff was directed to give notice, he did so to the Appellants' previous Advocates. The situation was that while the Suit was shown by its number and High Court number on the City Court cause list, the name of the Appellants' current Advocates were not shown. This is not disputed. The list or board in the City Civil Court does not carry the names of the parties but only the case number(s) and the names of the Advocates.

4. In the impugned order, the Trial Court held that this was immaterial and that it was sufficient if the number was shown. I cannot possibly agree. Parties are not expected to visit the Court every single day to check if their cases are listed by number. An Advocate will never be alerted and will never notice if his case is listed unless his or her name is shown.

5. This is the only reason that the Notice of Motion was dismissed.

6. The impugned order is set aside. In the facts of the case, the Plaintiff's original Notice of Motion No. 4300 of 2009 is restored to file. It will be heard for confirmation of the injunction against Defendants Nos. 4 and 5, who will be entitled to argue, without having to file a separate Notice of Motion, that the injunction should not be continued and should be vacated for that purpose. Consequently, the Appellants' Notice of Motion No. 647 of 2015 stands allowed.

7. Until then, the order of restraint must of necessity continue, but it will have to be continued only for a limited time. The parties will appear before the Trial Court on 21st July 2017 and obtain a date for hearing on the Plaintiffs' earlier Notice of Motion in the manner indicated above.

8. The Appeal from Order is disposed of in these terms with no order as to costs.

9. The Civil Application does not survive and is disposed of as infructuous.

(G. S. PATEL, J)