

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 1267 OF 2011

Vijay R. Shetty .. Petitioner
vs.
Baun Foundation Trust and ors. .. Respondents

None for both sides.

CORAM : M. S. SONAK, J.
DATE : 20 JANUARY 2017.

P.C. :-

1] None present for the appellant and the respondents, though this matter was duly notified on the cause list.

2] The challenge in this appeal is to the order dated 5 October 2011, by which, the City Civil Court at Bombay has continued the interim order made by this court on 26 September 2011 till the decision on preliminary issue. The plaintiffs in the suit, i.e., the respondents herein were also restrained from taking any policy decision, till disposal of the preliminary issue.

3] On 25 January, 2012, this court, made the following order:

“ Heard learned Advocates on both sides. Appeal is admitted. Learned Senior Counsel Mr. Madan waives service of admission on behalf of all the Respondents.

2. The Court is informed that in Short Cause Suit No. 1210 of 2011, the present Appellant raised a question of jurisdiction of the Court and upto some time, the Court was busy in recording the evidence on the question of jurisdiction. Thereafter, the learned Judge presiding in that Court has been transferred. As of today, there is no Judge presiding in the said Court and, therefore, the matter is being simply adjourned and that is how the question of jurisdiction has remained to be decided.

3. *In my view, it would be proper to direct the learned Principal Judge of the City Civil Court to assign the suit to some other Court so that the said Court can hear and decide the question of jurisdiction and pass an appropriate order. This has to be done urgently. Certain ad-interim orders passed by the learned Judge are running against the Appellants in particular; the order dated 5th October, 2011 impugned in this Court which says that the injunction will run against the Appellant till the decision of preliminary issue.*

4. *In view of the above, apart from the aforesaid order of admission, it is hereby ordered that the Principal Judge of the City Civil Court shall assign the aforesaid Short Cause Suit No. 1210 of 2011 to some other Court. This shall be done within two days from production of authenticated copy of this order by the Appellant before the learned Principal Judge of the City Civil Court. On assignment of the matter to the new Court, the learned Judge presiding in the Court shall hear and dispose of the question of jurisdiction on or before 15th March, 2012. If the said learned Judge holds that the City Civil Court has the jurisdiction, then he will hear and decide the Notice of Motion taken out by the Respondents-Plaintiffs for interim relief which Notice of Motion is still pending.*

5. *The Office to supply an authenticated copy of this order to the concerned parties”.*

4] As of today, it is not known as to whether the preliminary issue has been decided or not. If, the objection to the jurisdiction of the City Civil Court has already been upheld, then this appeal will become infructuous. In case, the issue is yet to be decided, then, it is quite unfortunate that the issue pends despite the aforesaid order dated 25 January 2012. The trial court, in such an eventuality is directed to dispose of the preliminary issue one way or the other within a period of two months from the date of receipt of authenticated copy of this order.

5] At this point of time, no useful purpose will be served in examining the legality of the impugned order, since, the impugned order was to operate only until any decision was taken on the preliminary issue.

6] Accordingly, this appeal is disposed of in the aforesaid terms. In case, the preliminary issue is yet to be decided, the trial court is directed to decide the same within a period of two months from the date of receipt of authenticated copy of this order.

7] The Registry is requested to transmit the authenticated copy of this order to the concerned City Civil Court at Mumbai taking up Suit No. 1210 of 2011 or to the Principal Judge of the City Civil Court for necessary action.

8] The pending civil applications, if any, do not survive and the same are also disposed of.

(M. S. SONAK, J.)

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