

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST NO. 34737 OF 2016
WITH
CIVIL APPLICATION ST NO. 34738 OF 2016**

Milind Vithal Chindarkar ...Appellant

Versus

Janardan Laxman Shirsekar Shikshan Sanstha, ...Respondents
through President Anjali A Wayangankar & Ors

AND

**APPEAL FROM ORDER ST NO. 29163 OF 2016
WITH
CIVIL APPLICATION ST NO. 29164 OF 2016**

Suresh Sitaram Madye & Anr ...Appellants

Versus

Janardan Laxman Shirsekar Shikshan Sanstha, ...Respondents
through Secretary & Ors

AND

FIRST APPEAL NO. 462 OF 2017

Milind Vithal Chindarkar ...Appellant

Versus

Janardan Laxman Shirsekar Shikshan Sanstha, ...Respondents
through Secretary & Ors

Mr Siddhesh A Pilankar, for the Appellant & Applicant in

AOST/34747 & CAAST/34738/16.

Mr Balasaheb R Deshmukh, *for the Appellant & Applicant in
AOST/29163/16 & CAAST/29164/16.*

Mr Pravartak Pathak, *for the Appellant in FA/462/17.*

Mr PV Satam, *for Respondent No. 1 in both Appeals.*

Mr YY Dabke, *AGP for State.*

CORAM: G.S. PATEL, J
DATED: 22nd June 2017

PC:-

1. There is a dispute between two groups: the Chindarkar family and the Shirsekar family. They are at war over the control and management of the Janardhan Laxman Shirsekar Shikshan Sanstha, a registered public charitable trust. The Chindarkars claim to be founder-members of the trust. The Shirsekars say the Chindarkars' ancestor may have been a co-founder member of the trust, but the settlor of the trust, and its true founder, was the Shirsekars' ancestor. The trust is named for him.

2. One Suresh Madye and another are also in litigation against the Shirsekars. They support the Chindarkars.

Appeal from Order St No. 34737/2016 & CA

3. This Appeal is filed by the original Plaintiff in S.C. Suit No. 3125 of 2016. He is a member of the Chindarkar family.

4. The difficulty with the Appeal is that it is directed against, as far as I can tell, no order at all. It says it is directed against "orders"

of 1st December 2016 and 14th December 2016, but these are not in any sense appealable orders. These are in the nature of directions. The Court merely noted appearance of parties, directed the completion of certain filings and adjourned the matter for a hearing. There is no indication that any application was made for ad-interim reliefs or that this application was declined. This is not noted either on 1st December 2016 or 14th December 2016. There is nothing on record to show that Plaintiff gave notice of moving for ad-interim reliefs on either of those days. In fact, had there been such an application made on 1st December 2016, and had it been stood over to 14th December 2016, the roznama or minutes would certainly so indicate. They do not. There is no appealable order.

5. Appeal from Order St No. 34737 of 2016 and Civil Application St No. 34738 of 2016 are both dismissed. There will be no order as to costs.

6. The Plaintiff's Notice of Motion will be decided on its own merits.

7. The Defendants have filed a Notice of Motion under Order VII Rule 11 of the Code of Civil Procedure 1908 for rejection of Suit No. 3125 of 2016. That Notice of Motion is pending. The next date is 19th July 2017. Hence the following directions:

- (a) On the scheduled date, 19th July 2017, the Trial Court will issue the necessary directions for filing of replies and rejoinders, if not already done, and set a date for

hearing and final disposal of both Notices of Motion, i.e., the Motion under Order VII Rule 11 as also Plaintiff's Notice of Motion for interim relief.

- (b) Should the Defendants' Motion for rejection of the plaint succeed, there will then be no question of taking up the Plaintiff's Notice of Motion for interim relief on merits.
- (c) If the Defendants' Notice of Motion under Order VII Rule 11 of the CPC is dismissed, then (and only then) the Plaintiff's Notice of Motion will be taken up immediately and will not be adjourned any further.

Appeal from Order St No. 29163/2016 & CA :

8. This Appeal is filed by the original Plaintiffs, one Suresh Madye and another, supporting the Chindarkars. They are aggrieved by an order dated 15th October 2016 declining ad-interim relief. The learned Judge found on the application for ad-interim relief that although specific allegations have been made against individuals those persons were not impleaded. All necessary parties were not joined, i.e., all the Trustees. The question of whether or not an authorization was required is of course a matter that will have to be left open.

9. It is difficult at this stage to find fault with the ad-interim order declining the relief. After all the Notice of Motion is pending.

I am informed however that the Plaintiffs have not yet got numbered that Notice of Motion by removing objections. I am also informed that the Notice of Motion is listed on 20th June 2017. If the office objections are not removed by that date, the Trial Court will dismiss the Notice of Motion on the strength of this order. There is no conceivable reason why the Notice of Motion ought to have been kept pending in objections for so long.

10. Even in this Suit No. 2716 of 2016, there is a pending Notice of Motion under Order VII Rule 11 of the CPC. The same directions will apply. The Order VII Rule 11 Notice of Motion will be heard first and only if it fails will the Plaintiffs' Notice of Motion (yet to be numbered, and subject to it being numbered) be taken up.

11. The Trial Court may in its discretion club all these Notices of Motion together and post them for hearing on a single day since common issues arise and since the parties and their Advocates are common.

12. The Appeal from Order and the Civil Application are both disposed of in these terms with no order as to costs.

First Appeal No. 462 of 2017:

13. There is an additional compilation tendered by the Respondents in First Appeal No. 462 of 2017. It is taken on record.

14. It is only necessary to clarify that given the fact that First Appeal No. 462 of 2017 has been admitted on 4th May 2017, any further operations of the Trust including appointment of Trustees or dispositions or dealings with the Trust property may be made subject to the outcome of this First Appeal.

(G. S. PATEL, J)