

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 29444 OF 2015**

Manoj Ramsevak Sharma	...Appellant
<i>Versus</i>	
Mumbai Municipal Corporation of Gr Mumbai & Anr	...Respondent

Mr Cyrus Ardeshir, i/b Mandar Limaye, for the Appellant.
Mrs Madhuri More, for the Respondent/MCGM.
Mr Shikur G Kudle, for Respondent No.2.
Nirmala R Sharma, Respondent No.2 present in Court.

CORAM: G.S. PATEL, J
DATED: 24th July 2017

PC:-

1. The 2nd Respondent is present in the Court. She was 2nd Defendant to the Suit. The Plaintiff-Appellant is her son. He brought suit *inter alia* saying his mother was trying to transfer the suit premises, a bhelpuri shop, and was trying transfer one of the licences in relation to that shop. The Shops and Establishments Licence was and is in the Plaintiff's name. The Plaintiff's father was a tenant of the shop premises and there is no dispute that it is the Plaintiff today who runs the bhelpuri business. His mother is said to be a co-tenant.

2. By the impugned order of 20th September 2015 the learned Judge of the City Civil Court held *prima facie* that the 2nd Defendant had every right to transfer her interest and that there was no question of maintaining *status quo*. He also held that the 2nd Defendant had a right to apply for transfer of the licence.

3. Regrettably, I am unable to appreciate the basis for this, or to follow the reasoning. Surely the mandate of the Court was to preserve the parties in *status quo* and not to permit, let alone encourage, an entire alteration of that *status quo* pending the Suit.

4. The Municipal Corporation of Greater Mumbai (“MCGM”) has filed an Affidavit of one Dr Bajam, Medical Officer (Health), ‘D’ Ward. In this he says that the Shops and Establishments Licence registered on 23rd September 1970 under No. D/1/5496, was first in the name of one Ramsnehi Badriprasad Sharma. He died on 24th March 1978. The Shops and Establishments Licence was transferred to his son, Ramsevak, on 2nd December 1980. The 2nd Defendant is Ramsevak’s widow. Ramsevak died on 9th April 2010, and the Shops and Establishments Licence was then transferred to his son, the present Plaintiff, Manoj. At the time of this transfer, there was a joint Affidavit stating *inter alia* that the 2nd Defendant had no objection to this transfer. Therefore, the finding of the learned Judge that the 2nd Defendant has “every right” to seek a transfer of this licence is clearly incorrect.

5. The Health Licence No.761427049/761475519 was also transferred in the name of the Plaintiff. At that time, he submitted a

No Objection Certificate of the 2nd Defendant. The 2nd Defendant has since objected to the transfer of these licences in the Plaintiff's name. The Health Licence is now therefore in the name of the 2nd Respondent while the Shops and Establishments Licence is in the name of the Plaintiff.

6. By an order of 6th January 2016, Dhanuka J, on the basis that the parties were attempting a settlement, directed that the Plaintiff and the 2nd Defendant would not create third party rights in respect of the property, and would also not apply for further transfer of either of the licence till the next date. At that time, Dhanuka J noted that both parties had agreed not to proceed with the trial Suit.

7. The 2nd Respondent is present in Court. The Plaintiff is agreeable and even willing to arrive at a settlement of the entire dispute. He is unwell and bedridden, apparently recovering from a recent hospitalization due to diabetes.

8. The 2nd Respondent completely refuses to go and meet him. It is unclear at this stage what the difficulty is between mother and son, especially when the son is willing to initiate the settlement.

9. Mr Kudle insists I make reference to the 2nd Respondent's Reply Affidavit. I should have thought it was best left alone. However, since he insists: In her Reply, the 2nd Respondent makes all the manners of allegations against the Plaintiff. These need to be tested. She also seeks an appointment of the Court Receiver. This is in fact a higher relief than the Plaintiff sought. The 2nd Respondent

has initiated no action or proceeding of her own. It is difficult to see how in the Plaintiff's suit the 2nd Defendant can get such a relief. In Court today, when the Plaintiff is repeatedly offering a settlement or at least shows his willingness to have a discussion, this is repeatedly completely refused by the 2nd Respondent. I see no reason why there could be any further consideration given to anything the 2nd Respondent has to say if she insists on being so utterly non-cooperative in this regard.

10. The result of this is that the impugned order have to be set aside. It will be substituted by a modification of the 6th January 2016 order in the following terms pending the final disposal of the suit:

- (a)** Neither the Plaintiff nor the 2nd Defendant will create any third party rights in respect of the suit property;
- (b)** The Plaintiff agrees and undertakes not to surrender possession of the suit property without prior leave of the Court obtained after at least four weeks' notice to the Advocate for the 2nd Respondent;
- (c)** The Plaintiff will not seek a transfer of the Shops and Establishments Licence in any other name.
- (d)** The 2nd Respondent will not seek to transfer either the Shops and Establishments Licence or the Health Licence to any other name.

11. This order will continue pending the Suit.
12. The Appeal is disposed of in these terms. No costs.

(G. S. PATEL, J.)