

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.277 OF 2016
with
CIVIL APPLICATION NO.357 OF 2016
IN
APPEAL FROM ORDER NO.277 OF 2016**

Mrs. Jayashree Vilas Kalbhor
@ Ms. Jayashree Govind Tikhe & Ors. ... Appellants

vs.

Smt. Vimal Laxman Tikhe & Ors. ... Respondents

Mrs. Brenda D'souza i/b M/s. Kumar & Associates for the Appellants.
Mr. V.P. Vaze i/b M/s. City Legal for the Respondent Nos.1 to 7.
Mr. Mihir Raut i/b Mr. Nitin P. Deshpande for the Respondent Nos.8,9,
10A and 10B.

Coram : **A.A.Sayed, J.**

Date : 06 February 2017

P.C. :

1 On the last occasion a grievance was made that the Appellants do not have a copy of the Will in question. Learned Counsel for the Respondent Nos.1 to 7 states that the Will was part of the record before the trial Court. Be that as it may, a copy of the Will has now been handed over to the Counsel for the Appellants.

2 It is noticed that by the impugned order, the Injunction Application (Exhibit 5) has been rejected, as far back as on 11 March 2013. The Suit is now kept for framing of issues and should be ripe for hearing. In the circumstances, I am not inclined to interfere with the impugned order. In any event, having regard to the facts and circumstances of the

case, I do not find that the discretion exercised by the learned Trial Judge warrants interference.

3 In **Wander Ltd. and Another vs. Antox India P. Ltd. 1990 (Supp) Supreme Court Cases 727** it has been held by the Supreme Court in para 13 and 14 as under:

“13. On a consideration of the matter, we are afraid, the Appellate Bench fell into error on two important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the Appellate Court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocinations as to the quality of Antox's alleged user of the trademark on which the passing-off action is founded. We shall deal with these two separately.

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a

conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Josheph:

*“... These principles are well established, but as has been observed by Viscount Simon in **Charles Osenton & Co. v. Jhanaton** '... the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'.”*

The appellate judgment does not seem to defer to this principle.”

4 The Trial Court has decided the Injunction Application within the framework of the principles mentioned in the afore-quoted judgment of the Supreme Court and the discretion exercised by the Trial Court cannot be said to be arbitrary or perverse or against settled principles of law.

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5 In light of the above, the Appeal from Order is dismissed. No order as to costs.

6 The Civil Application does not survive and the same to stand disposed of.

(A.A.Sayed, J.)

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