

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 29 OF 2018
WITH
CIVIL APPLICATION NO. 4695 OF 2018

Sayyed Kausar Sayyed Pasha Mazhar Jhagirdar .. Appellant

versus

Sayyed Gajanfaruddin Sayyed Habibuddin
and others .. Respondents

WITH
APPEAL FROM ORDER NO. 33 OF 2018
WITH
CIVIL APPLICATION NO. 5092 OF 2018

Chandrakant Gopinath Garad .. Appellant

versus

Sayyed Gujanfaruddin Sayyed Habibuddin
and others .. Respondents

Mr. S. G. Chapalgaonkar, Advocate for appellant in Appeal
from Order No.29 of 2018

Mr. P. S. Chavan, Advocate for appellant in Appeal from
Order No. 33 of 2018

Mr. Milind Patil, Advocate for respondent no. 1 in both Appeals
from Orders

CORAM : SUNIL P. DESHMUKH, J.
DATE : 2nd May, 2018

ORDER :

1. Heard learned counsel for parties.
2. It is the case on behalf of defendants - appellants in appeals from order that under impugned order passed on 16-12-2017 on temporary injunction application bearing Exhibit no. 19 in Special civil suit no. 6 of 2015 by Joint Civil Judge, Senior Division, Osmanabad, a restraint has been put on their rights to enjoy property under erroneous impression based on the version rendered by the plaintiff – respondent no. 1 herein in the absence of appearance on behalf of defendants.
3. It is being submitted on behalf of the appellants that factual position has been absolutely different and same could not be placed before the court effectively since on the date of hearing of temporary injunction application, there had been absence of appearance of advocate appearing for one of the defendants who had been facing difficulties.
4. Learned counsel go on to submit that had an opportunity come appellants way, they would have effectively

placed factual position on record and may be that would have changed the outcome of the decision on temporary injunction application filed by the plaintiff.

5. Learned counsel on behalf of respondent no.1 - plaintiff submits that aforesaid submissions on behalf of the appellants - defendants would not be in accordance with record of pending proceedings before trial court. He submits that it is a deliberate attempt and part of strategy on behalf of the appellants to procrastinate the proceedings and in the meanwhile chance upon and to reap unlawful gains. He submits, the trial court has properly considered the matter on merits and the same is reflected in the order impugned. He submits that as can be gathered from observations by trial court, there is no transfer of property which can be said to be valid in law having regard particularly to the contents of transfer deed and the conduct of the parties. He submits, defendants are shy of facing trial before the court and some defendants have let the matter proceed *ex-parte* and one of the appellants in present two appeals from order had not attended to the proceedings. He, therefore, urges not to indulge into request by appellants.

6. Suit had been instituted in respect of registered transaction of 2012 in 2015 and the same has been pending and despite receipt of notice of temporary injunction application and summons in the suit, it appears, appellants - defendants have been casually approaching the legal proceedings. However, since it is the contention of the appellants that they are in possession of lot of material including *prima facie*, about consideration having been completely passed, they deserve an opportunity before the trial court in temporary injunction hearing of which has taken place in the absence of one of the defendants as his advocate could not make it to the court on the date of hearing in the peculiar circumstances beyond his control.

7. In the circumstances, it would be expedient to let an opportunity to the appellants, of hearing in temporary injunction application and submit their case.

8. In view of aforesaid, impugned order dated 16-12-2017 passed on application - Exhibit 19 in Special civil suit no. 6 of 2015 is set aside making it further clear that, however, restraint as has been put under operative part of impugned

order would continue to operate till decision on the temporary injunction application filed by the plaintiff.

9. In the circumstances, it would also be expedient to accede to the request being made on behalf of respondent no. 1 - plaintiff to direct expeditious conduct of the suit itself and its disposal at an early date. As such, trial court to proceed with suit expeditiously and may dispose of the same preferably within a period of six months from the date of receipt of writ of this order.

10. Learned counsel for plaintiff – respondent no. 1 apprehends that since impugned order is set aside, it may affect pending proceedings in respect of disobedience of said order. It is for the trial court to decide on the same.

11. Appeals from order and civil applications stand disposed of.

SUNIL P. DESHMUKH,
JUDGE

pnd/-