

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 62 OF 2018

Sayyad Ubaidullah Zahoor-Ul-Haaque Biyabani
Age 60 years, Occu. Agri.,
R/o Biyabani House, House No. 11-69,
Habib Hasan Chowk, Ambad,
Dist. Jalna

.. Applicant
(Ori. Deft. No.1)

Versus

1] Sayyad Azharuddin S/o Ziyauddin Biyabani
Age 52 years, Occu. Agri.,
R/o. Biyabani House, House No. 11-79/1-A,
Habib Hasan Chowk, Ambad,
Dist. Jalna

2] Maharashtra State Board of Waqfs
Panchakki, Aurangabad
Through Chief Executive Officer

.. Respondents
(Ori. Deft. No.2)

...
Mr. S.D. Hiwrekar, Advocate for applicant
Mr. R.R. Shaikh, Advocate h/f. Mr. Er.S.S.M.R. Biyabani, Advocate
for respondent no.1

...
CORAM : SUNIL P. DESHMUKH, J.
DATE : 26-03-2018

ORAL JUDGMENT :

1. At the outset, learned counsel for applicant does not insist notice to respondent no.2 looking at the nature and circumstances of the matter and further says that the board may not be necessary to be heard at this juncture looking at aforesaid.

He, therefore, seeks leave to delete respondent no.2. Respondent no.2 accordingly is deleted at the risk and peril of applicant.

2. Notice to respondent no.1. Learned counsel Mr. R.R. Shaikh waives notice for respondent no.1.

3. Rule. Rule made returnable forthwith. By consent of learned counsel for parties, civil revision application is taken up for hearing and final disposal.

4. Respondent no.1 is plaintiff in waqf suit no. 25 of 2018 seeking injunction in respect of property referred to therein making certain averments and contentions. According to plaintiff, present applicant is giving concern to respondent entering institution with plaint an application at exhibit 5 for temporary injunction has been filed. On the very first day i.e. on 03-02-2018, notice to defendant no.1-present applicant and defendant no.2, had been issued and the order on exhibit 5 had been passed. According to learned counsel for respondent no.1, a reasoned order has been passed directing present applicant - defendant no.1 to maintain *status-quo* in respect of possession of plaintiff over suit land. The matter had been returnable on 12-02-2018. On 12-02-2018, defendant no.1 - applicant had appeared and took time to file say and pleadings. The matter had been

scheduled to come up on 20-03-2018. It appears that in the *interregnum, status-quo* had been continued. On 20-03-2018, exhibit-16 had been moved on behalf of the plaintiff for continuation of earlier interim relief or to grant *ex-parte ad-interim* injunction.

5. According to learned counsel for the applicant - defendant no.1, he had thereupon taken time to file say in the matter. It appears that it was expected that on the very day, say would be filed at exhibit-16. However, it appears in second session, no appearance had been caused on behalf of the defendant no.1. During second session, it appears that another application exhibit-17 came to be moved seeking police protection since trouble had been apprehended at the behest of defendant no.1. The tribunal had passed order on exhibit-16 and 17, directing continuation of *status-quo* till 24-04-2018 and issuing letter to Police Inspector, Ambad Police Station, Dist. Jalna to provide police aid to implement order of maintaining *status-quo*.

6. Aggrieved thereby, applicant - defendant no.1 is before this court, contending that even before say could be filed on exhibit-16, and time had been granted to file say, another application for police protection had been filed and without letting opportunity on that, an order came to be passed in the absence of applicant-defendant no.1. Learned counsel submits that even

breathing time had not been allowed by the court while the matter had to come up on 24-04-2018.

7. Mr. Shaikh, learned counsel for respondent no.1 purports to submit that, as a matter of fact, in the morning session, exhibit - 16 was filed and say thereon was expected immediately or at least by afternoon session. As such, according to learned counsel, it does not appear that the counsel for the applicant has been properly informed.

8. Be that as it may. It appears that the application for temporary injunction is to be heard on 24-04-2018 pursuant to the impugned order. In the *interregnum*, there have been few dates, one on the 12th and other on 20th. On 12th, interim relief as had been granted in the shape of *status-quo* to be maintained as directed under order dated 03-02-2018, had been continued. On 20-03-2018, as well, application exhibit - 16 had been made for continuation of interim relief and time to file say had been requested and the application was to be heard. It further appears that, applicant - defendant no.1 had no benefit of receiving exhibit - 17 and order has been passed.

9. In the circumstances, without getting obfuscated and involved into other aspects, it may be expedient that exhibit-5

itself be heard pursuant to the scheduled date and as interim order has been operating since 03-02-2018, it shall continue to operate till 24-04-2018 subject to further orders by trial court.

10. In order to avoid dithering over unwarranted issues which may not augment or rather hinder hearing of exhibit-5, be avoided.

11. In the circumstances, impugned order dated 20-03-2018 to the extent, it directs police protection, is set aside. It is, however, made clear that *status-quo* as operating since 03-02-2018 to continue to operate till 24-04-2018, subject to further orders by the trial court.

12. Civil revision application is accordingly disposed of.

13. Rule made absolute to the extent, as aforesaid.

[SUNIL P. DESHMUKH]
JUDGE

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