

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER No. 27 OF 2017
WITH
CIVIL APPLICATION No. 32 OF 2017
IN
APPEAL FROM ORDER No. 27 OF 2017

Dr. Anand Utture, Trustee ..Appellants.
Balmohan Vidyamandir Trust

Vs

Girish Moreshwar Rege, Trustee
Balmohan Vidyamandir Trust ..Respondent.

WITH
APPEAL FROM ORDER Stamp No. 163 of 2017
WITH
CIVIL APPLICATION Stamp No. 219 of 2017
IN
APPEAL FROM ORDER Stamp No. 163 of 2017
WITH
APPEAL FROM ORDER Stamp No. 1546 of 2017
WITH
CIVIL APPLICATION Stamp No. 1547 of 2017
IN
APPEAL FROM ORDER Stamp No. 1546 of 2017.

Ms Deepa Chavan a/with Mr. Vishwajit Savant I/by M/s Madekar & Co. for the Respondent No.2 in A.O. No.27 of 2017 and A.O. (St) No. 163 of 2017 and appellant in A.O. (St) No. 1546 of 2017.

Prashant Chawan I/by M/s Divekar & Co. for Respondent No.2 in A.O. No.27 of 2017 and A.O. (St) No. 163 of 2017 and A.O. (St) No. 1546 of 2017.

Mr. P.S. Dani, Senior Counsel I/by Ravindra Chile for Appellant in A.O. No.27 of 2017 and Respondent No.4 in A.O. (St) No. 163 of 2017 and Respondent No.3 in A.O. (St) No. 1546 of 2017.

Mr. Vijay Patil I/by Mr. Prabhakar Jadhav for Respondent No.4 in

A.O.

No.27 of 2017 and Respondent No.5 in A.O. (St) No. 163 of 2017 and Respondent No.4 in A.O. (St) No. 1546 of 2017.

Mr. Sudhir Sadavarte I/by Mr. Prashant Raul for Respondent No.6 in A.O. No.27 of 2017 and Respondent No. 7 in A.O. (Stamp) No. 163 of 2017 and Respondent No. 6 in A.O.(Stamp) No. 1546 of 2017.

Mr. Sunip Sen I/by M/s Navdeep Vora and Associates for Respondent No.5 in A.O. No.27 of 2017 and Respondent No.6 in A.O. (Stamp) 163 of 2017 and Respondent No.5 in A.O.Stamp No. 1546 of 2017.

Mr. A.Y. Sakhare, Senior Counsel a/with Rajesh Dattar I/by P.S. Legal for Respondent No. 7 in A.O. No. 27 of 2017 and Appellant in A.O. (St) No. 163 of 2017 and Respondent No.7 in A.O. (St) No. 1546 of 2017.

CORAM : M.S. SONAK, J.

DATE : 13th August, 2018.

P.C.:-

- 1) Heard the learned Counsel for the parties.
- 2) Since, the challenge in all these appeals is to the order dated 4th January, 2017 in Notice of Motion No.4473 of 2016 in Suit No. 2617 of 2016, it is only appropriate that all these appeals are disposed of by a common order.
- 3) By the impugned order the learned Trial Judge has granted the Respondent No.1 (plaintiff) ad-interim reliefs in terms of prayer clauses (a), (b) and (c) of the notice of motion,

which read as follows :-

(a) Pending the hearing and final disposal, this Hon'ble Court be pleased to direct the defendants to open the office premises and hand over the same to the plaintiff forthwith and put the plaintiff in possession thereof;

(b) That pending the hearing and final disposal of the suit this Hon'ble Court be pleased to restrain defendants by an interim order and injunction from desisting to act on the purported resolution dated 4/9/2016.

(c) That pending hearing and final disposal of the suit, this Hon'ble Court be pleased to restrain the defendants by a temporary injunction from any manner acting upon or in pursuance of the purported resolution dated 4/9/2016 referred to in prayer clause (a) above;

(d) Ad-interim and interim reliefs in terms of prayer (a) to (c) above;

(e) For any other reliefs in the nature and circumstances of the case may require;

(f) For costs;

4) By order dated 25th January, 2017, this Court had directed the parties to maintain status-quo in the matter.

In the context, in which the said order was passed, it is apparent that this Court had, in fact, stayed the operation of the impugned order dated 4th January, 2017. This

position continues till date. In fact, on one of the occasions, the learned Counsel for the Respondent No.1 (plaintiff) had also made a statement that the status-quo shall continue.

5) The Notice of Motion No. 4473 of 2016 is now ripe for hearing. In fact, Mrs Chavan, the learned Counsel for one of the appellants states that the same is posted for hearing on 14th August, 2018.

6) Since, the interim relief in this matter is continued till this date and the notice of motion is ripe for hearing it is appropriate that this position continues until the notice of motion is heard and disposed of on its own merits and in accordance with law.

7) Even otherwise, prima facie, it is necessary to observe that mandatory reliefs of this nature cannot be granted at the ad-interim stage unless an exceptional case is made out. Now that the notice of motion is ripe for hearing, it is not necessary to make any further observations in this regard.

8) The learned Counsel for the appellants,

however, point out that the Respondent No.1 (plaintiff) in the meanwhile has filed applications before the Provident Fund Authorities stating that he has retired as a Director on attaining the age of superannuation. Mr. Dani submits that if this is the position, according to the Respondent himself, then, nothing further will really survive in the Notice of Motion No. 4473 of 2016.

9) Mr. Kapse, the learned Counsel for the respondent (plaintiff) submits that he can explain the position arising out of the applications filed before the Provident Fund Commissioner.

10) At this stage, since this Court is merely the merely directing the learned Trial Court to dispose of the Notice of Motion on its own merits, there is no reason for this Court to go into all these issues. No doubt, the learned Trial Court will take into consideration all these issues as well as the rival contentions on these issues in deciding the notice of motion on its own merits and in accordance with law.

11) Accordingly, the impugned ad-interim order is

formally set aside and the learned Trial Court is directed to dispose of the notice of motion on its own merits and in accordance with law without being influenced by any of the observations in the impugned order which in any case is set aside by the present order. The Notice of Motion is to be decided on its own merits and in accordance with law after taking into consideration the rival contentions as articulated before me today as well as the other rival contentions which arise in the matter.

12) The learned Trial Judge is requested to dispose of the Notice of Motion as expeditiously as possible and in any case within a period of three months from today.

13) The appeals are disposed of in the aforesaid terms. There shall be no order as to costs.

14) All concerned to act on the basis of an authenticated copy of this order.

15) All civil applications are disposed of.

(M.S. SONAK, J.)