

Sarnobat

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

**APPEAL FROM ORDER (STAMP) NO. 15615 OF 2018
ALONGWITH
CIVIL APPLICATION (STAMP) NO. 15619 OF 2018**

M/s. Shah Housecon Pvt. Ltd. & Anr. ... Appellants
Vs.
Vikas Gajanan Kamble & Ors. ... Respondents

Mr. Pravin Samadani with Mr. Mayur Khandeparkar, Mr. Amogh Singh, Mr. Akash Lodha, Ms. Disha Shetty I/by Wadia Gandhi & Co., for the Appellants.

Mr. Omprakash Pandey, for Respondent No.1.

Ms. Vrushali Maindad I/by Abhijeet A. Desai, for the Respondent No.2.

CORAM : V. M. DESHPANDE, J.

DATE : 17th JULY, 2018.

P. C. :

1. This appeal against the order dated 15th November, 2016 by which pending draft Notice of Motion which is now registered as Notice of Motion No. 518 of 2016 in S.C. Suit No. 2958 of 2016 the Court below has granted ad-interim relief in terms of prayer clause (a) of the draft Notice of Motion till next date and ultimately it is continued from time to time and lastly the Court has extended the relief on 2nd July, 2018 and now Notice of Motion is fixed for hearing on 21st July, 2018.

2. At the outset Mr. Pandey the learned counsel appearing for

the respondent has raised preliminary objection by pointing out that there is no application for condonation of delay for challenging the order dated 15th November, 2016. His second objection is that the AO is still under the office objections. He submits that unless and until there is an application for condonation of delay, the Court should not proceed with the matter.

3. Normally the submission of Shri Pandey on the first count had force. In so far as the other, it concerns about office objections, it is between the Court and litigant. Looking to the nature of the office objections mentioned by the Registry, I overruled the office objections raised by the Registry. The office is directed to register the appeal.

4. In so far as the condonation of delay is concerned I would like to place on record the undisputed facts those emerged during the course of the hearing. 1) The respondent No. 1 filed a Suit before the Court below i.e. Suit No. 2958 of 2016 without joining the present appellant as defendant. 2) Though the appellant was a necessary party, he was not joined as a party defendant in the Suit and on 15th November, 2016 in the absence of the present appellant ad-interim order is passed.

5. The appellant herein ultimately filed a chamber summons on 17th March, 2017 for impleading it as the defendant under Order 1 Rule 10 of Code of Civil Procedure. The appellant was required to

approach before this Court for getting his said chamber summons decided as expeditiously as possible and ultimately only after the intervention of this Court in Writ Petition No. 13759 of 2017 on 11th January, 2018, ultimately on 9th April, 2018 the chamber summons No. 491 of 2017 of the present appellant was allowed with a direction to the present respondent/plaintiff to make amendment in the plaint by adding the appellant as defendant to the Suit within two days from the order dated 9th April, 2018.

6. Though it was obligatory on the part of the respondent/plaintiff to make amendment in the cause title as directed within a period of two days, for the reasons best known to the respondent/plaintiff it remained to be done till 2nd July, 2018 and only on 2nd July, 2018 the present appellant is joined as the party defendant in the Suit in which ad-interim order dated 15th November, 2016 prejudicially to the appellant was passed.

7. In view of the aforesaid I am of the firm view that, this appeal cannot be rejected and/or shown the door only on the ground that application for condonation of delay is not filed. Therefore, though the objection is taken by Shri Pandey that the appeal is not maintainable in view of non filing of application for condonation of delay, I overruled his submission and condoned the delay in view of the facts set out in the preceding paragraphs.

8. Much to state by learned Senior advocate Shri Samadani for attacking the order passed by learned Judge of the Court below and he prays for vacation of that particular order. Admittedly, the stay order is in operation from 15th November, 2016.

9. Presently, after joining the present appellant as party defendant in this Suit the position emerges is that he is a party in Suit as well as in a party to the Notice of Motion which is still pending before the Court below.

10. If all the submissions of Shri Samadani the learned Senior advocate and Shri Pandey learned counsel for the respondent are considered at this stage, in my view it will be nothing but pre-judging the issue which is still pending before the Court below. It is always open for the present appellant to put forth its case before the Court wherein now it is the party to the Suit. In that view of the matter, I propose to pass the following order so that, it will not cause prejudice to any of the parties by inviting any of the observations made by this Court. Hence, the order;

ORDER

- I) The learned Trial Court on whose file Notice of Motion No. 518 of 2016 in S.C. Suit No. 2958 of 2016 is pending shall decide the said Notice of Motion by giving opportunity of hearing within a

period of Ten days from the receipt of this order.

- II) It is made clear that neither the respondent No.1/
plaintiff nor the appellant shall try to adjourn the
matter on any ground.
- III) It shall not be open for any of the parties to Notice of
Motion to make a submission before the Court
below that they want adjournment for changing of
the advocate.
- IV) The Trial Court shall decide the Notice of Motion
peremptorily by giving precedence to this Notice of
Motion by giving opportunity to the parties to the
Notice of Motion.
- V) If the learned Judge of the Court below noticed that
plaintiff is making dilatory tactics to prolong the
hearing then, the learned Trial Court is directed to
make necessary order effecting vacation of ad-
interim stay granted on 15th November, 2016.
- VI) The period of Ten days will be commenced from
21st July, 2018 since according to both the parties
the Court below has kept the matter for hearing on
21st July, 2018.

VII) With this observations, the appeal is disposed of.

VIII) All Civil Applications are disposed of.

[V. M. DESHPANDE,J.]