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

**APPEAL FROM (ST) NO. 30425 OF 2018
WITH
CIVIL APPLICATION (ST) NO.30543 OF 2018**

Ladislaus Pereira & Ors ... Appellants

V/s.

Darryl D'Monte and ors ... Respondents

Mr. Prasad K. Dhakephalkar, Senior Advocate a/w Mr. Jaideep Mitra and Mr. Swapnil Patil i/by A.S.Khan & Associates, for the appellants.

Mr. Sanjay Singhvi, Senior Advocate a/w Mr. Manmohan A. Amonkar, & J. Kadantot for respondent Nos. 1 to 4.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 1st NOVEMBER, 2018.

P.C. :

1] Heard learned counsel for the appellants and respondents.

2] This Appeal from Order takes an exception to the order dated 17th October, 2018, passed by the City Civil Court, Dindoshi, Mumbai, in Draft Notice of Motion in S.C. Suit No.3036 of 2018.

3] The said Notice of Motion and the suit was filed by the appellants. In the Notice of Motion, ad-interim relief was sought, restraining respondents from implementing the resolution passed by the General Body of Club permitting celebration of the festival, in the Club premises.

4] The grievance of the learned Counsel for the appellants is that the premises at which festival is to be held are leasehold. The indenture in that behalf is specifically for the purpose of tennis court and not used to be for any other purpose, especially for the commercial purpose. In this respect, learned counsel for appellant brought to the notice of various clauses contained in the Indenture of lease to submit that if premises are reserved for the purpose of Tennis Court, respondent cannot use the same for the purpose of festival and commercial activities. Accordingly the Managing Committee of the Club has rejected the permission, but despite that the General Body has passed the resolution granting such permission and without considering this fact the trial Court has refused to grant ad-interim relief. Further it is submitted that in case of breach of the terms and conditions in the lease deed, the lease is liable to be terminated and to that effect, even letter is received from Salsette Catholic Co-operative Housing Society Ltd. Hence according to learned counsel for the

appellant, the trial Court should have granted such ad-interim relief as Bandra Food Festival is likely to be held on 17th and 18th November, 2018.

5] Per contra, learned counsel for respondent has pointed that such festival is being held since last 7 years and it is not some new activity, undertaken in this year. Moreover, it is submitted that even if the Managing Committee has passed the resolution refusing the permission for holding of such festival, the General Body has passed the resolution with overwhelming majority of 482 members voting in favour of the resolution and only 8 members including, present appellants, opposing the same.

6] In my considered opinion also, when the General Body has passed resolution with majority of members granting permission for holding of such festival, that too knowing consequences of the same, that if the premises are used for commercial purpose, then lease is likely to be terminated. The no fault can be found on the part of the trial Court, in not granting ad-interim relief. At this stage, we cannot enter into that aspect especially when respondents are holding such festival since last several years and there is no evidence on record, to show that festival is for commercial purpose. According to learned

counsel for respondent it is held for social cultural purpose.

7] The terms and conditions which were imposed by the Managing Committee for holding such festival, respondent has shown readiness and willingness to abide by those conditions.

8] In view of this, at this stage, no reason is made out to interfere in the impugned order passed by the trial Court. Hence, the Appeal stands dismissed.

9] In view of dismissal of Appeal itself, pending Civil Application therein no more survives and the same is accordingly disposed off.

[DR.SHALINI PHANSALKAR-JOSHI, J.]