

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (ST.) NO. 32938 OF 2017
WITH
CIVIL APPLICATION (ST.) NO. 32940 OF 2017
IN
APPEAL FROM ORDER (ST.) NO. 32938 OF 2017**

Mr.Milind Vithal Chindarkar

...Appellant

Versus

Dr.Jaykumar Janardan Shirsekar & Ors.

...Respondents

.....

Mr. Uday P.Warunjikar i/b. Mr. Vinay M.Bhate for the Appellant.
Mr.P.V.Satam for Respondent Nos. 1 to 3.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATE : JANUARY 09, 2018**

P.C.:

1. This Appeal from Order is directed against the order dated 10th November, 2017 passed by the learned Judge, City Civil Court, Dindoshi, Mumbai in Notice of Motion No. 2045 of 2017 in S.C.Suit No. 1562 of 2017.

2. Notice of Motion No. 2045 of 2017 was filed by the respondents/defendants against the appellant/plaintiff. The

appellant/ original plaintiff has filed the Suit for due process of law. In the suit, the appellant/plaintiff has prayed for injunction against the respondents/defendants that they should not remove the appellant/ plaintiff without following due process of law. In the said Suit, the respondents/ defendants have filed Notice of Motion under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint on the ground that it is a Trust property and permission of the Charity Commissioner has not been obtained by the plaintiff. The trial Court while deciding the said Notice of Motion did not grant relief as prayed in the impugned Notice of Motion. The relief at prayer clause (a) was in respect of the jurisdiction, however, it was not granted. At prayer clause (d) of the said Notice of Motion, the defendants have sought injunction that the plaintiff be restrained from entering the suit premises. The trial Court has granted relief only in terms of prayer clause (d). As pointed out by the learned Counsel for the appellant, such relief cannot be prayed and cannot be granted in view of Order 39 Rule 1 (a) of the Code of Civil Procedure.

3. The submissions made by the learned Counsel for the appellant are correct. Hence, Appeal from Order is allowed. The order passed by the learned Judge of the trial Court granting

ad-interim relief in terms of prayer clause (d) of Notice of Motion No. 2045 of 2017 is hereby set aside.

4. With this, Appeal from Order is disposed of. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)