

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1077 OF 2010
IN
APPEAL NO. 1356 OF 1998

Boman Dinyar Faramarzi and anr. ... Applicants/ Appellants.
V/s.
Banoo Merwan Aref and ors. ... Respondents.

Mr. Ganesh Ambekar I/b Thakore Jariwala and Associates for the Applicants/Appellants.
Mr.Vatsal Shah and Mr. Dipak Khilari I/b Mr. Chetan N. Mehta for Respondent Nos.2 to 5.

CORAM : A.S. OKA AND M.S. SONAK, JJ.
DATE : 3rd SEPTEMBER 2018.

P.C.:

- 1] Heard the learned counsel appearing for the parties.
- 2] The present Notice of Motion is taken out in a disposed of appeal preferred against an interim order in a suit. The appeal was disposed of by the judgment and order dated 11th March 2010 passed by a Division Bench of this Court. The appeal was preferred by the original 1st and 2nd defendants. The subject matter of the challenge in the appeal was the order dated 16th October 1998 passed by the learned Single Judge in a Notice of Motion taken out by the original plaintiffs. After appeal was admitted, the Division Bench of this Court passed an interim order dated 30th January 1999 in terms of prayer clause (a) of Notice of Motion No. 1876 of 1996. By the said order, the appellants in the appeal were directed to deposit with the Prothonotary and Senior Master an amount of

Rs.8 Lakhs. The appellants were directed to deposit with the Prothonotary and Senior Master, a sum of Rs.27,000/- per month from January 1999 onwards and the respondents Nos.1 to 4 in the appeal were permitted to withdraw 50% amount deposited. While disposing of the appeal finally by the order dated 11th March 2010, the Division Bench of this Court continued the interim order dated 30th January 1999 till disposal of the suit and the appellants were directed to clear the arrears, if any, in terms of the said order within a period of six weeks. The prayers in this Notice of Motion is for setting aside the order dated 11th March 2010 by which the appeal was disposed of and for restoration of the appeal.

3] The learned counsel appearing for the applicants (original plaintiffs) submitted that though the hearing of the suit was expedited by order dated 11th March 2010, for one reason or the other, the hearing could not proceed. He states that a Notice of Motion is taken out by the appellants in the appeal for grant of permission to file written statement is pending. He submits that as a result of continuation of the order dated 30th January 1999, the 1st and 2nd defendants (the appellants) continued to run lucrative business of restaurant by paying a paltry amount. He submitted that the reasons for absence of the advocate for the applicants, who are the respondents in the appeal, at the time of hearing of the appeal have been set out in the affidavit in reply to the appeal.

4] We have considered the submissions. As stated earlier, the appeal was preferred by the 1st and 2nd defendants for challenging the interim order dated 16th October 1998. The result of the judgment and order

dated 11th March 2010 in appeal is that the impugned interim order passed by the learned Single Judge was substituted by the interim order dated 30th January 1999 passed in the appeal and the said interim order is to operate till the disposal of the suit. The suit is of the year 1996.

5] Thus, the effect of the judgment dated 11th March 2010 while disposing of the appeal is that the order dated 30th January 1999 passed by the Division Bench will have to be treated as the interim order passed by the learned Single Judge in the suit.

6] If with the passage of time, there are change in circumstances warranting vacation of the order dated 30th January 1999 or modification thereof, the present applicants can always apply before the learned Single Judge for appropriate relief as the order dated 30th January 1999 is an interim order in the suit. If a case is made out of change in circumstances warranting modification of the said order, the learned Single Judge can always do so, in accordance with law.

7] In the circumstances, it is not necessary to entertain this Notice of Motion for setting aside the judgment in the appeal and for restoration of the appeal. Subject to what is observed above, the Notice of Motion is disposed of. All contentions on merits are kept open.

(M. S. SONAK, J.)

(A.S.OKA, J.)