

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMMERCIAL APPEAL (L) NO.534 OF 2018
IN
NOTICE OF MOTION NO.1939 OF 2018**

Shailesh Nagindas Shah and others	..Appellants
Versus	
Rubi Ventures Pvt. Ltd. and others	..Respondents

**AND
NOTICE OF MOTION (L) NO.1282 OF 2018
WITH
NOTICE OF MOTION (L) NO.1290 OF 2018
IN
COMMERCIAL APPEAL (L) NO.534 OF 2018
IN
NOTICE OF MOTION NO.1939 OF 2018**

Shailesh Nagindas Shah and others	..Applicants
Versus	
Rubi Ventures Pvt. Ltd. and others	..Respondents

**AND
COMMERCIAL APPEAL (L) NO.537 OF 2018
IN
NOTICE OF MOTION NO.1948 OF 2018**

Shailesh Nagindas Shah and others	..Appellants
Versus	
Sanjay Rasiklal Shah and others	..Respondents

**AND
NOTICE OF MOTION (L) NO.1285 OF 2018
WITH
NOTICE OF MOTION (L) NO.1289 OF 2018
IN
COMMERCIAL APPEAL (L) NO.537 OF 2018**

IN
NOTICE OF MOTION NO.1948 OF 2018

Shailesh Nagindas Shah and others	..Applicants
Versus	
Sanjay Rasiklal Shah and others	..Respondents

AND
COMMERCIAL APPEAL (L) NO.538 OF 2018
IN
NOTICE OF MOTION (L) NO.1137 OF 2018

Shailesh Nagindas Shah and others	..Appellants
Versus	
Dordawala Family Trust and others	..Respondents

AND
NOTICE OF MOTION (L) NO.1283 OF 2018
WITH
NOTICE OF MOTION (L) NO.1286 OF 2018
IN
COMMERCIAL APPEAL (L) NO.538 OF 2018
IN
NOTICE OF MOTION (L) NO.1137 OF 2018

Shailesh Nagindas Shah and others	..Applicants
Versus	
Dordawala Family Trust and others	..Respondents

AND
COMMERCIAL APPEAL (L) NO.539 OF 2018
IN
NOTICE OF MOTION NO.1949 OF 2018

Shailesh Nagindas Shah and others	..Appellants
Versus	
Ramchandra Hiralal Shah and others	..Respondents

AND
NOTICE OF MOTION (L) NO.1284 OF 2018
WITH
NOTICE OF MOTION (L) NO.1287 OF 2018
IN
COMMERCIAL APPEAL (L) NO.539 OF 2018
IN
NOTICE OF MOTION NO.1949 OF 2018

Shailesh Nagindas Shah and others	..Applicants
Versus	
Rameshchandra Hiralal Shah and others	..Respondents

AND
COMMERCIAL APPEAL (L) NO.542 OF 2018
IN
NOTICE OF MOTION (L) NO.1323 OF 2018

Shailesh Nagindas Shah and others	..Appellants
Versus	
Shah Steel Impex Pvt. Ltd. and others	..Respondents

AND
NOTICE OF MOTION (L) NO.1295 OF 2018
WITH
NOTICE OF MOTION (L) NO.1296 OF 2018
IN
COMMERCIAL APPEAL (L) NO.542 OF 2018
IN
NOTICE OF MOTION (L) NO.1323 OF 2018

Shailesh Nagindas Shah and others	..Applicants
Versus	
Shah Steel Impex Pvt. Ltd. and others	..Respondents

AND
COMMERCIAL APPEAL (L) NO.543 OF 2018
IN
NOTICE OF MOTION NO.1950 OF 2018

Shailesh Nagindas Shah and others	..Appellants
Versus	
Mallinath Shares and Stock Private Limited and others	..Respondents

AND
NOTICE OF MOTION (L) NO.1297 OF 2018
WITH
NOTICE OF MOTION (L) NO.1298 OF 2018
IN
COMMERCIAL APPEAL (L) NO.543 OF 2018
IN
NOTICE OF MOTION NO.1950 OF 2018

Shailesh Nagindas Shah and others	..Applicants
Versus	
Mallinath Shares and Stock Private Limited and others	..Respondents

AND
COMMERCIAL APPEAL (L) NO.545 OF 2018
IN
NOTICE OF MOTION NO.1945 OF 2018

Shailesh Nagindas Shah and others	..Appellants
Versus	
Haldiram Foods International Private Limited and others	..Respondents

AND
NOTICE OF MOTION (L) NO.1303 OF 2018
WITH
NOTICE OF MOTION (L) NO.1304 OF 2018
IN
COMMERCIAL APPEAL (L) NO.545 OF 2018
IN
NOTICE OF MOTION NO.1945 OF 2018

Shailesh Nagindas Shah and others

..Applicants

Versus

**Haldiram Foods International Private Limited
and others**

..Respondents

Mr. Pravin Samdani, Senior Advocate a/w Mr. Aniruddha Joshi, Mr. Amogh Singh & Ms. Krishna Raja I/by M/s. LJ Law, Advocate for the Appellants/Applicants in COMAPL No.534 of 2018.

Dr. Birendra Saraf a/w Ms. Krishna Raja & Ms. Kanizz Munjee I/by M/s. LJ Law, Advocate for the Appellants/Applicants in COMAPL No.542 of 2018, COMAPL No.543 of 2018 & COMAPL No.545 of 2018.

Mr. Aniruddha Joshi a/w Ms. Krishna Raja I/by M/s. LJ Law, Advocate for the Appellants/Applicants in COMAPL No.537 of 2018 & 539 of 2018.

Ms. Krishna Raja I/by M/s. LJ Law, Advocate for the Appellants/Applicants in COMAPL No.538 of 2018.

Dr. Milind Sathe, Senior Advocate a/w Mr. Saket Mone, Mr. Vishesh Kalra, Mr. Subit Chakraborti & Ms. Neha Joshi I/by M/s. Vidhi Partners, Advocate for Respondent No.1 in COMAPL No.538 of 2018.

Mr. Karl Tamboly a/w Mr. Saket Mone & Mr. Vishesh Kalra & Mr. Subit Chakraborti & Ms. Neha Joshi I/by M/s. Vidhi Partners, Advocate for Respondent Nos.1 to 3 in COMAPL No.537 of 2018 & for Respondent No.1 in COMAPL No.539 of 2018.

Mr. Saket Mone a/w Mr. Vishesh Kalra, Mr. Subit Chakraborti & Ms. Neha Joshi I/by M/s. Vidhi Partners, Advocate for Respondent No.1 in COMAPL No.543 of 2018 & COMAPL No.534 of 2018, COMAPL No.542 of 2018.

Mr. Abhishek Prabhu, Advocate for Respondent No.2 in COMAPL No.534 of 2018, COMAPL No.538 of 2018, COMAPL No.539 of 2018, COMAPL No.542 of 2018, COMAPL No.545 of 2018, COMAPL No.543 of 2018 & for Respondent No.4 in COMAPL No.537 of 2018.

Mr. Amit I. Sheth & Mr. Kailas Surve, Advocate for Respondent No.3 in COMAPL No.534 of 2018, COMAPL No.538 of 2018,

COMAPL No.539 of 2018, COMAPL No.542 of 2018, COMAPL No.545 of 2018 & COMAPL No.543 of 2018 & for Respondent No.5 in COMAPL No.537 of 2018.

Mr. Sandeep Maurya, Advocate for Respondent No.4 in COMAPL No.534 of 2018, COMAPL No.538 of 2018, COMAPL No.539 of 2018, COMAPL No.542 of 2018, COMAPL No.543 of 2018, COMAPL No.545 of 2018 & for Respondent No.6 in COMAPL No.537 of 2018.

Mr. S. S. Jain a/w Mr. Komal Khushlani I/by M/s. Crawford Bayley & Co., Advocate for Respondent No.1 in COMAPL No.545 of 2018.

Ms. Dhruvi Kapadia a/w Mr. R. Y. Sirsikar, Advocate for MCGM.

CORAM : B. R. GAVAI &

RIYAZ I. CHAGLA, JJ.

DATE : 11th DECEMBER, 2018

P.C.

1] For the reasons stated in affidavit in support of the Notices of Motion for condonation of delay, the Notices of Motion are allowed. Delay is condoned.

2] The Appellants challenge the order dated 18th July 2018, vide which the learned Single Judge has enjoined Defendant Nos.4 to 7 from creating third party rights in respect of the suit project. By the said order, Defendant Nos.4 to 7 were also directed to file their disclosure affidavit in terms of prayer clause (e). By the order dated 23rd July 2018, Defendant Nos.2 and 3 are also directed to file

disclosure affidavit in terms of prayer clause (e). Vide the said order dated 23rd July 2018, Defendant Nos.2, 3 and 4 to 7 have been directed not to create any third party rights in respect of their personal assets. By the subsequent order dated 9th August 2018, the learned Single Judge has granted liberty to the Defendants to move the Court seeking modification of the order dated 18th July 2018. In the meanwhile, the learned Judge directed the earlier order to continue. By the said order, the learned Judge has also observed that by consent, the matter is to be treated as part heard.

3] We have heard Mr. Pravin Samdani, learned Senior Counsel appearing on behalf of the Appellants i.e. Defendant Nos.4 to 7, as also Dr. Birendra Saraf. It is the contention of the learned Senior Counsel for the Appellants that without the Plaintiffs making case for granting attachment before judgment, by a drastic order, the entire properties of the Appellants as well as their firms have been injuncted. It is submitted that by blanket order of injunction, Defendant No.1 firm as well as the Defendant's partners have been injuncted from not dealing only with the suit property, but also other properties, in which they are having stakes. It is submitted

that such a drastic order of injunction has a effect of totally stalling the entire business of the Appellants. It is submitted that monetary claim towards damages of the Plaintiffs is not more than 35 crores. As against this, the value of the property of the Defendants in the suit property itself is more than 50 crores, as per the method of valuation adopted by the Plaintiffs. It is submitted that apart from that, a list of the properties which is owned by the Defendant No.1 and other Defendants has been given at page 589 of the paperbook. The same is alongwith the affidavit dated 23rd August 2018 in the Motion. It is submitted that the Plaintiffs in collusion with Defendant Nos.2 and 3 have filed the present suit and the Motion, as could be evident that, initially only injunction was sought against Defendant Nos.4 to 7.

4] Dr. Milind Sathe, learned Senior Counsel appearing on behalf of one of the Plaintiffs stated that learned Judge after taking into consideration the conduct of the Defendants has granted an injunction by order dated 18th July 2018. He submits that the learned Judge prima-facie came to a conclusion that the unauthorized construction was carried on by the Defendants and

therefore has granted an injunction. He submits that as a matter of fact, learned Judge himself vide order dated 9th August 2018, has granted liberty to the Defendants to move the Court seeking modification of the order dated 18th July 2018.

5] Mr. Pravin Samdani, learned Senior Counsel appearing for the Appellants, in rejoinder says that though the liberty was granted to the Defendants for modification of the order dated 18th July 2018 and though invoking the said liberty, the Defendants have applied for vacating the ad-interim orders and moved the Court time and again, on account of huge pendency before the learned Single Judge, the matters could not be heard.

6] We do not propose to go into merits of the rival claims at this stage. However, we are of the considered view that the approach adopted by the learned Single Judge is not in tune with the settled legal position. Their Lordships of the Apex Court in the case of Shiv Kumar Chadha Vs. Municipal Corporation of Delhi and others¹ have laid down that unless the Plaintiff makes out a case based on prima-facie case, balance of convenience and

¹ (1993) 3 SCC 161.

irreparable injury, an order of injunction should not be granted.

7] In the present case, though an affidavit in reply is filed on behalf of Defendant Nos.4 to 7, dated 9th July 2018 and though the Defendants have pleaded as to why an order of injunction should not be granted against them, there is not even a whisper in the order, which is passed after nine days from the filing of the affidavit. We may not say that what has been stated by the Defendants in the said affidavit is to be accepted as it is, but the least that is expected is that the learned Judge should give reasons, may be brief, as to why Plaintiffs makes out a case for grant of injunction. We are constrained to say that grant of such a drastic injunction without assigning reasons in support of such order is not permissible under the law.

8] There is another reason as to why we find that the approach adopted by the learned Single Judge is not in accordance with law.

9] The Apex Court in catena of decisions has not only directed the Judicial Officers to give reasons, but also insisted on the

authorities exercising quasi Judicial powers to give reasons in support of orders they propose to pass. A reference in this regard could be made to the judgments of the Hon'ble Apex Court in the cases of *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India and another*² and *State of Orissa Vs. Dhaniram Luhar*³. It is held by Their Lordships of the Hon'ble Apex Court that reasons are live links between considerations by the Judicial authorities and the conclusion arrived at. It has been further held that the reasons are necessary to be given in an order, so that the party knows, what has weighed with the Judge while passing the order. It has further been held that reasons are also necessary to be given so that the Appellate Court knows as to what weighed with the Trial Judge in passing the order. This is lacking in the present matter.

10] However, since the learned Single Judge vide order dated 9th August 2018, has himself granted liberty to move before him for modification of the order dated 18th July 2018, which liberty has been invoked by the Appellants, we request the learned Single

² AIR 1976 SC 1785.

³ (2004) 5 SCC 568.

Judge to consider the application of the Appellants for modification of the orders.

11] We clarify that, if the learned Single Judge is not in a position to give fulfilled hearing, he would consider the request of the Appellants for restricting injunction only insofar as the claim of the damages made by the Plaintiffs in the plaint.

12] Needless to state that if the Appellants are in a position to point out the properties which are unencumbered and which are worth more than 35 crores, the learned Single Judge would take into consideration that aspect of the matter for restricting the order of injunction. The Appeals stand disposed of in the aforesaid terms.

13] In view of disposal of Appeals, the Notices of Motion for stay, do not survive and accordingly stand disposed of.

[RIYAZ I. CHAGLA, J.]

[B. R. GAVAI, J.]