

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Appeal from Order (ST) NO.2550/2019

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
Mr. Deepak Chitnis – Chiparikar i/b. Deepak Chitnis – Chiparikar & Co. for the Appellant Mr. Prasad Dani, Senior Advocate with Mr. D. V. Deokar and Ms. Jaylaxmi C. Gaud i/b M/s. Parimal K. Shroff & Co. for Respondent No.1.	

CORAM : K.K.TATED, J.
DATED : MAY 3, 2019

P.C.

Heard. By this Appeal from Order, the Appellant – Plaintiff challenges the order dated 14.12.2018 passed by the Bombay City Civil Court in Notice of Motion NO.2432/2013 in Suit No.632/2013 dismissing their Notice of Motion for permanent injunction and for appointment of a Court Commissioner.

2 The learned counsel for the Appellant submits that Notice of Motion No.2432/2013 was not on board for hearing on 14.12.2018 before the Trial Court. In fact, some other Notice of Motion was heard. Hence, the learned counsel for the Appellant has filed praecipe dated 18.12.2018 to recall the

order dated 14.12.2018 and for hearing of Notice of Motion No.2432/2013 on merits. He submits that the Trial Court, by order dated 30.03.2019 held that as the Appellant has already filed the Appeal from Order, there is no question of deciding the praecipe filed by them. The said order dated 30.03.2019 passed by the Trial Court reads thus:

“None for Plaintiff . Adv.Ms.Jaylaxmi Gaud for Defendant No.1 and 2 present. KB. Later On. Adv. Deepak Chitnis for Plaintiff present. Adv. Ms. Jaylaxmi Gaud for Defendants No.1 and 2 present. Heard Adv.Chitnis on precipe dt.18/12/2018 seeking recalling of order dt.14/12/2018 passed by my predecessor on Notice of Motion No.2432/13. Adv. Ms. Gaud for Defendant No.1 and 2 submitted that her senior will be replying the arguments and that an appeal from order is also filed by the Plaintiffs before the Hon’ble High Court. She sought time. Time is granted. Adv.Chitnis submitted that the A.O. Bears Stamp No.2550/19. Adj. To 22/04/2019 for Reply and hearing on Exh.3.”

3 On the other hand, the learned senior counsel for the Respondent - Defendant submits that there is one more Notice of Motion No.3574/2018 pending for hearing. He submits that let the Trial Court to decide

both these Notices of Motion on merits as early as possible.

4 Considering these facts, following order is passed:

a. Order dated 14.12.2018 passed by the Trial Court in Notice of Motion NO.2432/2013 in Suit No.632/2013 is set aside.

b. The Bombay City Civil Court, Mumbai is directed to hear Notice of Motion No.2432/2013 and another Notice of Motion No.3574/2018, as early as possible, without influencing the fact of filing the present Appeal from Order.

c. All contentions of the parties are kept open.

d. Liberty granted to the parties to file additional pleadings, if any, before the Trial Court.

e. Appeal from Order stands disposed of accordingly. No order as to costs.

(K.K.TATED, J.)