

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.719 OF 2019

WITH

CIVIL APPLICATION NO.859 OF 2019

IN

APPEAL FROM ORDER NO.719 OF 2019

Santosh Nimbale & Ors.

...Appellants

vs.

Maharashtra Rajya Krushi Panan Mandal

...Respondent

.....

Mr. Ajay Basutkar, a/w. Mr. Aniket Ransubhe, for the Appellants.

Mr. Shailendra S. Kanetkar, for the Respondent.

.....

CORAM : S.C. GUPTE, J.

DATED : 26 AUGUST 2019

P.C. :

. This appeal from order challenges a common order passed by District Court at Pune on two interim applications, being Exhibits 6 and 30. The Appellants (original defendant nos. 2 and 13) had filed an application (Exhibit 6) for stay of execution of a decree passed in Regular Civil Suit No.2/2003, whereas Respondent Nos. 1 to 11 (original plaintiffs) had filed an application (Exhibit 30) to restrain the Appellants (the defendants) from carrying out construction on the suit property. The plaintiffs were farmers, who were members of a society by the name of Ashok Sahakari Samudayik Shetki Sangh Maryadit. That society went into liquidation. The liquidator appointed of the society executed a lease

deed in favour of the Respondent, who is a State authority. As a condition of this lease, the liquidator required the Respondent to employ members of the society in liquidation/their relations on wages. The Respondent was under an obligation to employ at least one person from the family of each member or his legal heir, according to the qualification obtained by such person. It was the grievance of the Appellants that the Respondent breached this condition and did not employ anyone from the families of members. In the premises, the present suit was filed, seeking a declaration that the lease deed executed by the liquidator in favour of the Respondent should be declared as null and void and the suit property be returned to the Registrar of Co-operative Society, Pune for disposal in accordance with law by safeguarding the interest of the shareholders/members of the society in liquidation. That suit was decreed and possession of the suit properties was ordered to be returned to the Registrar. The Respondent has challenged that order before the District Court at Pune in Civil Appeal No.447/16. As noticed above, the Respondent (appellant before the District Court) made an application for stay of execution of the decree of return of land, whilst the Appellants herein (respondents before the District Court and original plaintiffs) applied for restraining the Respondent from carrying out any construction on the suit property. Whereas the Respondent's application for stay of execution was accepted by the District Court, the Appellants' application for restraint on construction was rejected. That order is in challenge in the present appeal.

2. At the hearing of the appeal, it is submitted by learned

Counsel for the Respondent that the matter was referred to mediation of a learned advocate, who, by his mediation report dated 24 September 2018, had recorded that the matter could not be resolved despite an offer given by the Respondent *inter alia* offering to employ at least one member each from eight families of members of the society in liquidation on a permanent basis as per their qualifications and one member each from the remaining three families, who did not have a direct member to be employed, on a temporary basis. The offer also noted that if the Appellants form a society, that society would be given the work of fishing in the 40 acre tank as also of the nursery of the Respondent in the subject property without calling for tenders or without any competition. In addition to this, as a token of compensation, all eleven families of members of the society in liquidation were offered a sum of Rs.1 lakh each as an adhoc compensation for not having offered employment to the family members during the interregnum. Learned Counsel submits that this offer, though reasonable and in the interest of the parties, was not accepted by the Appellants and, as a result, the mediation failed.

3. At the hearing of the appeal from order, learned Counsel for the Respondent reiterates this offer. Learned Counsel for the Appellants, after taking instructions from his clients, proposes to accept this offer. Mr. Kanetkar, learned Counsel appearing for the Respondent, places on record a table offering permanent employments to eight persons from eight families of members of the society in liquidation, termed as Table “A”, which also sets out documents required from each of them and temporary employments to remaining three persons from the families of

members, subject to terms including submission of documents referred to therein. This table was before the mediator when the offer was made. The table referred to as "Table A", is taken on record, marked "X" for identification. Learned Counsel for the parties inform the Court that the modalities of the offer, involving all aspects of it, shall be worked out mutually between the parties. The offer made by the Respondent and its acceptance by the Appellants, as noted above, determines the whole controversy between the parties.

4. Accordingly, it is ordered as follows :-

The impugned order dated 12 December 2017 passed by District Judge-11, Pune is substituted by the following order:

(a) The decree passed by Joint Civil Judge, Junior Division, Vadgaon, Maval, District Pune, dated 29 February 2016, in Regular Civil Suit No.2/2003 is quashed and set aside.

(b) Regular Civil Suit No.2/2003 is disposed of in terms of the following order :

(i) The Respondent (defendant no.2 in the regular civil suit) shall employ eight persons placed at Sr. Nos. 1 to 8 in the statement, being Table "A", taken on record, marked "X", in the posts and pay scales mentioned against each of them on permanent basis;

(ii) The Respondent (original defendant no.2 to the regular civil

suit) shall employ three persons at Sr. Nos. 9, 10 and 11 in the statement, marked "X", in temporary posts in accordance with their respective qualifications;

(iii) The modalities of these appointments as well as the documents to be executed by the persons, who are to be employed, shall be worked out by the parties in mutual consultation;

(iv) In case the original members of the society in liquidation or their family members form another society and make an application to the Respondent herein (original defendant no.2 in the regular civil suit), the latter shall give the work of fishing in the 40 acre tank as also the work at the nursery of the Respondent in the subject property without calling for any tenders or without any competition;

(v) Each of the eleven family members, names of whom/whose family members have been listed at Sr. Nos. 1 to 11 in the statement taken on record, marked "X", shall be paid compensation of Rs.1 lakh on adhoc basis and in full and final settlement of their monetary claims, if any, concerning their entitlement to be employed with the Respondent, which was the subject matter of the regular civil suit;

(vi) The parties declare that with the regular civil suit being disposed of in terms noted above, neither party has any claim in the matter of the suit against the other;

(vii) No order as to costs.

5. Liberty to apply.

6. In view of the disposal of the appeal from order as above, the civil application does not survive and is disposed of.

7. This order may be produced by either party before the District Judge at Pune and suitable disposal of the appeal may be sought from that court.

(S.C. GUPTE, J.)

Smita
Gonsalves

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