

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST.) NO.5254 OF 2017

Jagdish Chandra Mansukhani	...	Appellant
Versus		
Rameshchandra Jhamaklal Mansukhani	...	Respondent

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Ms. Aditya Pimple i/b Orbit Law Services for the Appellant.
Mr. Chetan Kapadia a/w Mr. Gaurav Shah i/b DSK Legal for the Respondent.

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CORAM : S.C. GUPTE, J.

DATE : 04 OCTOBER 2019

P. C. :

. This Appeal from Order challenges an ad-interim order passed by the City Civil Court at Dindoshi on a notice of motion taken out by the Respondent (original plaintiff). That order was passed on 26 January 2017. The Appellant (original defendant) thereafter took out a notice of motion for recall of that order. That notice of motion was also disposed of on 13 February 2017 by dismissing the notice of motion. More than two and half years since have passed; the plaintiff's motion itself is now ripe for hearing. No practical purpose, in the premises, would be served by entertaining the appeal. It is in the interest of justice to dispose of the notice of motion itself, which is anyway before the trial court and scheduled to come up on 7 October 2019. There is one more grievance. The plaintiff has filed

a chamber summons for amendment of his plaint and the court has indicated that the chamber summons would be taken up for hearing first. It is the grievance of the Appellant (original defendant) that the original ad-interim order was obtained by misrepresentation to the court; and after more than six months of obtaining that ad-interim order, the plaintiff has moved for amendment of the plaint. It is submitted that if this amendment is considered first and then the motion is taken up for hearing, it will cause a further delay and in the meantime, the defendant will continue to suffer the ad-interim order, which is the subject matter of challenge in the present Appeal from order.

2 This court sees no difficulty in the Chamber Summons being allowed, subject to all contentions of the parties on merits of the amended case being kept open. The apprehension of the defendant can be properly addressed by directing the trial court to instead dispose of the notice of motion as expeditiously as possible and in a time bound manner.

3 By consent, the Appeal from order is, accordingly, disposed of in the following terms :

- (i) The chamber summons taken out by the plaintiff, being Chamber Summons No.651 of 2017 stands allowed ;
- (ii) All rights and contentions of the parties on merits

of the amendment, however, are kept open ;

(iii) The defendant shall file additional reply, if any, to the plaintiff's notice of motion, being Notice of Motion No.307 of 2017, on the amended case, within a period of one week from today ;

(iv) The plaintiff shall file his rejoinder, if any, within four days thereafter.

(v) The City Civil Court at Dindoshi is requested to dispose of the notice of motion as expeditiously as possible and preferably within a period of four weeks from today.

(S.C. GUPTE, J.)