

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO. 11781 OF 2022
IN
APPEAL NO. 90 OF 2022

Dhirajlal Raishi Chheda & Anr	...Applicants
<i>In the matter between</i>	
Dhirajlal Raishi Chheda & Anr	...Appellants
<i>Versus</i>	
Mukesh Raishi Chheda & Ors	...Respondents

Mr YA Sanglikar, *with PA Sarwankar, i/b Sarwankar & Co, for the Appellants.*
Mr Uttam S Rane, *for Respondents Nos. 1 & 2.*

CORAM G.S. Patel &
M.G. Sewlikar, JJ.
DATED: 9th June 2022

PC:-

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1. In our view the Appeal is thoroughly misconceived. The learned Single Judge framed issues. Mr Sanglikar for Defendants Nos. 1 and 2, the present Appellants, claims that his clients were prejudiced because his draft issues were not considered or accepted.
2. In paragraph 4 of the impugned order of 14th March 2022, what BP Colabawalla, J said was this:

4 I must mention that Mr.Sanglikar has also tendered a separate draft issues. **However, on going through the same, I find that the same are in the nature of arguments which, 1st and 2nd Defendants are free to agitate at the time when the suit is heard. It should not be understood to mean that the Defendant Nos.1 and 2 have given any of their arguments.**

(Emphasis added)

3. This clearly means that the Defendants' submission was considered but in the discretion of the learned Single Judge it was found that this was argumentative and not a set of issues properly so called. Even so, the Defendants were set at liberty to agitate the points in their note at the time of hearing of the Suit. It was even further clarified that the impugned order should not be read to mean that the 1st and 2nd Defendants had given up their arguments.

4. We are quite unable to see what prejudice can be said to have been caused to Defendants Nos. 1 and 2 by this order. No rights have been decided. That will happen only at the hearing of the Suit. It is abundantly clear that and well-settled that issues may be framed at any time and an additional issue may be cast before final judgment is pronounced. Whether or not the Defendants wish to make an application for this purpose is for them to decide and for the learned Single Judge to consider on an appropriate application if and when made. No permission of either this Court or any other Court is required for this. That is a provision in the Code of Civil Procedure 1908 ("CPC") itself.

5. There is no merit in the Appeal. It is dismissed. There will be no order as to costs.

6. In view of this, the pending Interim Application is infructuous and is disposed of accordingly.

(M.G. Sewlikar, J)

(G. S. Patel, J)