

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 869 OF 2014

WITH

CIVIL APPLICATION NO. 1041 OF 2014

WITH

CIVIL APPLICATION NO. 1044 OF 2014

H.L. Pandey

... Appellant/Applicant

Versus

Mrs. Nalini Navin Kamani & Ors.

... Respondents

WITH

APPEAL FROM ORDER NO. 870 OF 2014

WITH

CIVIL APPLICATION NO. 1045 OF 2014

Ram Niranjana Jatia

... Appellant/Applicant

Versus

Mrs. Nalini Navin Kamani & Ors.

... Respondents

WITH

APPEAL FROM ORDER NO. 871 OF 2014

WITH

CIVIL APPLICATION NO. 1046 OF 2014

Janson Engineering and Trading Pvt. Ltd. ... Appellant/Applicant

Versus

Mrs. Nalini Navin Kamani & Ors.

... Respondents

Mr. Anchit Ojha i/b. M/s. Mahesh Jani & Co. for the appellant in
AO/869/2014.

Ms. Ekta Dalvi i/b. Mr. Jitendra J. Shah for the appellant in
AO/870/2014 and AO/871/2014.

Ms. Snehal R. Modi for respondent no. 1.

Mr. Jehangir Jejeebhoy a/w. Ms Umanuti Shah i/b. M/s. Bachubhai
Munim & Co. for respondent no. 4.

CORAM: G. S. KULKARNI, J.

DATED: 4 January 2023

P.C.

1. It is informed at the bar that S.C. Suit No. 330 of 2011 in which the impugned order has been passed, namely, on Notice of Motion No. 1096 of 2011 and Notice of Motion No. 550 of 2012 itself has been decreed. In this view of the matter, the impugned order insofar as it orders that the defence of defendant nos. 1 and 2 be struck off, had become infructuous.

2. Insofar as the orders in regard to disobedience of the orders dated 19 April, 2011, 17 January, 2012 and further order dated 11 July, 2013 are concerned, whereby the learned trial Judge has observed that there was an intentional disobedience of the said orders and accordingly directed the appellant/defendant no. 2 to be detained in Civil Prison for one month and respondent no. 1 to be detained in Civil Prison for seven days, in my opinion, to such effect the impugned order needs to be set aside. This considering the fact that the said order was stayed by this Court and now substantial time has passed. Also the appellant who suffers such order is around 80 years of age as pointed out by the learned counsel for the appellant. Accordingly, the present proceedings do not require any further adjudication. They are accordingly disposed of by setting aside clauses 2, 3, 5, 6, 7 and 8 of the operative part of the impugned order, which for convenience are extracted hereunder:

“2. The suit property of defendant no. 1 shall remain attached for a period of one year and thereafter if the disobedience continues, appropriate order would be passed in accordance with Sub-Rule 2 of Rule 2A of Order 39 of CPC.

3. Defendant no. 2 be detained in civil prison for one month and respondent no. 1 be detained in civil prison for seven days.

5. Plaintiff to deposit an amount of Rs.15,000/- within two weeks for meeting the expenses of detention.

6. Warrant for arrest be issued immediately after deposit of the said amount.

7. Plaintiff would be entitled to necessary police aid for ensuring enforcement of orders passed by this Court.

8. Defendant nos. 1 and 2 and respondent no. 1 shall each pay costs of Rs.10,000/- to the plaintiff within two weeks.”

3. Needless to observe that if there are any further proceedings in the nature of an appeal against the final judgment and order passed by the City Civil Court on the suit, all contentions of the parties on such proceedings are expressly kept open.

4. It is also informed at the bar that the appellant-Ram Niranjana Jatia in Appeal from Order No. 870 of 2014 has expired. Thus, the said proceedings in any event have stood abated.

5. All the Appeals from Orders are accordingly disposed of, in the above terms.

6. In view of disposal of Appeals from Order, the above Civil Applications do not survive and the same are accordingly disposed of.

7. No costs.

G. S. KULKARNI, J