

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 715 OF 2023
ALONGWITH
INTERIM APPLICATION NO. 14873 OF 2023**

Sham Baburao Kandekar

...Appellant

V/s.

Ulka Vitthalrao Bhairat

..Respondent

Mr. Sandeep Phatak, for the Appellant.

Mr. Jaydeep Deo, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 6 September 2023.

P.C. :

1. By this Appeal, the Appellant challenges order dated 12 January 2017 passed by the Ad-Hoc District Judge-1, Pune allowing application at Exhibit-4 for temporary injunction during pendency of the Appeal.

2. It appears that the original plaintiffs had instituted Special Civil Suit No.184/2009 for partition of three properties bearing House No.1394/A, Kasba Peth, Pune, House No.1661, Shukrawar Peth, Pune and land bearing Survey No.353/1,

Bhamburda, Pune. The suit came to be dismissed by the Trial Court by judgment and order dated 19 November 2015. The Original Plaintiffs have instituted Regular Civil Appeal No.309/2016. In their Appeal, the Original Plaintiffs have filed an application for temporary injunction to restrain the Appellant herein from creating third party rights in respect of the property at CTS No.353/1, Bhamburde, Pune. By order dated 12 January 2017, the lower Appellate Court has restrained the Appellant from transferring, selling, letting on lease, rent or leave and license basis the suit property bearing CTS No.353/1, Bhamburda, Pune.

3. I have heard Mr. Phatak, learned counsel for the appellant and Mr. Deo, learned counsel for the Respondent.

4. The Original Plaintiffs were admittedly not armed with any order of injunction during pendency of their suit. It appears that the Appellant herein is running business of lodge on the property bearing CTS No.353/1 by giving the premises on cot basis to his customers. The Trial Court has apparently not restrained the Appellant from giving his premises on cot basis. Even Mr. Deo would fairly concede that the Original Plaintiffs would not object to the Appellant herein giving the premises on cot basis to his customers. Mr. Deo, however submits that the Appellant could not be permitted to induct a licensee which would then defeat the fruits of decree, if and when obtained by the Plaintiffs in the

Appeal.

5. Since the lower Appellate Court has permitted the Appellant to give the premises on cot basis, in my view, such use would obviously be on license basis. Therefore, letting the Appellant to give the premises on cot basis would include issuance of a license to the customer of the Appellant. In that view of the matter, directions of the lower Appellate Court to restrain the Appellant to give the premises on license basis appears to be self-contradictory.

6. The present Appeal is accordingly **disposed of** by clarifying that while rest of the order of injunction would continue to operate, the Appellant herein would be free to give the premises on leave and license basis during pendency of the Appeal.

7. With disposal of the Appeal, the Interim Application No. 14873/2023 does not survive. The same is disposed of as having become infructuous.

NEETA
SHAILESH
SAWANT

Digitally signed by
NEETA SHAILESH
SAWANT
Date: 2023.09.11
15:07:15 +0530

SANDEEP V. MARNE, J.