

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 862 OF 2023
WITH
INTERIM APPLICATION NO. 16428 OF 2023

Mr. Ramatma Saheblal Kanojiya

....Appellant

V/s.

Mr. Ramgulab Saheblal Kanojiya
& Ors.

....Respondents

Ms. T. Monis, for the Appellant.

Mr. Amerendra Mishra, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 19 October 2023.

P.C.:

1. The challenge in this Appeal is to the order dated 18 September 2023 passed by the City Civil Court allowing Notice of Motion No. 347/2018 filed by the Plaintiffs. The City Civil Court has passed the following order on 18 September 2023 :

- 1) The Notice of Motion No. 347 of 2018 filed by the plaintiffs is allowed.
- 2) Plaintiff Nos.1 and 2 shall conduct the laundry business in the suit shop i.e. Shop No.1A, Ramuben Nagobai Bharwad Chawl, Krishna Colony, Ram Kumar Thakur Road, Opp. Mulgaonkar Hospital,

Dahisar (East), Mumbai-400068 on every Monday, Tuesday, Wednesday and Thursday. The defendant shall not cause obstruction and interference to the plaintiffs when they are conducting laundry business from Monday to Thursday.

3) The defendant shall conduct the laundry business in the suit shop on every Friday and Saturday. Plaintiff Nos.1 and 2 shall not cause obstruction and interference to the defendant while he is conducting laundry business on Friday and Saturday.

4) On Sunday, the shop remained closed.

5) The plaintiffs and the defendant shall bear the maintenance of the suit shop, laundry business as well as electricity bill in equal proportion.

6) Costs in cause.

7) The Notice of Motion No. 347/2018 stands disposed of accordingly.

2. Plaintiffs and Defendants are brothers and claim right in respect of the suit structure which belongs to their father. The father was running a Laundry in the suit structure. After the demise of father in the year 2011, both Plaintiff No.1 and Defendant claim that they are running the business of Laundry exclusively in the suit structure. While the Plaintiff No.1 has claimed in the suit that he has been running Laundry in the suit structure and that Defendant No.1 occasionally assists him, it is the case of the Defendant in his Affidavit that he has been exclusively running the business at the suit structure since the demise of his father.

3. One of the grounds raised in the present Appeal is that at the time of hearing of Notice of Motion No. 347/2018, the Advocate

of the Defendant could not remain present and that the Motion has been decided without hearing any submissions which could be advanced on behalf of the Defendant.

4. The Defendant has also placed on record some of the photographs and documents for the first time in the Appeal which apparently were not produced before the City Civil Court. It is also the case of the Defendant in the present Appeal that Plaintiff No.1 operates the business of Laundry in some other structure. The said stand was not taken before the City Civil Court.

5. The City Civil Court has directed that Plaintiffs and Defendant shall operate the business of Laundry on different days of week. Appellant submits that, it is not possible to divide the business of Laundry in different days of a week. That if an order is received by Appellant on a Saturday evening, he will not be able to execute it until the next Friday. That such arrangement would be unworkable.

6. Be that as it may, considering the fact that the Defendant's Advocate was not heard while deciding the Notice of Motion which was pending since the year 2018, as well as additional documents sought to be placed directly before this Court, it would be appropriate that the Notice of Motion No. 347/2018 is heard afresh by the City Civil Court by granting opportunity of hearing to the Defendant and production of additional documents.

7. Accordingly, the present Appeal is **disposed of** by setting aside order dated 18 September 2023 passed by the City Civil Court. The Defendant shall file additional Affidavit alongwith the necessary documents before the City Civil Court within one week.

8. The Plaintiffs shall be at liberty to file their rejoinder within one week thereafter. The City Civil Court shall endeavour to decide the Notice of Motion as expeditiously as possible preferably within a period of six weeks from today. The parties shall appear before the City Civil Court on 25 October 2023 and seek further directions. With the above directions, the Appeal is disposed of. Needless to say that the City Civil Court shall decide the Notice of Motion without being influenced by any of the observations made by it in the impugned order as well as in the present order.

9. With disposal of the Appeal, Interim Application does not survive. The same is disposed of as having become infructuous.

SANDEEP V. MARNE, J.

**NEETA
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