

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1231 OF 2010
IN
SUIT NO.1152 OF 2010

Maryknoll Corporation and Another ...Plaintiffs
vs.
Yolanda Ferrow and Others ...Defendants

Mr. Ganesh Ambekar i/b. Thakore Jariwala & Associates, for the Plaintiffs.

Ms. Gayatri Sharma i/b. S.K. Srivastava & Co., for Defendant No. 21.
Mr. Aniesh Jadhav a/w. Mr. Rushikesh Kekane, Mr. P.J. Thorat, for Defendant No. 3.

CORAM : N. J. JAMADAR, J.
DATE : JANUARY 02, 2023

P.C.:

1. Heard the learned counsel for the parties.
2. This Court granted ad-interim relief by an order dated 15th July, 2010. Relevant part of the order dated 15th July, 2010 reads as under:-

2] After having considered the entire record, I am inclined to observe that the Plaintiffs have made out a prima-facie case for grant of ad-interim relief in terms of prayer clause (a) except the bracketed portion. Same is the position so far as prayer clause (b). It is required to be mentioned that the Plaintiffs are not in a position to secure the addresses of the Defendants because the documents creating rights in favour of Defendant Nos.4 to 20 have been made behind the back of the Plaintiffs and on the basis of actions which according to the Plaintiffs are fraudulent.

3] Hence, following order is passed at the ad-interim stage:-

- (i) Issue ad-interim injunction in terms of prayer

clause (a) except the bracketed portion and prayer clause (b).

3. Having regard to the time lag of more than 12 years and the nature of the order passed by this Court, it would be expedient to direct that the ad-interim order dated 15th July, 2010, extracted above, operates as an interim order till the disposal of the suit.

4. Hence, the ad-interim order shall operate as an interim order and, accordingly, Notice of Motion No. 1231 of 2010 is made absolute.

5. In the event, the plaintiffs consider it necessary to seek further interim relief against any of the defendants, the plaintiffs are at liberty to do so.

6. In the intervening period, it seems that the defendant No. 3 raised an issue of bar of limitation and, thereafter, by an order dated 12th June, 2015 this Court directed that an issue of limitation be framed and tried as a preliminary issue.

7. The learned counsel for the plaintiffs submits that the plaintiffs led evidence in terms of the aforesaid order dated 12th June, 2015.

8. The defendant Nos. 2 and 3 have filed the written statement. The suit is directed to be proceeded ex-parte against defendant Nos. 1 and 4 to 20.

9. In view of the judgment of the Supreme Court in the case of Nusli Neville Wadia vs Ivory Properties and Others¹ the issue of limitation, need not be tried as a preliminary issue as it usually presents a mixed question of fact and law.
10. Since the pleadings are complete, the parties shall circulate and exchange the draft issues.
11. List for settlement of issues on 6th February, 2023.

(N. J. JAMADAR, J.)

1 (2020) 6 Supreme Court Cases 557.