

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.10152 OF 2022
IN
FIRST APPEAL NO.659 OF 2022**

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Sanjay Jaiprakash Gupta ..Applicant/Appellant
Versus
Chedilal Mataprasad Gupta
Since deceased through legal heirs
Sumitra Chedilal Gupta & Ors. ..Respondents

Mr. Harish R. Pawar, for the Applicant/Appellant.
Ms. Panthi Desai i/by M. P Vashi & Associates, for the Respondents.

CORAM : KISHORE C. SANT, J.

DATE : 15th JANUARY, 2024

PC.

1. This Application is by the original Defendant No.1 seeking stay to the execution and operation of impugned judgment and decree passed by learned City Civil Court, Mumbai in S.C. Suit No.2954 of 2006. The learned Trial Court has declared that the family arrangement agreement dated 17.07.1968 (Exh.35) is valid, subsisting and binding on the parties to the suit. The 1st Defendant/ present Applicant/Appellant who is conducting the business and whose turn already expired in 2006 to hand over the suit premises to the Plaintiffs for conducting the business on rotation as per Exh.35. Defendant No.6 is permanently restrained from creating third party right and interest in respect of the suit shop.

2. Today, the Appeal at the instance of Defendant No.1 is admitted. The parties are heard on Interim Application by consent. Learned advocate vehemently argued that the learned Trial Judge has wrongly passed a decree solely relying on isolated admissions of the Defendant No.1 in written statement. He submits that in fact suggestions to the Plaintiffs' witness which would show that he has disputed Exh.35 by which family arrangements were made. He further submits that from his evidence, it is also clear that the admissions were isolated. It was necessary for the Plaintiffs to prove their own case and should not rely only on the admissions. He further submits that Exh.35 though is a document executed more than 30 years prior, still contents of it was required to be proved. Since the contents and signatures are not proved, learned Trial Judge has committed mistake in relying on the said Exhibit. His case is that in fact the so called family arrangement was only between his father and his uncle and not between his grandfather and brother of grandfather.

3. Learned advocate for the Respondents vehemently opposed the Application submitting that Trial Court has rightly passed a decree by relying upon document Exh.35, which was executed 30 years prior and therefore presumption under Section 90 of Evidence Act is applicable in the present case. Through the written statement it is pointed out that at least at three places there is clear and specific admission given by the Defendant about family arrangement. It is also clearly stated that the Defendant is running

business as per his turn and the said turn is to expire on 30th June, 2007. The subsequent denial during the course of evidence would be contrary to the admission. Once admission is given in the written statement, it is not open for any party to retract from the same. She also further points out from the subsequent conduct of the Applicant/Appellant that though the order is passed on 6th May, 2022 and though for more than two months there was no interim order, he didn't obey the order. The Bailiff had been to the premises to execute the order, however, the said Bailiff could not execute the same on the objection of Defendant No.1 that other Defendants were not present.

4. To appreciate this arguments, it is necessary to see Exh.35. Exh.35 is a document executed between one Pratap Sarju Gupta and Mataprasad Sarju Gupta. Their father Sarju Gupta was the original tenant, who was running business of Chana and Kurmura under the name and style as "Maharashtra Chana Bhandar". As per family arrangement, each of the brother was to conduct business in the suit premises for two years each by rotation. The brother who carries the business was to pay the rent of the premises and thus, they both had become entitled to run business by paying rent. If the contents of this document are seen, there is clear that after death of Sarju Gupta, it was both the brothers who were to look after the business. Each of the brother was entitled to run the business by rotation. The present Plaintiffs and Defendants are successors of the two brothers. Sanjay Gupta became entitled being

son of deceased Pratap Sarju Gupta. Thus, this Court finds that the entire case rests upon document Exh.35. This Court *prima-facie* finds that the Trial Court has rightly appreciated that Exh.35 is proved. Though the learned advocate for the Applicant/Appellant relies upon judgment reported in **2005(1) Mh.L.J. 306 (Prabhakar Balasa Saoji Vs. Subhash Baburao Malode & Ors.)**, this Court finds that paragraph 15 itself shows that in the said matter, a suit was filed for specific performance of contract and provisions of Section 90 of the Evidence Act were considered. In view of the facts of that this Court has held that the contents must be proved. Assuming that it is necessary to prove the contents, however, in view of admissions, it is clear that this position was accepted by both the parties. In view of this, this Court finds that the judgment is of no help to the Applicant. This Court finds that no case is made out to grant stay to the impugned judgment and order.

5. The Application as such stands rejected.

6. At this stage, learned advocate for the Applicant/Appellant prays for continuation of interim relief, which is running since the date of judgment for a period of eight weeks.

7. Considering the fact that since there is interim relief in operation, same is continued for four weeks.

[KISHORE C. SANT, J.]