

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/LETTERS PATENT APPEAL NO. 1412 of 2016****In****R/SPECIAL CIVIL APPLICATION NO. 10081 of 2016****With****CIVIL APPLICATION (FOR VACATING INTERIM RELIEF) NO. 1 of 2017****In****R/LETTERS PATENT APPEAL NO. 1412 of 2016**=====
SHARDABEN CHIMANBHAI PATEL & 1 other(s)**Versus****SHREE VITHTHAL COOPERATIVE HOUSING SOC LTD.**
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Appearance:

MR A M VADERA(6583) for the Appellant(s) No. 1,2

NOTICE SERVED BY DS(5) for the Respondent(s) No. 1
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CORAM: HONOURABLE MR.JUSTICE R.M.CHHAYA**and****HONOURABLE MR.JUSTICE V. B. MAYANI****Date : 28/02/2019****COMMON ORAL ORDER****(PER : HONOURABLE MR.JUSTICE R.M.CHHAYA)**

1. Heard Mr. A.M. Vadera, learned advocate for the appellants. Though served, no one appears for the respondent.
2. By this appeal under Clause 15 of the Letters Patent, the appellants have challenged the order dated 29.6.2016 passed by the learned Single Judge in Special Civil Application no. 10081 of 2016. The challenge before the learned Single Judge was an order passed below Exh.5 in Lavad Case no.217 of 2016. The learned Single Judge has observed thus:-

“5.2 In any view, the Laval Case is still pending and at large before the

Board of Nominees. What is sought to be challenged is only interim order. Interim order whereby the injunction is granted, does not decide the rights of the parties finally. Laval Suit is yet to be tried on merits. The findings recorded in the injunction order are tentative and are of interim nature. It is also not to be gainsaid that refusal of injunction would have created new equities and rights in favour of the defendants. Grant of injunction, therefore could not excepted.

6. For the aforesaid reasons and consideration, this Court is not inclined to entertain the petition which is against the Exh.5 order which is interim order. No ground is made out for interference. Request of the petitioners to permit them to continue with the construction on undertaking, cannot be accepted. The petition is liable to be dismissed.

7. Accordingly, the petition is hereby dismissed, at the same time however, it is observed to require the Joint Registrar of Board of Nominees, Vadodara to decide the Lavad Case expeditiously and preferably within a period of one year from the date of receipt of this order. The Board of Nominees shall decide the Lavad Case strictly in accordance with law, as per bye-laws of the society and on merits."

3. We find that there is no error in the impugned order. We therefore confirm the same. The present proceedings are initiated against the

interim order and the injunction sought for would amount to permit the appellants to continue with the construction. The same cannot be accepted, as rightly not accepted by the learned Single Judge. Still however, the direction issued in Paragraph 7 of the impugned order is not a reality today and therefore, the Board of Nominees, Vadodara, before whom the proceedings of Lavad Case no.217 of 2016 are pending, is hereby directed to expedite the hearing and endeavour to dispose of the same latest by 30.11.2019. As observed by the learned Single Judge, the Board of Nominees shall decide the Lavad Suit strictly in accordance with the by-laws of the society on merits without in any manner being influenced by the interim order passed below Exh.5 as well as the order passed by this Court in the writ petition as well as the present order.

4. Accordingly, the appeal is disposed of. As the appeal is disposed of, Civil Application would not survive and is disposed of.

(R.M.CHHAYA, J)

(V. B. MAYANI, J)

MRP