

(2003) 02 GUJ CK 0035
In the Gujarat High Court

Case No : Civil Application No. 1411 of 2003 in Appeal from Order No. 69 of 2003

Nautamswami Guru Vasudev

APPELLANT

Vs

Harjibhai Nanjibhai Bhimani

RESPONDENT

Date of Decision : 27-02-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3

Citation : (2003) 23 GLH 560 : (2004) 1 GLR 827

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Advocate : Harin P. Raval in Civil application No. 1411 of 2003, for the Appellant; H.M. Parikh, for Respondent No. 1-2, Purohit and Mithani, for Respondent No. 4-10 in Civil Application No. 1411 of 2003, for the Respondent

Judgement

P.B. Majmudar, J.—Rule. Learned Advocate Mr. Parikh waives service of rule on behalf of the respondents Nos. 1 and 2, learned

Advocate Mr. Purohit waives service of rule on behalf of the respondent No. 3 while learned Advocate Mr. Mithani waives services of rule on

behalf of the respondents Nos. 4 to 10.

2. The Appeal From Order is admitted by this Court today and the same is now fixed for final hearing. This Civil Application is filed by the

appellant with a prayer that during the pendency of the Civil Application, ex-parte ad-interim order passed by the learned Civil Judge (S.D.),

Anand in Civil Suit No. 17/2003 be stayed. Since the original Appeal From Order is filed against the ex-parte order of the trial Court which is

admitted by this Court, the question which requires to be considered in this Civil Application is whether the petitioner has made out any strong

prima facie case for getting interim relief and whether, in the facts and

circumstances of the case, interim relief prayed for can be granted during the pendency of the Appeal From Order. In order to consider the controversy between the parties, it is necessary to refer to the facts of the case.

3. The dispute in the present proceedings relates to appointment of an Acharya at Swaminarayan Temple, Vadatal. Special Civil Suit No. 156/02 is

pending in the Court of Civil Judge (S.D.) at Nadiad in which there is a prayer that one Ajendraprasadji and his son have got no right to continue

as an Acharya of the aforesaid institution. Since this Court is not directly concerned with the aforesaid suit in the present proceedings, it is not

necessary to refer the details of the said suit. Reference to the said suit is made for a limited purpose with regard to some interim relief granted by

the trial Court in the said suit. In the aforesaid suit, the trial Court granted injunction in favour of the plaintiffs by which the aforesaid Acharya was

prevented from acting as an Acharya. The said order is carried further by way of Appeal From Order being Appeal From Order No. 421/2002.

This Court (Coram: R.P.Dholakia,J.) has admitted said Appeal From Order. The order of the learned Single Judge of this Court is made available

for my perusal by the learned Advocates of both the sides and I have gone through the contents of the said order. The learned Single Judge, while

admitting the said Appeal From Order, has rejected the prayer for staying the order of the trial Court by which earlier Acharya was restrained

from functioning as an Acharya of the institution. The appellants of the said appeal at the time of preferring the said Appeal From Order had

submitted a Civil Application No. 7250/2002 for interim relief. The interim relief which was prayed for in the said Civil Application is as under:

5.(A) to stay, pending the hearing and final disposal of the captioned Appeal From Order No. 421/2002, the operation, implementation and

execution of the impugned judgment and order dated 1-10-2002 passed below application Exh.5 in Special Civil Suit No. 156 of 2002 by the

learned 3rd Joint Civil Judge (S.D.), Nadiad.

(B) to restrain the opponents/respondents, pending the hearing and final disposal of the captioned Appeal From Order from appointing and/or

nominating any person as Acharya, at the Vadatal Diocese of the Swaminarayan sect and thereby permit the applicant No. 1 to perform the duties

of the Acharya as contemplated in the scheme.

4. The learned Single Judge by a detailed order rejected the application for interim relief in to, meaning thereby, that both the aforesaid prayers were rejected by order dated 30th January, 2003. The learned Single Judge has given various reasons for refusing interim relief. The learned Single Judge has considered in his order various judgments cited before him, such as judgment delivered by the Joint Judge, Ahmedabad in Civil Suit No. 179/1914 and Civil Suit No. 62 of 1919; judgment given by the Gonda Court in Civil Suit No. 30/1947 and the judgment delivered in First Appeal No. 57 of 1949 by the Lucknow Bench of the Allahabad High Court. After considering the facts and circumstances of the case and after considering the relevant judgments as indicated above, ultimately the interim relief is refused by the learned Single Judge. There is also a reference of further order by which the learned Single Judge has not granted the prayer made by the aforesaid appellants for restraining the respondents of the said appeal from making appointment of new Acharya. That further order is also part and parcel of the present proceedings and is made available to this Court alongwith the original. It seems that since interim relief was not granted by the learned Single Judge at the time of admitting the appeal, appointment of new Acharya was made and by the aforesaid appointment order one Rakeshprasad Mahendraprasad Pande was appointed as new Acharya. It is not in dispute that appointment of the aforesaid Acharya was made by one Satsang Mahasabha. The said appointment was made on 31st January, 2003. Subsequently, the respondents Nos. 1 and 2 herein instituted a suit being Special Civil Suit No. 17/2003 in the Court of Civil Judge(S.D.) at Anand and alongwith the suit, Application Exh.5 is also submitted for interim injunction. As per the averments in the suit, the appointment of new Acharya is illegal, arbitrary and contrary to certain books and literature of Swaminarayan sect. In paragraph 9 of the plaint, it is averred that in an illegal manner earlier Acharya Ajendraprasadji was removed by passing certain resolution. Reliance is placed on some religious literature as well as reference to proceedings at Gonda Court is also made in paragraph 11 of the plaint. Similarly, reference is also made to the judgment delivered by the Allahabad High Court in paragraph 11 of the plaint. In paragraph 15 thereof, the plaintiffs have mentioned the cause of action for filing the present suit. It is stated therein that on 31st January, 2003, the defendants Nos. 2 to 9

has illegally appointed defendant No. 1 as an Acharya without informing the Swaminarayan Temple at Anand about such appointment and that

even though the said Shri Ajendraprasadji is still continuing as Acharya yet, new Acharya is appointed and accordingly, cause of action in filing the

present suit has arisen. As stated above, the said aspect regarding the cause of action in filing the suit is mentioned in paragraph 15 of the plaint. In

the prayer clause, following prayers are made in the suit:

(A) A decree for permanent injunction be granted restraining the defendant No. 1 from functioning as an Acharya and a declaration is also sought

for to the effect that defendant No. 1 has no right to continue as an Acharya of Swami Narayan Sampraday(Southern portion).

(B) It may be declared that the defendants Nos. 2 to 9 have no right to give appointment to the defendant No. 1 as an Acharya.

(C) It may be declared that Acharya Ajendraprasadji Narendraprasad Pande continues as Acharya of Southern portion of the Swaminarayan sect.

(D) It may be declared that whatever decisions have been taken by the defendant No. 1 with effect from 31-1-2003 be declared null and void.

4.1. In substance, these are the prayers before the trial Court in the present suit with which we are concerned in this Appeal From Order.

5. Alongwith the suit, the plaintiffs have also submitted certain documents with the list of documents. The aforesaid suit is filed on 16-2-2003 and

as submitted by the present appellants, the plaint was presented at the residence of the learned trial Judge on 16-2-2003 which was a Sunday. The

learned trial Judge after considering the averments made in the plaint as well as in Exh.5 application and after hearing the arguments of the plaintiffs

came to the conclusion that the appointment of new Acharya is made with an oblique motive i.e. to circumvent the pending proceedings being A.O.

No. 421/2002 which is pending before this Court. The trial Court also considered the arguments of the plaintiff in connection with certain orders of

various Courts i.e. Gonda Court as well as Allahabad High Court as well as the order of the Civil Court at Ahmedabad. After considering the

arguments of the plaintiffs and after perusing documents, the trial Court passed the following order on 16-2-03:

It is hereby ordered that defendant No. 1 shall not act as Acharya and defendants Nos. 2 to 9 shall not give any duty to defendant No. 1 till 26-

2-2003 without seeking prior permission of the Honourable High Court as per the scheme framed by the Honourable High Court in F.A. No. 543

of 1970 and confirmed in LPA No. 183 of 1973 on 4-12-976 and A.O. No. 421/2002 and as per religious books, namely, Devshivbhagno Lekh,

Satarigi Jivanam etc. Plaintiffs shall comply with provisions of Rule 3 of the Order 39 of C.P.C. Injunction is to be issued on payment of process

fee"".

5.1 The aforesaid order is challenged by the original defendant No. 2 by way of this Appeal From Order. As stated earlier by separate order, I

have already admitted the Appeal From Order.

6. The question which is required to be considered in this Civil Application is whether the impugned order of the trial Court is required to be

suspended during the pendency of the Appeal From Order. At this stage, the following aspects are required to be kept in mind:

(1) It is not in dispute that some of the points raised in the present suit and the issue involved in the Appeal From Order No. 421/2002 are

common and interconnected. In the present suit, one of the prayers in the plaint is that Ajendraprasadji Narendraprasad Pande be continued as

Acharya. The same point is also involved in the said Appeal From Order.

(2) The appointment of new Acharya is made on 31st January, 2003 while the present suit is presented before the learned trial Judge on 16-2-

2003.

(3) It is not in dispute that during the intervening period, the newly appointed Acharya was already functioning.

(4) While granting ad interim injunction the requirement of Order 39 Rule 3 is not complied with and there is no mention about the said provision in

the impugned order of the trial Court.

(5) There is no reference in the order of the trial Court as to why ad interim injunction is required to be issued without issuance of notice to the

other side. (6) In the Appeal From Order No. 421/2002, there is a specific prayer in the Civil Application, at the instance of the appellants of said

Appeal From Order to the effect that the respondents of the said appeal be restrained from making appointment of new Acharya.

(7) This Court while admitting the appeal has rejected the Civil Application in to, meaning thereby, that this Court has not granted injunction

restraining the authority from making appointment of new Acharya.

6. Considering the averments in the plaint, it is clear that the present plaintiffs have challenged the action of the defendants in appointing the new

Acharya on various grounds and it is also the case of the plaintiffs that removal of earlier Acharya is illegal. In this connection, the plaintiffs have

also made reference to the judgments of the Allahabad High Court, Gonda Court, Ahmedabad Court etc. Reference to certain religious books is

also made in the plaint. The learned trial Judge has also referred to the said aspect in the impugned order. It is also required to be noted that when

practically in a similar issue when this Court has not granted any interim relief restraining the authority from making appointment of new Acharya,

prima facie, it is doubtful whether this very prayer could have been granted by the trial Court by passing an interim order. The trial Court has also

not considered the provisions of Order 39 Rule 3 CPC, and no such satisfaction is also recorded in the order as to why it is necessary to give an

interim injunction without issuance of notice to the other side. It is also required to be noted that at the time when the trial Court entertained the

application for injunction, newly appointed Acharya was already functioning since 15 days, yet the learned trial Judge did not think it fit to issue

short notice of few days before granting such interim order. It cannot be said that such a step is taken in order to prevent immediate danger as by

issuance of notice the whole prayer of the plaintiffs would have become infructuous. Such injunction is granted without following the requirement of

Order 39 Rule 3 CPC. No reasons are given for dispensing with the requirements of Order 39 Rule 3 of CPC. Except narrating the facts of the

case and except mentioning that appointment of new Acharya is made to overreach the process of this Court in Appeal From Order No.

421/2002, the learned Judge has not discussed anything further in connection with the urgency part of the matter. Reading the order of the learned

trial Judge it seems that the learned trial Judge is not aware that there is a provision of Order 39 Rule 3 in the CPC. There is no doubt in my mind

that the effect of the impugned order is that the interim relief which is not granted by the High Court in Appeal From Order No. 421/2002 is

virtually granted by the trial Court by preventing the newly appointed Acharya from functioning as an Acharya even though he was functioning since

last 15 days, at the time when the impugned order is passed by the learned trial Judge. In the case of Trilok Singh Vs. State (Delhi Administration),

, the Honorable Apex Court has laid down the principles in the matter of granting ex parte injunction. The relevant observations are as under:

44. As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the Court in

the grant of ex parte injunction are:

(a) where irreparable or serious mischief will ensue to the plaintiff;

(b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a

party in his absence is prevented;

(d) the court will consider whether the plaintiff had acquiesced for some time and in such circumstances it will not grant ex parte injunction.

(e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application.

(f) even if granted, the ex parte injunction would be for a limited period of time.

(g) General principles like prima facie case, balance of convenience and irreparable loss would also be considered by the court.

45. In United Commercial Bank Vs. Bank of India and Others, , this Court observed:

No injunction could be granted under Order 39 Rules 1 & 2 of the Code unless the plaintiffs establish that they had a prima facie case, meaning

thereby that there was a bona fide contention between the parties or a serious question to be tried. The question that must necessarily arise is

whether in the facts and circumstances of the case, there is a prima facie case and, if so, as between whom? In view of the legal principles

applicable, it is difficult for us to say on the material on record that the plaintiffs have a prima facie case. It cannot be disputed that if the suit were

to be brought by the Bank of India, the High Court would not have granted any injunction as it was bound by the terms of the contract. What

could not be done directly cannot be achieved indirectly in a suit brought by the plaintiffs. Even if there was a serious question to be tried, the High

Court had to consider the balance of convenience. We have no doubt that there

is no reason to prevent the appellant from recalling the amount of Rs. 85,84,456. The fact remains that the payment of Rs. 36,52,960 against the first lot of 20 documents made by the appellant to the Bank of India was a payment under reserve while that of Rs. 49,31,496 was also made under reserve as well as against the letter of guarantee or indemnity executed by it. A payment "under reserve" is understood in banking transactions to mean that the recipient of money may not deem it as his own but must be prepared to return it on demand. The balance of convenience clearly lies in allowing the normal banking transactions to go forward.

Furthermore, the plaintiffs have failed to establish that they would be put to an irreparable loss unless an interim injunction was granted.

46. This Court had occasion to emphasize the need to give reasons before passing ex parte order of injunction. In *Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others*, it is stated as under:

The Court shall record the reasons why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed. The party which invokes the jurisdiction of the court for grant of an order of restraint against a party, without affording an opportunity to him of being heard, must satisfy the court about the gravity of the situation and court has to consider briefly these factors in the ex parte order. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the court of the authority concerned to record reasons before exercising power vested in them. In respect of some of such provisions it has been held that they are required to be complied with but non compliance therewith will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of order 39. The Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex parte order have far-reaching effect, as such

a condition has been imposed that court must record reasons

before passing such order. If it is held that the compliance with the proviso aforesaid is optional and not obligatory, then the introduction of the

proviso by the Parliament shall be a futile exercise and that part of Rule 3 will be a surplusage for all practical purposes. Proviso to Rule 3 of Order

39 of the Code, attracts the principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at

all. This principle was approved and accepted in well-known cases of Taylor v. Taylor (1875) ICH D 426 and AIR 1936 253 (Privy Council) ,

This Court has also expressed the same view in respect of procedural requirement of the Bombay Tenancy and Agricultural Lands Act in the case

of Ramchandra Keshav Adke v. Govind Joti Chavare (1975) 1 SCC 915. As such whenever a court considers it necessary in the facts and

circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should

take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be

defeated if an ex parte order is not passed.

6.1. Considering the aforesaid ratio, in my view, it cannot be said that the object of granting injunction itself would have been defeated if an ex

parte order is not passed.

7. It is a matter of regret that the injunction which is not granted by the High Court is granted by the trial Court at the instance of different plaintiffs.

Even on the principle of judicial comity, the trial Court should not have granted ad interim injunction which was not granted by this Court.

8. In the instant case, the trial Court has also incorporated the arguments of the learned Advocate for plaintiffs in Special Civil Suit No. 17/2003.

The relevant part of the said arguments which is recorded by the trial Court in its order as under:

Shri Patel has further argued that the Honourable High Court has framed a scheme in F.A. No. 543/70 and L.P.A. No. 183/1973. He has

submitted that the signature of Acharya has also been laid down in the scheme. He has further relied on the case of Shripadprasad Becharilalji

Acharya v. Laxmidas Dungarbhaji Barot reported in the Bombay Law reporter Vol.XXV page 747. He has also relied on the judgment delivered

by Civil Court of Gonda, and appeal preferred in it. He has further read over the judgment of Honourable High Court in A.O. No. 421 of 2002.

He has read over page No. 11 of the judgment which is dated 30-1-2003. He has submitted that the defendants had admitted them and given

consent before Honourable High Court that defendants shall not appoint Acharya, even then they have appointed the Acharya i.e. defendant No. 1

in a midnight just to infractue and the order of the Honurable High Court.

9. There is nothing on record to show that the defendants of the earlier suit had admitted before this Court (in Appeal From Order No. 421/2002)

that they had given consent before this High Court that the defendant shall not appoint Acharya, yet they have appointed the Acharya. The trial

Court has even not tried to ascertain from the plaintiff as to on what basis such statement was made before the Court. If the learned trial Judge had

taken little more care, he would not have made the mistake by incorporating the said arguments in the order, and therefore, it was all the more

necessary to issue a short notice to the other side to ascertain whether the statement made by the plaintiffs is correct or not. When the order of this

Court in the said Appeal From Order is very clear as to why the statement, which was made by the respondents of the said Appeal From Order,

is not further extended, it means, that they were free to appoint new Acharya. If the trial Court before giving ex parte order had issued notice to the

other side, this fact could have been brought to the notice of the learned trial Judge by the defendants of the present suit.

10. The learned Judge has considered the arguments of the plaintiff to the effect that new Acharya is appointed at midnight of 31st January, 2003,

however, the learned trial Judge himself passed the order after 16 days without complying with the mandatory requirement of law and granted such

order by entertaining the suit on Sunday at his residence for which prima facie nothing is shown as to why such order was required to be passed in

such a manner, though prima facie it seems that there is no urgency to entertain the suit in such a manner. 11. Considering the facts and

circumstances as indicated above and considering the fact that the mandatory requirement of Order 39 Rule 3 CPC is not complied with by the

trial Court and considering the fact that the learned trial Judge has completely misread the judgment of this Court in Appeal From Order No.

421/2002 and considering the fact that the interim relief which is not granted by the High Court in the said appeal is granted by the trial Court

though in favour of the other plaintiffs, the Appeal From Order, in my view, is maintainable before this Court, even though, the trial Court has not

finally disposed of Exh.5 application and it is only at a show cause notice stage. In the facts and circumstances of the case, the order of the trial

Court is required to be suspended, and I will be failing in my duty if such order of the trial Court is not suspended forthwith.

12. At this stage, reference is required to be made to certain objections raised by the learned Senior Counsel Mr. Vakil in entertaining this Appeal

From Order. Mr. Vakil submitted that this appeal is filed only by the defendant No. 2, and therefore, at the most the order of the trial Court can be

stayed only qua the defendant No. 2, and therefore, the defendant No. 1 who has not challenged the order of injunction granted by the trial Court

by which he is prevented from acting as an Acharya can not function as an Acharya because he is bound by the said injunction which he has not

challenged. In that view of the matter, since the defendant No. 1 has not filed any appeal, the interim stay granted by this Court, cannot be

effectively complied with as the defendant No. 1 is bound by the injunction granted by the trial Court against him and he cannot function as an

Acharya any further. It is, however, required to be noted that Mr. Raval appearing for the defendant No. 1 has stated that the whole order is

required to be stayed and that the defendant No. 1 is going to file appropriate application with a prayer to transpose him as co-appellant. During

the course of arguments such oral request was made by him but since the oral request is opposed by Mr. Vakil, Mr. Raval has stated that

necessary written application shall be filed in this behalf. Considering the aforesaid aspect of the matter and considering the fact that the trial Court

has permitted the defendants to approach this Court before appointing new Acharya and also considering the fact that this Court has not granted

any interim relief in Appeal From Order No. 421/2002, in my view, the entire order is required to be suspended, especially when, the mandatory

requirement of Order 39 Rule 3 is not complied with by the learned trial Judge.

13. Mr. Vakil further contended that unless the post of Acharya is vacant, new Acharya cannot be appointed. It is submitted that the earlier

deposed Acharya has already filed Appeal From Order which is pending before this Court and the said matter is already admitted and is pending

for final hearing. Under the circumstances, it cannot be said that the post of Acharya is vacant. It is required to be noted that by virtue of injunction

order granted by Nadiad Court in Special Civil Application 156/2002, the earlier Acharya naturally cannot function as an Acharya. This Court has

not granted any interim relief in favour of the said Acharya in the said Appeal From Order. Under the circumstances, when earlier Acharya cannot

function by virtue of injunction, naturally the post of Acharya is required to be filled in as it cannot be kept vacant. If during the intervening period,

other person is appointed as Acharya, it cannot be said that his appointment is illegal since there was no subsisting vacancy at the relevant time,

when the appointment of new Acharya is made.

14. Mr. Vakil next argued that the interim relief as prayed for if granted would amount to allowing the appeal at this stage. He submitted that the

relief which can be granted only at the final stage cannot be granted at an interim stage as it would amount to allowing the whole appeal at the

interim stage. Mr. Vakil relied upon the decision of the apex Court in the case of HARISH CHANDER VERMA V. KAYASTHA

PATHSHALA TRUST & ors. reported in JT 1988 (1) SC 625, wherein it has been observed in para 2 as under:

Apart from the convenience the parties and equity arising in the facts of the case, a larger principle is involved in the matter. On the face of a

decree for permanent injunction is it appropriate for the appellate court to allow it to be nullified before the appeal is disposed of. We are of the

view that the answer has to be in the negative.

14.1. I do find any substance in this argument. Firstly, because by suspending the order of the trial Court, it cannot be said that the whole appeal

can be said to have been allowed at this stage or that the proceedings will become infructuous in any manner. If ultimately, the appeal is dismissed,

naturally, the newly appointed Acharya will not be in a position to function and the situation prevalent at the time of filing of the suit will come into

picture. Further, there is a specific provision under Order 41 Rule 5 of CPC by which the impugned order of the trial Court can be stayed by this

Court. It cannot be said that by granting such interim stay, the whole appeal is

allowed at an interlocutory stage. Once the Court finds that there is a prima facie case at the time of entertaining the appeal, the question of staying the impugned order is required to be considered looking to the totality of the facts and circumstances and material on record. 15. Mr. Vakil further submitted that the plaintiffs have tried to overreach the process of this Court as even though the Appeal From Order is admitted by this Court and the question about removal of the earlier Acharya is sub judice before this Court, yet appointment of new Acharya is made. According to him, when the defendants Nos. 2 to 9 have appointed Acharya in such a hot hurry in order to circumvent the order of this Court passed in Appeal From Order No. 421/02, and especially when, the said AFO is fixed for final hearing, the trial Court was perfectly justified in injuncting the defendant No. 1 from acting further as Acharya. However, even that question could have been decided by the trial Court after issuing notice to the other side. The trial Judge has not stated a word as to what imminent danger is required to be prevented by granting ad interim injunction without issuance of notice to the defendants. Reading the order of the trial Court, prima facie one may get an impression that interim relief which is not granted by this High Court in Appeal From Order is virtually granted by the trial Court. Under these circumstances, in my opinion, the order of the trial Court is required to be suspended forthwith.

16. Mr. Vakil next submitted that since the order in question is operative only upto 26-2-2003 and since that date is over now, this appeal has become infructuous, and therefore, it is now not necessary to decide this Appeal From Order. To substantiate his say, he has relied on certain judgments of the apex Court to show that if the proceedings have become infructuous, the same are not required to be entertained, and is not required to be decided. In response to the said argument, the respondents have stated that on 26-2-2003, the matter is adjourned and the trial Court has extended interim relief. However, since there is nothing on record to show whether as to on which date the matter is adjourned and whether the interim relief is extended or not, I would not like to state anything further in this behalf. Suffice it to say, that this matter came up for hearing for the first time on 25-2-2003. On the aforesaid date, this Court had issued notice making it returnable on 26-2-2003 and on the

aforesaid date the arguments of both the sides were heard for the whole day and it was adjourned to today for further arguments. In my view, the ad interim injunction granted by the trial Court having continued at the time when this appeal has come up for hearing, it cannot be said that this appeal has become infructuous. Even otherwise, the trial Court itself has given directions to the defendants that before appointing new Acharya they have to take permission from the High Court in pending Appeal From Order No. 421/2002. Considering the aforesaid aspect, it cannot be said that this Appeal From Order has become infructuous, though of course, these are all tentative observations as ultimately, I am not deciding the entire Appeal From Order.

17. Mr. Vakil next argued that before granting interim relief in the Civil Application, this Court has to consider the question about comparative strength of the claim of the respective parties. He has relied on the decision of the apex Court in the case of Colgate Palmolive (India) Ltd. Vs.

Hindustan Lever Ltd., , wherein the Honourable Apex Court has considered the scope of granting or refusing interim injunction. The relevant part of the observations are at paragraphs 24 and 25 which read as under:

24. We, however, think it fit to note herein below certain specific considerations in the matter of grant of interlocutory injunction, the basic being non-expression of opinion as to the merits of the matter by the court, since the issue of grant of injunction, usually, is at the earliest possible stage so far as the time-frame is concerned. The other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below:

- (i) extent of damages being an adequate remedy;
- (ii) protect the plaintiffs interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason therefore;
- (iii) the court while dealing with the matter ought not to ignore the fact of strength of one party's case being stronger than the other's;
- (iv) no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case - the relief being kept flexible;

(v) the issue is to be looked at from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury

keeping in view the strength of the parties" case;

(vi) the balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima

facie case in support of the grant;

(vii) whether the grant or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise.

25. It is on this backdrop the exercise of discretion by the Commission shall have to be considered and it is at this juncture certain further factual

details ought to be noted.

17.1 It is required to be noted that there is a difference between granting injunction under Order 39 and granting stay of the impugned order of the

trial Court. As a matter of fact, this aspect, i.e. comparative strength was required to be considered by the trial Court at the time of granting

injunction but, even otherwise, on merits also, after considering the comparative case of both the sides, in my view, the order of the trial Court is

required to be suspended for the reasons which I have already narrated in the earlier part of this order. As a matter of fact, the trial Court, even

before granting the injunction, was required to consider the said aspect about the comparative strength of the case of both the sides and that can be

decided only after hearing both the sides. I therefore, do not find any substance in the said contention of Mr. Vakild. Mr. Vakild also further

submitted that Satsang Sabha has no locus to appoint new Acharya, however, this argument is not required to be dealt with in the present

proceedings, especially when, this very question, about the powers of the Satsang Sabha and the matter of removal of Acharya, is pending before

this Court in A.O. No. 42/2002. In the present Appeal From Order, I am more concerned with the question whether the trial Court was right in

granting ex parte injunction without following the provisions of Order 39 Rule 3, CPC.

18. I am conscious of the fact that detailed reasons are not required to be given at this interim stage as it may prejudice the case of either side,

however, since Mr. Vakild has requested that all his arguments may be taken into consideration and detailed reasons be assigned, such reasons are

given. The order of the trial Court is accordingly suspended during the pendency of the present Appeal From Order. It is also required to be noted

that the learned trial Judge has also referred the same material which is already considered by this Court in Appeal From Order No. 421/2002 i.e.

judgment of Gonda Court, Civil Court, Ahmedabad, the order of the High Court in First Appeal as well as some religious books and yet, the trial

Court has granted injunction which is not granted by the High Court.

19. The trial Court shall now proceed with Exh.5 on its own merit. Since the trial Court at the time of deciding Exh.5 has considered in great

details, the point involved in the matter at an ex parte stage, it would be desirable that this application Exh.5 be decided by another Judge. Under

the circumstances, the learned District Judge, Nadiad, is directed to assign this matter i.e. Special Civil Suit No. 17/2003 to another Civil Judge

(S.D.) at Anand, and if there is no other Senior Division Court at Anand, the matter may be assigned to another Senior Division Judge at Nadiad.

Writ be sent to the District Judge, Nadiad forthwith. Rule in this Civil Application is accordingly made absolute with no order as to costs.

At this stage, request is made by the learned Senior Advocate Mr. Vakil for staying this order for a week with a view to challenge the said order.

However, in the facts and circumstances of the case, the said request is rejected.