

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 1547 OF 2018
IN
SUIT (L) NO. 867 OF 2018

Mr.Parvez Driver and another ... Plaintiffs

Versus

Young Rathesthtas Foundation ... Defendants

Mr.Firoz Bharucha a/w. Mr. Rushad Irani I/b. Mr.P. Fouzdar for the Plaintiffs.

Mr.Kersi Randeria, Representative of the Defendants.

CORAM : S.J. KATHAWALLA, J.

DATED : 30th JUNE, 2018

(In Chambers)

P.C.:

1. I was informed by my Associate in the afternoon that the Plaintiffs are desirous of making an Application for urgent ad-interim reliefs and the Advocates are seeking permission to move the Application at 2.30 p.m. The Advocates were granted liberty to mention the matter at 4.30 p.m. Due to pending work in Chamber, the Advocates were allowed to move the Court after 05.00 p.m. After hearing the Advocates for the Plaintiffs, the order was dictated, thereafter corrected and uploaded at 7.38 p.m. The said order is reproduced hereunder for ready reference :

“1.Not on board. Upon mentioning, taken on board.

2.The Plaintiffs have tendered the Draft Amendment seeking to add Mr.Xerxes Dastur as Plaintiff No. 3 and to delete the name of Mr.

Khushru Crawford and add the name of Mr. Homiyar Doctor who is a trustee / office bearer of the Young Rathestars Foundation. The Draft Amendment is taken on record, marked 'X' for identification and is allowed.

3.It is necessary to mention at the outset that the elections to the post of the Trustee/s of the Bombay Parsi Panchayat are bitterly contested and the last election as well as the election to be held tomorrow were held / are to be held under the supervision of five senior officers of this Court each to be posted at the five election centres.

4.This is an urgent Application made by Mr. Parvez Driver, Mrs. Roshan Irani and Mr. Xerxes Dastur (who is a candidate for the post of Trustee of Bombay Parsi Panchayat scheduled to be held tomorrow i.e. 1st July, 2018) in the following circumstances :-

(i)The election for the post of Trustee of Bombay Parsi Panchayat are scheduled on 1st July, 2018 between 10.00 a.m. to 6.00 p.m. One of the five candidates for the said election is Ms. Anahita Desai, who is wife of the present Chairman of the Bombay Parsi Panchayat. Ms. Arnavaz Mistry is a past Trustee of the Bombay Parsi Panchayat. She had re-contested the election (i.e. the last election held to select a Trustee of the Bombay Parsi Panchayat). Though, she was supported by Mr.Yezdi Desai and Ms.Anahita Desai, she lost the election to Mrs.Armaity Tirandaz. She is at present the Trustee of a charitable organization by the name - Young Rathestars Foundation. The said Young Rathestars Foundation have issued an appeal in the newspaper wherein it is announced that the Annual Grain Distribution Programme will be held at the Sorab Palamkote Hall in August 2018 where about 600-650 needy and poor parsi / Irani Zoroastrian families in Bombay will be given tea, sugar, pulses, towels, napkins and other household items and the members of the community are

requested to donate generously towards the charitable cause. Photocopy of the Appeal published in a Parsi publication (Jam-e-Jamshed) on 24th June, 2018, is reproduced hereunder :-

the Parsi our Atash Padshahs are tended to in every way and our Parsi properties are

• Pervez Daruwala is a corporate facilitator, motivational speaker, executive and life empowerment coach and a freelance writer

YOUNG RATHERSTARS
APPEAL

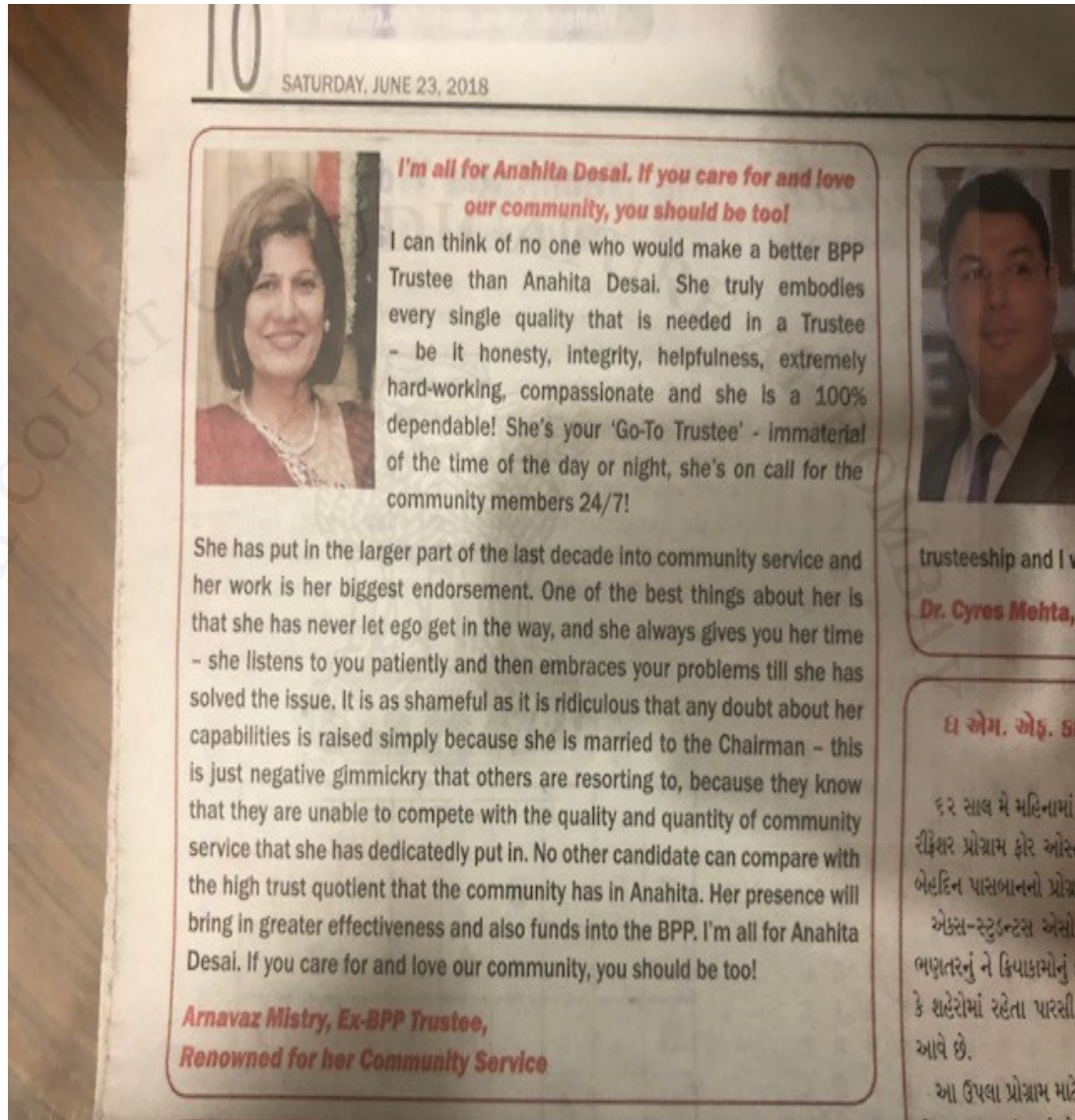
ANNUAL - BOMBAY GRAIN DISTRIBUTION PROJECT

OUR ANNUAL GRAIN DISTRIBUTION PROGRAMME WILL BE HELD AT THE **SORAB PALAMKOTE HALL IN AUGUST 2018** WHERE ABOUT 600 to 650 NEEDY AND POOR PARSİ / IRANI ZOROASTRIAN FAMILIES IN BOMBAY WILL BE GIVEN NEW SADRAS, TEA, SUGAR, PULSES, TOWELS, NAPKINS ETC. AND OTHER HOUSEHOLD ITEMS.

KINDLY SEND YOUR GENEROUS DONATION BY CHEQUE IN FAVOUR OF **YOUNG RATHERSTARS** TO:-

MR. SHAHRUKH N. DHALLA LAXMI SADAN, 604-B, DR. AMBEDKAR ROAD, DADAR (EAST), MUMBAI - 400 014. TEL. No.: 24121402.	MRS. ARNAVAZ J. MISTRY MISTRY MANOR, 803-A, DR. AMBEDKAR ROAD, DADAR (EAST), MUMBAI - 400 014. MOB. No.: 9821009289	MR. HOMIYAR M. DOCTOR J. J. BLDG., ROOM NO. 68, 811/814, JAME JAMSHED ROAD, DADAR (EAST), MUMBAI 400014. MOB NO.: 9821384385
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(ii) On 23rd June, 2018, the said Arnavaz Mistry has through a Parsi publication (Parsi Times) extended her support to Ms. Anahita Desai, which is reproduced hereunder :-



5.It is the Plaintiffs' case that Ms. Arnavaz Mistry, Trustee of Young Rathestars Foundation in order to support Ms.Anahita Desai through Young Rathestars has informed the needy Parsis to remain present tomorrow (i.e. on the day of election) at the Dadar Madressa Hall between 9.00 a.m. and 6.00 p.m. to register themselves for the food grains etc to be distributed in August 2018. Ms.Mistry has also asked the poor and needy Parsis to carry with them their registration certificate / voter ID, which is required to vote at the Bombay Parsi Panchayat elections. It is submitted that Ms. Arnavaz Mistry is using the platform of the well known Young Rathestars Foundation to help Ms. Anahita Desai by directing the needy Parsis to come to the Dadar Madressa Hall with the registration card / ID proof so that they can be further directed to go and vote for Ms.Anahita Desai at J.B. Vachha School at Dadar, which is at a walking distance of 2 minutes from Madressa hall. It is submitted that therefore the intention of Young Rathestars Foundation more particularly its trustee Ms. Arnavaz Mistry is to influence / force the poor and under privileged Parsis, who are the beneficiaries of the foundation and are under the obligation of the foundation to vote for Ms. Anahita Desai and ensure that the election is not fair and impartial.

6.It is submitted that the plaint is prepared in grave haste and there are some errors in the Plaint and the Plaintiffs be excused for the same. It is submitted that the purpose of holding free and fair elections will be served if Young Ratheshtas Foundation are restrained by an order of this Court from not distributing any forms or carrying out any registration activity tomorrow i.e. on 1st July, 2018 or by directing Young Ratheshtas

Foundation to carry out the registration work in the presence of an officer of the Court. It is submitted that the reliefs as sought is not granted the candidates as well as the Parsi community will be deprived of a free, fair and impartial election. It is submitted that if reliefs as sought is not granted grave and irreparable harm, loss and prejudice will be caused to the other contestants as well as the Parsi community. It is therefore submitted that the balance of convenience is not in favour of the Defendants but is in favour of the Plaintiffs, the candidates and the community in general.

7. Though I appreciate the urgency in the matter and also the fact that Ms. Arnavaz Mistry and Shahrukh Dhalla are given notice of this application but are not present by themselves or their representative or Advocate, since Arnavaz Mistry has stated in a WhatsApp message that she is at Lonavala and one of the trustees is unwell, I am not passing any order in their absence. However, I am fixing the Application for urgent ad-interim reliefs at 9.30 p.m. today in my Chambers i.e. Chamber No.45. It is made clear that if Young Rathestars Foundation fails to remain present through its trustees or representatives or an Advocate, the Court shall be constrained to hear the Plaintiffs and pass appropriate orders in their absence.

8. All concerned to act on an ordinary copy of this order duly authenticated by the Associate of this Court.

9. Advocate for the Plaintiff shall serve a copy of this order on the Defendants by e-mail and if possible by hand-delivery.

10. Stand over to 30th June, 2018 at 9.30 p.m.”

2. The Advocates for the Plaintiffs submit that though an attempt was made to

serve the Order along with the papers on Mr.Homiyar Doctor, who is the office bearer of the Defendants, he has not accepted service. The Advocate for the Plaintiffs submit that they have tape recorded their conversation with Mr.Homiyar Doctor, which I have heard. Mr. Doctor was informed that they want to serve the papers on him. However, he has questioned them as to how he can accept the papers and also stated that he will call them back within two minutes. Mr. Doctor was told that they have to appear before the Court within an hour to which Mr.Doctor states that he is aware of the same. According to the Plaintiffs, Mr.Homiyar Doctor thereafter switched of his phone and did not revert.

3. However, Mr.Randeria who is a Trustee of the Bombay Parsi Panchayat has appeared before me. He states that he is representing Ms.Arnavez Mistry, who is a family friend. He states that the allegations made by the Plaintiffs are incorrect and false. He states that the tape recorded conversation is incomplete and transcript of the same should be called from the Plaintiffs. The Plaintiffs shall hand over transcript to the Defendants or Mr.Randeria on 1st July, 2018 at 12.00 noon.

4. Since Mr. Randeria states that the allegations made by the Plaintiffs are false, this Court enquired if Ms.Arnavez Mistry / Young Rathestars Foundation can make a statement that the allegations made by the Plaintiffs are false and they are not going to ask any of the poor parsis to show their registration card and / or ID proof, nor are they going to give any direction to the poor parsis to go and vote at J.B.Vachha School at Dadar in favour of Ms.Ananita Desai or any other candidate. Mr. Randeria

took my permission to step out of my Chamber and make a phone call. Mr.Randeria thereafter returned and informed the Court that Ms.Arnavaaz Mistry will not make any such statement as a matter of principle.

5. In view of the facts and circumstances and submissions recorded in the order passed by me in the evening, which is reproduced hereinabove and further in view of the approach / attitude of Young Rathestars Foundation, namely that they are not willing to make any statement as suggested by this Court, I am constrained to pass the following Order :

i. The Trustees of the Young Rathestars, their representatives, volunteers, helpers attending to the poor parsis on 1st July, 2018 at Dadar Madressa Hall will not ask any of the Applicants / poor parsis to produce their registration certificate / ID proof required for the purpose of casting their vote for the election of the Trustee of the Bombay Parsi Panchayat and shall not suggest or direct them to vote for any candidate contesting the election of the Trustee also to be held on 1st July, 2018 between 10.00 a.m. to 06.00 p.m.

ii. Mr.Randeria shall convey this Order, which is dictated in his presence, to Ms.Arnavaaz Mistry, who in turn shall convey this Order to all the office bearers, volunteers, helpers who shall be attending to the poor parsis at Dadar Madressa Hall on 1st July, 2018.

iii. Mr.Randeria has applied for stay of this order. I am informed that the poor parsis shall start coming to the Dadar Madressa Hall by early morning. The question

of granting stay therefore does not arise. The Application is therefore rejected.

iv. All concerned to act on an ordinary copy of this Order, duly authenticated by the Associate of this Court.

(S.J.KATHAWALLA, J.)

