

**IN THE CITY CIVIL COURT AT AHMEDABAD****Civil Suit No.2263 of 2007****Order below Exh.31/32 (Notice of Motion)****Appearance :-****Learned Advocate Shri B. K. Damani for plaintiff.****Learned Advocate Shri V. A. Shah for defendants.**

1. Plaintiff has taken out Notice of Motion injunction application Exh.32 restraining defendants from using name of plaintiff No.1 association or introducing themselves as anywhere as to plaintiff No.1 association has been merged with defendant No.1 company and also from using logo, stationaries and papers of plaintiff No.1 association and also from operating the bank accounts and properties or assets of plaintiff No.1 association. It is also prayed that till final disposal of suit, defendant No.1 be restrained from acting on behalf of or using Logo of the plaintiff and restraining defendants from organizing any

property show in the name of plaintiff No.1 by showing and organizing the said property show as mentioned in the letter dated 15/7/2009 to be organized by defendant No.1.

2. Defendants are appeared and have filed reply at Exh.35 interalia contended that allegations made in the notice of motion application Exh.32 are not true and are not binding to defendants and are categorically denied by the defendants. It is contended that plaintiff application is not maintainable. It is contended that vide this Court's order dated 08/04/08, it was held that prima facie there is in no existence of the plaintiff No.1 as a Non-Trading Corporation and that no injunction on the basis of that NTC continues to exist can be granted and present plaintiff have not challenged the order dated 08/04/2008 passed by this Court and therefore, it deemed to have accepted by the plaintiff and present application is required to be rejected. It is contended that present application filed by the plaintiff are similar to the relief

prayed in injunction application Exh.6/7 and therefore, present application on similar grounds is not maintainable and it is abuse of process of law and therefore, injunction application to be rejected with cost.

3. Plaintiff has filed rejoinder in affidavit at Exh.37 and have controverted the contention raised by the defendants in their reply.

4. Heard, learned advocates appeared on behalf of both the parties. Learned advocate for plaintiff Shri B. K. Damani has submitted that plaintiff No.1 is Non Trading Corporation duly incorporated under the provisions of Bombay Non Trading Corporation Act, 1951 and plaintiff No.1 is also known as Gujarat Gruh Rachana Mandal and plaintiff No.2 and 3 are the members of plaintiff No.1 NTC. It is submitted that plaintiff No.1 was in existence upto 25/02/2005 and as per the NTC Act, plaintiff No.1 NTC repelled from 25/02/2005. It is submitted that defendants have illegally established the

defendant No.1 company and defendants have obtained licence under section 25 of the Companies Act, 1956 and defendants have informed to the plaintiffs that plaintiff No.1 is merged with defendant No.1 company but plaintiff No.1 NTC is never merged with the defendant No.1. It is submitted that plaintiff No.1 has its own entity and also have their own members and being administered by the its members. It is further submitted that defendants are representing as plaintiff No.1 is merged with defendant No.1 company and also saying that property and estate of plaintiff No.1 are also transferred and vested in favour of defendant No.1 and thereby also representing as they have right to operate bank accounts maintained with Bank of Maharashtra and Kalapur Comm. Co. Op. Bank Ltd. It is submitted that plaintiff No.1 members have right to file injunction application in case of such activities made against plaintiff No.1 and property and its assets if affects. It is submitted that defendants have got up false resolution of association meeting which was

never held and plaintiff No.1 NTC never merged with defendant No.1. It is further submitted that defendant No.1 and its persons, agents have no right to use the logo, assets and property of plaintiff No.1. It is submitted that earlier injunction application Exh.6/7 was rejected on the ground of non-existence of plaintiff No.1 NTC. It is submitted that it is observed by the Court in its order dated 08/04/08 that few members of association have applied for licence under section 25 of the Companies Act of 1956, this would not divest the interest of other members of NTC, neither it would result into vesting of the properties of the N.T.C. Into few such persons. Prima facie, the assets of the unincorporated N.T.C. Now collectively vest in the members of the unregistered N.T.C. And it would not be permissible for few members to carry away such assets just by obtaining license u/s.25 of the Companies Act, 1956. it is further submitted that order passed below EXH.6/7 tilts in favour of the plaintiff and therefore, the plaintiff has not challenged the said order in

Appeal. It is further submitted that on non filing of the appeal before the Appellate Court, not fatal for filing interim injunction application. It is further submitted that non-granting of interim injunction non-granting of earlier injunction application is not a reason to the plaintiff is not in existence and was repealed but, as per the observation made in order below EXH.6/7, the property of the plaintiff vested in the non-incorporated N.T.C. And its members and therefore, the present plaintiff has a right to file injunction application. It is further submitted that if even similar relief of earlier injunction application is prayed there is no bar to file another injunction application on the same relief and on the same ground. It is further submitted that the property of the plaintiff No.1 not vested into defendant No.1 company as plaintiff No.1 is not merged with the defendant No.1 company and therefore, the defendants have no right to use property and logo of the plaintiff. It is further submitted that if

property and logo of the plaintiff No.1 is being used by the defendant No.1 every N.T.C. member have right to file injunction application and such applications are maintainable. It is further submitted that there is no delay, latches, accusations and therefore, programme held by the defendant at abroad and anywhere and defendant has not issued notice to the plaintiff N.T.C. Members and therefore, there is no accusation, delay and latches on the part of the plaintiff. It is further submitted that the plaintiff has categorically denied allegations made in the reply filed by defendants and plaintiffs have filed the rejoinder in affidavit and controverted the contentions raised by the defendants in their reply EXH.35. So, argument of learned advocate for the defendant that there is admission on the part of the plaintiff regarding accusations are not true. It is further submitted that there is an irreparable loss and balance of convenience is in favour of the plaintiff but, the said are not in favour of the defendants and therefore, the injunction as

prayed for is required to be allowed.

5. Learned advocate Shri V. A. Shah on behalf of defendants has submitted that plaintiff has suppressed material facts and plaintiff has filed injunction application at EXH.6/7 and the same was rejected by the Hon'ble court. It is further submitted that prayer of earlier injunction EXH.7 and present injunction application EXH.32 are the same and similar and therefore, present application is not maintainable. It is further submitted that the plaintiff No.1 N.T.C. Is not in existence and therefore, present suit and injunction application are not maintainable and therefore, it deserves to be dismissed. It is further submitted that the plaintiff has not specifically denied and they have admitted that defendant is occupying logo since 1½ years and said is in accusation of the plaintiff but, the plaintiff remained inactive and therefore, on that ground injunction application deserves to be dismissed. It is further submitted that the



defendant had published his letter and recently going to organize a programme on 11 to 13<sup>th</sup> September, 2009. The said is a mega show and said facts is known to the plaintiffs and therefore, with mala fide intention, the plaintiff has filed this injunction application. It is further submitted that reputation of the defendant no.1 is very esteemed and he is organizing shows in various parts of the country and foreign countries and if, the injunction is granted in favour of the plaintiff then, reputation of the company will be affected and defendant no.1 has to bear a huge damage. It is further submitted that two members are associated with the plaintiff and objecting the defendant no.1 activities. It is further submitted that majority members are associated with defendant No.1 company. It is further submitted that defendants are not satisfied with the observation made in th order passed in notice of motion EXH.6/7 against them and therefore, they have filed an appeal before the Hon'ble High Court and the same is pending. It

is further submitted that there is no prima facie case, no balance of convenience and no irreparable loss in favour of the plaintiff and the same are in favour of the defendant No.1 company. It is further submitted that plaintiff is non existence and therefore, plaintiff has no right or locus standee to file the present application. It is further submitted that the prayer of the present injunction application and the earlier injunction application are same and similar and therefore, the plaintiff is not entitled to the reliefs claimed for.

6. Looking to the above arguments of both the parties and considering the documentary evidence on record I have gone through the evidence produced by the parties. The plaintiff has prayed present injunction application for the relief as stated above. It is an undisputed fact that the plaintiff had filed an injunction application EXH.7 and the same was rejected by this Court. Looking to the prayer of the present application and EXH.7 are similar. Looking to

the prayer made in the injunction application EXH.7 it reads as follows :

*(A) During the pendency and final disposal of the suit, the Hon'ble Court be pleased to grant temporary injunction restraining defendant Nos.1 to 8 and / or their members, directors, agents, servants, employees, representatives, associates and / or persons claiming through them from claiming or exercising any right, title or interest in any assets, rights, privileges and properties of plaintiff NO.1 and from using and occupying the office situated at 5<sup>th</sup> Floor, Saroj Chambers, Opp. Embassy Market, Ashram Road, Ahmedabad and / or assets / properties of plaintiff No.1.*

*(B) During the pendency and final disposal of the suit, the Hon'ble Court be pleased to grant temporary injunction restraining defendants Nos.1 to 8 and/or their members, directors, agents, servants, employees,*

*representatives, associates and/or persons claiming through them from operating the Current Account No.2273 with Bank of Maharashtra and the Current Account No. 1410102088 with Kalapur Commercial Co. Op. Bank Ltd and from encashing or otherwise dealing with the fixed deposits of plaintiff No.1 lying with the aforesaid two banks or otherwise.*

*(c) During the pendency and final disposal of suit, the Hon'ble Court be pleased to grant temporary injunction restraining defendants Nos.1 to 8 and/or their members, directors, agents, servants, employees, representatives, associates and/or persons claiming through them from using the name "The Gujarat Institute of Estate and Housing Developers" as a part of its corporate name or logo and from representing that defendant No.1 is converted from plaintiff No.1 or to claim to be successor of plaintiff No.1.*

*(d) Yadi of the order be sent to Branch Manager of Bank of Maharashtra and also to*

*Kalupur Commercial Co. Op. Bank Ltd.*

7. Now looking to prayer made in the present Notice of Motion injunction application Exh.32, it reads as follows :

*(A) Your honour may allow the present stay application and till hearing and final disposal of the suit, your honour may grant temporary injunction against defendant No.1 to 8 that they may not use the name of plaintiff No.1 association or they may not introduce themselves at anywhere that the plaintiff No.1 association has been merged with the defendant No.1 company and also use any stationaries or papers of the plaintiff No.1 association and also your honour may restrain the defendant No.1 to 8 to operate bank account of plaintiff No.1 association and also restrain the defendant No.1 to 8 to use any properties or assets of the plaintiff No.1 association.*

*(B) Pending and final disposal of the present*

*Civil Suit No.2263/07, Hon'ble Court be pleased to restrained defendants No.1 from acting on behalf of or using name of plaintiff No.1 or from using logo of the plaintiff No.1 or its name anywhere, further be pleased to grant injunction restraining the defendant from organizing any property show in the name of the plaintiff No.1 by showing as if the plaintiff No.1 is organizing the said property show and thereby till final disposal of the present civil Suit No.2263/2007, no property show as mentioned in the letter dated. 15/7/2009 be organized by the defendant no.1.*

8. Now plaintiff are come with the case that defendants are using plaintiff No1's Logo, stationaries, papers etc. and organizing the property show in the name of GIHED, now question before this Court is Whether plaintiff is entitled to relief prayed in present injunction application ? In my view, order passed by this Court on Exh.6/7 is very clear and now by present injunction application plaintiff are

praying restraining defendants from using Logo, Stationaries, Papers, Properties, and organizing show and restraining from operating bank accounts, such prayer has been rejected by the Court vide order dated 08/04/2009 and now by present injunction application, similar prayer has been prayed by the plaintiff. In my view, such relief can not be granted when earlier injunction application has been rejected.

9. Considering the facts of this case, defendants have filed reply Exh.35 and also produced documentary evidences at Exh.36/7 – affidavits of 309 members of association and all the 309 members have executed affidavits on oath stating that “they disapprove of any action taken by person or body on the basis of that erstwhile NTC and distinct entity from registered and incorporated body and in such action / proceedings should be abandoned/withdrawn forthwith. Defendants have also produced Exh.36/14 to 36/18 regarding property show performed in Gujarat, out side Gujarat and foreign countries. Considering these evidences,

defendant No.1 has earned good reputation in the market and all this programmes defendant No.1 using Logo 'GIHED' and these programmes are highly responded by the public. It is submitted by the learned advocate for the defendants that arranging these programmes, there is no damage cause to the plaintiffs and therefore, there is no damage cause to plaintiff No.1 as it is not in existence. So, there is no irreparable injury cause to the plaintiff. I am agree with the learned advocate for the defendants and considering these documentary evidences, defendant No.1 has earned high reputation in the market. Learned advocate for the plaintiff has argued on delay, latches and accusation. Looking to documentary evidences on record which shows that defendants have organized the programmes with occupying the Logo. Learned advocate for the defendants in reply has submitted that programmes are being organized in the country and foreign countries, so it can not be said plaintiff have accusations organized by defendants. Looking to the counter affidavit



filed by the plaintiff in para 12 it is submitted that even after the order was passed on 08/04/2008, thereafter also defendants having illegally continue to use properties of plaintiff No.1. Plaintiff has also submitted in their counter affidavit that in AGM meeting of dated 20/12/2008 almost 220 members have participated and said members are not defendant No.1 company, they are the members of association. Considering this facts on record, plaintiff has himself admitted that after the order passed below Exh.6/7 dated 04/08/2008 till defendant is continue in use Logo and estate and plaintiff 220 members have also participated in the Annual General Meeting. Considering these facts on record, programmes are being organized by the defendants in Gujarat, out side Gujarat and abroad and these facts are in accusation to the plaintiff. In my view, all these facts are in knowledge of plaintiff and plaintiff are remain inactive for approximately one and hand year and so, in the instant case, here is also ground of delay, latches and accusation. So on

that ground, in my view, plaintiff is not entitled to get interim relief. Looking to earlier order in that order, it is observed and held by this Court that plaintiff No.1 is not in existence and therefore, plaintiffs have no right to file injunction application and on that ground injunction application was rejected and after rejection order, till yet, plaintiffs have not amended the suit plaint. Looking to order passed below Exh.6/7 that "Suit itself may not lie by a unregistered association without invoking provision of O.1, Rule 8 of CPC." So, in my view, here is question of maintainability of present application and therefore, as per my above discussion and reasons, as similar prayer has been prayed by the plaintiffs. Plaintiff No.1 is in non existence, plaintiff has not amended the suit plaint and so, on the above grounds, present application is not maintainable. As per my above discussion and reasons, there is no prima-facie case of plaintiff. I have also not found balance of convenience and irreparable loss in favour of

plaintiffs but are in favour of defendants. As per my above discussion and reasons, if an interim injunction is granted in favour of plaintiff then prejudice will be caused to the defendants and said will not be compensated in terms of money and therefore, I come to the conclusion that present injunction application Exh.32 is required to be dismissed and hence following order is passed :-

**O R D E R**

Notice of Motion application Exh.32 is hereby rejected. NM interim injunction applications Exh.32 is disposed of accordingly. No order as to costs.

Pronounced in the open Court today on this 05th day of September, 2009.

**(M. M. Parmar)**  
**Chamber Judge,**  
**City Civil Court No.23**  
**Ahmedabad.**