

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO.465 OF 2015
IN
ARBITRATION PETITION NO. 255 OF 2013

Media Marketing Services (MMS)Applicant

IN THE MATTER BETWEEN

Bharat Sanchar Nigam Limited Petitioner

VERSUS

Media Marketing Servies (MMS) Respondent

Mr.Subhash Dhole, a/w. Ms.Anuja Dhole for the Applicant in Notice of Motion/Original Respondent.

Ms.Martina Sapkal, i/b.Mr.Arun Sapkal & Co. for the Respondent in Notice of Motion and Original Petitioner.

Mr.D.U.Mirajkar, advocate present on Notice.

Mr.Praveen Srivastav present in person.

CORAM : R.D. DHANUKA, J.

DATED : 8th MAY, 2015

P.C.

By this notice of motion, the applicant (original respondent) has prayed that the order dated 5th January, 2015 passed by this court be recalled being non-est and having no legal existence.

2. Learned counsel appearing for the applicant submits that the advocate Mr.D.U.Mirajkar who had appeared for the applicant before this court on 5th January, 2015 at the stage of hearing and final disposal of the arbitration petition was not engaged by the applicant and was not authorised to appear on her behalf in the Arbitration Petition No.255 of 2013. He submits that the applicant was not

even served with the notice by the learned advocate representing the original petitioner. He submits that since no notice was served on the applicant by the original petitioner, the order passed by this court on 5th January, 2015 has been passed behind the back of the applicant and the same shall be set aside on that ground also.

3. It is submitted by the learned counsel that the advocate Mr.D.U.Mirajkar was approached for the purpose of giving his opinion and for addressing a letter to the learned advocate representing the original petitioner but the applicant had not engaged him to represent her in this proceedings and did not file any vakalatnama in his favour.

4. In support of his submission that without service of notice upon the applicant, this court could not have passed any order against the applicant, learned counsel placed reliance on the judgment of Supreme Court in case of ***Prabin Ram Phukan and another vs. State of Assam and others*** reported in (2015) 3 SCC 605 and in particular paragraphs 24 to 26.

5. Learned counsel appearing for the original petitioner on the other hand submits that the learned advocate Mr.D.U.Mirajkar had appeared for the applicant even in the arbitration proceedings and was instructed by the husband of the applicant who was her authorised representative and was issued a power of attorney by the applicant in his favour. My attention is also invited to the letter addressed by Mr.D.U.Mirajkar dated 20th February, 2013 addressed to the learned advocate representing the original petitioner in response to the letter dated 20th February, 2013 by the advocate of the original petitioner to the applicant. In the said letter advocate Mr.D.U.Mirajkar had represented the applicant. Learned

counsel appearing for the original petitioner submits that the husband of the applicant who was representing the applicant was all throughout present in the court when the matter was argued by his counsel.

6. In view of the controversy raised by the applicant in the notice of motion that the learned advocate Mr.D.U.Mirajkar was not authorised to represent the applicant, this court issued a notice to the learned advocate and copies of the notice of motion alongwith affidavit in support was served upon him. Pursuant to the said order, learned advocate filed an affidavit dated 20th April, 2015 in the notice of motion. Learned advocate is also present in court at the time of hearing of this notice of motion and also addressed this court on the allegations made by the applicant against him. Learned advocate submits that the applicant was represented by authorised representative Mr.Praveen Srivastav, her husband who had contacted him. He submits that the business of the applicant firm is conducted on behalf of the applicant exclusively by her husband. It is stated in the affidavit that he was instructed by Mr.Praveen Srivastav to draft an application to the learned arbitrator for effecting correctness of an arithmetical error in calculation of interest on the amount granted in the award. After the arbitration petition was filed by the original petitioner, the learned advocate was instructed by Mr.Praveen Srivastav to write a letter to the petitioner regarding precondition of deposit of a percentage of the amount of the award.

7. It is stated by the learned advocate that he was instructed by Mr.Praveen Srivastav to draft and prepare the affidavit in reply to the petition and accordingly he had prepared the said affidavit. It is stated that since the learned advocate was not registered as an advocate on the Original Side of this court, he requested Mr.Praveen Srivastav to get the Vakalatnama for the applicant filed through a

colleague Mr.T.M.Gole, advocate and also to get the reply filed and served upon the original petitioner. He was informed by Mr.Praveen Srivastav that the same was done. It is stated that he however did not know why the said vakalatnama and reply were not found in the record.

8. It is also stated in the said affidavit that when the petition was called for final hearing, the learned advocate was present in court alongwith Mr.Praveen Srivastav. When the matter was argued by him on behalf of the applicant before this court, the same was argued in presence of Mr.Praveen Srivastav. Mr.Pravin Srivastav was present all throughout the entire hearing and was giving instructions. The learned advocate has denied the allegations made by the applicant against him in the affidavit in support of the notice of motion.

9. The applicant has filed rejoinder to this affidavit filed by learned advocate Mr.D.U.Mirajkar. In the rejoinder, it is the case of the applicant that the applicant had sought legal advice of Mr.D.U.Mirajkar on 20th February, 2013 and had requested him to send a reply to the learned advocate of the original petitioner which was sent by him on 20th February, 2013. It is however alleged that Mr.D.U.Mirajkar was neither appointed as an advocate by the applicant to represent her before this court nor any vakalatnama was given to him by the applicant.

10. Mr.Praveen Srivastav is present in court today when this matter is being heard. In view of the rival contentions raised by both parties I confronted him with these allegations made by parties and also the learned advocate. Mr.Praveen Srivastav admitted before this court that when the matter was heard, he was present in court. He however submits that he was called by the learned advocate

on phone. He did not challenge authority of Mr.D.U.Mirajkar, Advocate to represent the applicant.

11. It is not in dispute that the applicant had engaged Mr.D.U.Mirajkar in the arbitral proceedings before the learned arbitrator. A perusal of the record indicates that some of the documents were also signed the said Mr.Praveen Srivastav on behalf of the applicant. A perusal of the affidavit in rejoinder filed by the applicant clearly indicates that it is not denied by her that the husband of the applicant was present when the matter was argued before this court by Mr.D.U.Mirajkar or that he was not authorised to represent her and engage Mr.D.U.Mirajkar, Advocate. It is also not denied that he had appeared for the applicant before the learned arbitrator and his services were engaged for the purpose of atleast drafting the reply to the letter to be addressed to the learned advocate of the original petitioner.

12. In view of these admitted facts and in view of the fact that Mr.Praveen Srivastav who is himself present in court admitted that he was present when the matter was heard by this court and was being argued by Mr.D.U.Mirajkar on behalf of the applicant and did not raise any objection in Mr.D.U.Mirajkar arguing the matter on behalf of the applicant, I am not inclined to accept the submission of the learned counsel for the applicant that the applicant had not authorised Mr.D.U.Mirajkar to represent her before this court when the matter was being argued.

13. A perusal of the affidavit filed by the learned advocate however indicates that the vakalatnama of the applicant does not appear to be on record. Office is directed to make an enquiry as to whether any vakalatnama of the applicant was filed and if filed, why the same is not traceable.

14. Insofar as issue of notice raised by the learned counsel appearing for the applicant is concerned, it is the case of the original petitioner that the respondent was served with the copy of the petition. In my view since this court has taken a view that the applicant was represented by advocate Mr.D.U.Mirajkar who had argued the matter on merits on behalf of the applicant, I am not inclined to accept the submission of the learned counsel for the applicant that the applicant was not served with the copy of any notice or papers and proceedings in the matter.

15. Insofar as judgment of Supreme Court in case of ***Prabin Ram Phukan and another (supra)*** relied upon by the applicant is concerned, in the said matter, the Supreme Court was considering an issue whether the parties who is made liable to pay any amount due by the government is required to be served with any notice in the prescribed manner as setout in the regulation or not. In my view the said judgment does not apply even remotely to the facts of this case. The applicant was represented by her advocate and thus there is no merit in this submission.

16. A perusal of the judgment rendered by this court on 5th January, 2015 also clearly indicates that the matter was argued at length by both the parties through their respective counsel and only thereafter the said petition was disposed of by this court. I am not inclined to accept the submission of the learned counsel for the applicant that the learned advocate appeared in the matter on his own in good faith and without any instructions represented the applicant. In my view there is no reason to disbelieve the statements of the learned advocate Mr.D.U.Mirajkar made in his affidavit dated 20th April, 2015 and across the bar. Notice of Motion is thus misconceived and is accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]