

IN THE HIGH COURT OF BOMBAY AT GOA
MISCELLANEOUS CIVIL APPLICATION NO. 780 OF 2015
IN
WRIT PETITION NO. 409 OF 2015

SHRI.DILIP TRIMBAK ALVE AND ANR., ... Applicants

Versus

SHRI M. ASHRAF NAGARWALA ... Respondent

Mr. Nitin Sardessai, Senior Advocate with Mr. Deep Shirodkar,
Advocate for the Applicants.

Mr. Ashwin D. Bhobe, Advocate for the original Petitioner.

Mr. S.D. Padiyar, Advocate for the original Respondent No. 1.

Coram:- S. B. SHUKRE, J.

Date:- 28th January, 2016

ORAL ORDER:

Heard Mr. Nitin Sardessai, learned Senior Counsel for the applicants, Mr. Bhobe, learned Counsel for the original petitioner and Mr. Padiyar, learned Counsel for original respondent no. 1-Margao Municipal Council.

2. By this application, this Court has been called upon to speak to the minutes of the judgment dated 20.10.2015 and delete clause (ii) of the operative part of the judgment, which

reads as under:

“(ii) The respondent no. 1 is directed to open the seal within a period of one week.”

3. Learned Senior Counsel submits that clause (ii) of the operative part of the judgment was never asked for by the original petitioner in this Writ Petition and if this clause of the operative part of the judgment is allowed to stay, it would certainly come in the way of the applicants, who have filed the original Writ Petition No. 830/2015, challenging the order of the Municipalities Appellate Tribunal directing opening of the seal of the shop within 10 days. He submits that when this Court allowed the petition in terms of prayer clause (a) of the petition, there was no need to issue yet another direction of opening the seal of the shop as the prayer clause itself included the prayer of opening of the seal. It is submitted that now clause (i) and clause (ii) of the operative part of the order, as they stand in the judgment dated 20.10.2015, are likely to result in an anomalous situation.

4. Learned Counsel for the original petitioner submits that ordinarily, a prayer for speaking to the minutes is made by

consent of the other side and a joint application is made in this regard by both the parties. However, he submits that the original petitioner is opposing this prayer for speaking to the minutes on the ground that this Court considered the argument canvassed on behalf of both the sides and through an intelligent process, has made a conscious decision which is reflected in the second part of the order. If this clause (ii) is deleted, it would amount to review of the order which is not the purpose of speaking to the minutes of the judgment.

5. The provision regarding speaking to minutes is found in Rule 2 Chapter XI of the Bombay High Court Appellate Side Rules, 1960. Although, this provision does not speak anything about the contours of the power of the Court to express its opinion in the nature of speaking to the minutes, the purpose of this provision can be very well ascertained from various provisions contained in Chapter XI of the Bombay High Court Appellate Side Rules, 1960. An overall review of these provisions, particularly the provision relating to approval of fair copy of judgment in Rule 1, creates an impression that provision of Rule 2 Chapter XI of the Bombay High Court Appellate Side Rules, 1960 has been made with a view to

remove any doubt or ambiguity or clerical or typographical error that may remain in the order passed by the Court, notwithstanding an opportunity to correct it under Rule 1, for to err is human. It works to lend clarity to the order of the Court, to prevent prejudice being caused or anomalous situation being created from vagueness or clerical errors or unintended misses or lapses. The provision, however, does not permit reconsideration or review of the order. It only permits speaking out clearly, if that is required to properly understand the order or prevent the order from being misconstrued in situations already referred to. Such being the purpose of the provision, it has to be now examined whether or not in the light of the rival arguments, clause (ii) of the operative part of the judgment dated 28.10.2015 leads to any ambiguity or creates any anomalous situation.

6. Clause (i) of the operative part of the order shows that the petition has been allowed in terms of prayer clause (a) of the petition. Prayer clause (a) of the petition reads thus:

*"For writ or any other appropriate writ,
order calling for the records and
proceedings of Second Municipal Appeal
No. MIN/UD/44/2014 on the file of*

respondent no. 4 and upon considering the legality and propriety of the ex-parte order dated 29/09/2014 (wrongly typed as 29/06/2014) passed in Second Municipal Appeal No. MIN/UD/44/2014 be pleased to forthwith vacate the said order and direct the respondent no. 1 to remove the seal affixed to the shop as directed by the Presiding Officer, Goa Municipalities Appellate at Panaji in Municipal Appeal No. 67/2014, on terms and conditions this Hon'ble Court deems fit and proper."

7. It is clear from prayer clause (a) of the Writ Petition that it also includes the prayer for grant of relief for opening of the seal in terms of the order passed by the Municipalities Appellate Tribunal. The order of Municipalities Appellate Tribunal directs that the seal be opened within 10 days from the date of the order. Now, if we look at clause (ii) of the operative part of the order, we would find that even by this part, same order as has been sought in later part of prayer clause (a) has been passed, although, the period given for compliance is reduced from 10 days to 7 days. Reduction of period of compliance should pose no difficulty. The difficulty would arise when this part of the order in question is seen as standing on it's own

footing and independently. As of now, it indeed stands separately from clause (i) of the order, which also grants prayer clause (a) entirely. Therefore, the learned Senior Counsel for the applicants is right when he submits that just in case the applicants succeed in Writ Petition No. 830/2015, the clause which stands independently in the order would still remain as it is, whereas the first clause in the order in question would not and this would lead to an anomalous situation. This could not have been the purpose or meaning of clause (ii) of the operative part of the order. Its purpose is to only reinforce what is stated in clause (i) of the operative part of the order and not create any anomalous situation. As said earlier, the purpose of the provision relating to speaking to minutes is to remove ambiguity or clerical or unintended error leading to an anomalous situation or prejudice to the parties. It follows that clause (ii) of the operative part of the order in question would have to be clarified as not standing separately and independently but to be a part of the operative part of clause (i) of the order. Accordingly, it is clarified that clause (ii) of the order in question shall be read as forming part of clause (i) of the order in question and the period of compliance shall be read as 7 days instead of 10 days.

8. Miscellaneous Civil Application is disposed of in above terms.

S. B. SHUKRE, J.

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