

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (ST) NO. 23727 OF 2015
IN
REVIEW PETITION (ST) NO. 23726 OF 2015
IN
WRIT PETITION NO. 174 OF 2015

Ganesh N. Salunkhe	..	Applicant
vs.		
Nizampur Vibhag Shikshan		
Prasarak Mandal & Ors.	..	Respondents

Mr. Balkrishna Joshi for Applicant.
Mr. R. A. Thorat - Senior Advocate i/b. Ms. Gauri Jadhav with Mr. Tushar Jadhav for Original Petitioner.
Mr. C. G. Gavnekar for Respondent Nos. 3 to 7.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 07 January 2016

Date of Pronouncing the Judgment : 12 January 2016

JUDGMENT :-

1] The civil application, which seeks condonation of delay in instituting the review petition is hereby allowed and the delay is condoned. The review petition is taken up for hearing on merits.

2] The review petition has been instituted by Ganesh N. Salunkhe, who has claimed that he was not a party to writ petition no. 174 of 2015, in which the order dated 4 February 2015, of which review is applied for came to be made.

3] Mr. Joshi, the learned counsel for the review petitioner has basically made two submissions in support of the review petition:

(a) That the Review Petitioner was not even a party to writ petition No. 174 of 2015. Therefore, no direction to implead him as the respondent in appeal No. 29 of 2008 pending before the Charity Commissioner, could ever have been made in the writ petition;

(b) Even otherwise such a direction is contrary to the provisions contained in Order XLI Rule 20 of Code of Civil Procedure, 1908 (CPC) as interpreted by this Court in case of *Sheikh Yusuf Haji Sheikh Usman & Ors. vs. Haji Mohammad Jamil Ahemad & Ors.*¹, particularly since the remedy of appeal against the review petitioner is barred by limitation.

4] The order dated 4 February 2015, of which, review is applied for was made in the writ petition No. 174 of 2015 instituted by the Nizampur Vibhag Shikshan Prasarak Mandal (Trust). Admittedly, review petitioner – Ganesh Salunkhe is a Trustee of the said Trust. Lest, any technical objection of this nature does not surface at a future date, a specific query was made to the learned counsel, Tushar Jadhav, who was then appearing for the Trust, as to whether writ petition No. 174 of 2015 was instituted, *inter alia*, on

1 2015 (1) ALL MR 120

the basis of instructions from Ganesh Salunkhe and Shankarlal P. Mehta. In response, Tushar Jadhav made statement that though Shankarlal Mehta and Ganesh Salunkhe may not be the petitioners themselves, the petition has been filed by the Trust, of which the two said persons are the trustees and further, the petition has been filed on the basis of instructions from the said two persons. This was duly recorded in the order dated 4 February 2015. The relevant portion of the order reads thus :

“3.The learned counsel for the petitioner submits that although Mr. Mehta and Salunkhe are not petitioners in the present petition, this petition has been filed by and on behalf of a trust i.e. Nizampur Vibhag Shikshan Prasarak Mandal of which these two persons are trustee and accordingly, the learned Counsel submits that this petition has been filed on the basis of the instructions of these two persons.

[Emphasis supplied]

5] However, in view of the categoric assertion by Ganesh Salunkhe that he was neither aware nor he had given any instructions to Advocate Tushar Jadhav for the institution of writ petition no. 174 of 2015, by order dated 4 December 2015, Advocate Tushar Jadhav was requested to appear in the matter and clarify the basis upon which he made the statement which came to be recorded in paragraph 3 of the order dated 4 February 2015.

6] Advocate Tushar Jadhav has appeared in the matter through a counsel and also filed affidavit dated 6 January 2016. In the affidavit, Advocate Tushar Jadhav has clearly stated that the statement made by him was not false and further being trustees, Ganesh Salunkhe and Shankarlal Mehta were aware of the legal proceedings. Advocate Tushar Jadhav in his affidavit has also made reference to several other circumstances, on the basis of which he has asserted that both Ganesh Salunkhe and Shankarlal Mehta were very much aware of the proceedings instituted by and on behalf of the trust, of which they are admittedly the trustees. Ganesh Salunkhe neither applied for nor has filed any affidavit in rejoinder, to counter the statements made by Tushar Jadhav. There is really no reason now to doubt the statement made by Advocate Tushar Jadhav, which was duly recorded in paragraph 3 of the order dated 4 December 2015.

7] If the statement of Advocate Tushar Jadhav is right and is required to be accepted, as a corollary, the statement of Ganesh Salunkhe is false and is required to be rejected. Institution of a review petition, on the basis of a false statement is a serious matter. In fact this calls for proceedings against Mr. Ganesh Salunkhe for perjury as well as abuse of the process of the Court. However, taking into consideration the advanced age of Mr. Ganesh Salunkhe

and also not discounting the possibility that he has acted on basis of misconceived advise, no further action, other than imposition of costs is proposed. The first ground, on the basis of which review was urged, lacks merit and is therefore rejected.

8] The second ground, apart from not constituting any error apparent on face of record, is even otherwise misconceived. It needs to be noted, that the respondents in writ petition had instituted appeal No. 29 of 2008 questioning the change report dated 31 July 2008. The appeal was dismissed by the Charity Commissioner by the order dated 7 February 2011, *inter alia*, on the ground that certain parties, including Mr. Ganesh Salunkhe and Mr. Shankarlal Mehta were not impleaded as the respondents. The respondents in writ petition No. 174 of 2015, therefore, instituted miscellaneous civil appeal No. 108 of 2012 before the District Judge, Alibag questioning the order dated 7 February 2011 made by the Charity Commissioner. Therein, both Mr. Shankarlal P. Mehta and Mr. Ganesh Salunkhe were admittedly impleaded as respondent Nos.4 and 5. However, the respondents in miscellaneous civil appeal No. 108 of 2012, which was *inter alia*, include Mr. Shankarlal Mehta and Mr. Ganesh Salunkhe, by application (vide Exhibit-31) dated 17 October 2014 applied for deletion of names of Mr. Shankarlal Mehta and Mr. Ganesh

Salunkhe on the ground that no leave was applied before joining them as parties and further miscellaneous civil appeal No. 108 of 2012 may be proceeded against the original respondents only. The District Judge by order dated 29 October 2014 dismissed the application at Exhibit-31, by observing that there was no merit in the same.

9] The trust, thereupon, instituted writ petition no. 174 of 2015 to challenge the order dated 29 October 2014 made by the District Judge. By order dated 4 February 2015, the said writ petition was disposed of. The proceedings before the District Judge in miscellaneous civil appeal no. 108 of 2012 were disposed of and consequently, the order dated 29 October 2014 did not survive. At the same time, the Charity Commissioner's order dated 7 February 2011 was itself set aside and appeal No. 29 of 2008 was restored before the Charity Commissioner for fresh decision, in accordance with law. Lest, technical objection of non-joinder of Mr. Shankarlal P. Mehta and Mr. Ganesh Salunkhe persists, direction was issued for impleadment of said two persons in appeal No. 29 of 2008. Such direction was issued, not only after consideration of the submissions made by the learned counsel for the parties, but also after ascertaining that writ petition no. 174 of 2015 was instituted on the instructions of Mr. Shankarlal Mehta and Mr. Ganesh Salunkhe.

10] If the case of Mr. Ganesh Salunkhe, the review petitioner, to the effect that he had, notwithstanding being a Trustee of the trust not instituted writ petition no. 174 of 2015 or that he had not even issued instructions to Mr. Tushar Jadhav to institute said petition is to be accepted, then it is clear that Mr. Ganesh Salunkhe was not aggrieved by the order dated 29 October 2014 made by the District Judge to implead him as a party in the District Court's proceedings in miscellaneous civil appeal No. 108 of 2012. If however, writ petition no. 174 of 2015 was instituted on the basis of instructions of Mr. Ganesh Salunkhe or in any case, since Mr. Ganesh Salunkhe is admittedly the trustee of trust, the writ petition should be deemed to have been instituted on his behalf, then it is doubtful whether Mr. Ganesh Salunkhe has the authority to institute this review petition, particularly, since the trust itself, does not seem to have any grievance against the order dated 4 February 2015. In fact, Mr. Gavnekar is right in his submission that if writ petition no. 174 of 2015 had not been instituted by or under the instructions of all the trustees, then the same was not maintainable and was required to be dismissed on the said ground alone. In that case, the trust cannot purport to even retain any of the benefits obtained by it by virtue of the order dated 4 February 2015. From all this, it does appear that the sole purpose of instituting this review petition was to thwart proceedings before the Charity Commissioner and to

defeat the directions issued for expeditious disposal of appeal no. 29 of 2008 by the Charity Commissioner. With such oblique motive, Ganesh Salunkhe did not desist, even from making false statements in support of the review petition.

11] The direction to implead Ganesh Salunkhe and Shankarlal Mehta in appeal no. 29 of 2008 is not relatable to powers under Order XLI Rule 20 of the CPC. Accordingly, there is no question of applicability of the decision in the case of *Sheikh Yusuf* (supra) even if one has to accept that the interpretation put thereon by Mr. Joshi, is correct. The direction issued, was for the purposes of setting at rest hyper technical objections, which were being put-forth to derail adjudication on merits. The direction was issued so that the two trustees, assuming that they have any defence, which is different and distinct from the defence of the trust or the other trustees, cannot complain of denial of any opportunity of being heard in the matter. Such directions can always be issued in exercise of supervisory jurisdiction under Article 227 of the Constitution of India and in the interests of justice for promotion of adjudication on merits. There is accordingly, no error, much less apparent on face of record, warranting the exercise of review jurisdiction.

12] For the reasons referred to in paragraph '7' above, this review petition is dismissed with costs of Rs.15,000/- (Rupees Fifteen Thousand). These costs shall be paid by the review petitioner to the respondent nos. 3 to 7, the contesting respondents. In addition, the review petitioner is directed to pay costs of Rs.5,000/- (Five Thousand) to Advocate Tushar Jadhav, as, without any reason, false statement was made with regard to his conduct before this Court. The costs to be paid within a period of four weeks from today. The Charity Commissioner, who is taking up appeal no. 29 of 2008, is directed to ensure that such costs are indeed paid by the review petitioner, as indicated. The review petition is dismissed with costs as aforesaid.

13] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka