

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10972 OF 2015

WITH
CIVIL APPLICATION NO. 3164 OF 2015

WITH
CIVIL APPLICATION NO. 3165 OF 2015

WITH
CIVIL APPLICATION NO. 428 OF 2016

1. Common Citizen of India	}	
(Common Man)	}	
through Rakesh Omprakash	}	
Agarwal, aged 57 years,	}	
Occupation - Social Worker,	}	
R/at 39, Udhan Complex, Gandhi	}	
Chaman Road, Jalna,	}	
Tal. and Dist. Jalna	}	
	}	
2. Peoples Rights Vigilance	}	
Organisation (NGO), through	}	
"General Secretary" Rakesh	}	
Omprakash Agarwal, aged 57	}	
years, Occupation Business,	}	
R/at G-2 Abad Complex, Gandhi	}	
Chaman Road, Jalna,	}	
Tal. and Dist. Jalna.	}	
	}	Petitioners
versus		
1. The Hon'ble High Court	}	
Judicature of Bombay through	}	
Registrar General, High Court,	}	
Mumbai, Fort area, Mumbai,	}	
Mumbai Tal. Dist. Mumbai.	}	
	}	
2. The Hon'ble Chief Justice,	}	
High Court, through Registrar	}	
General, High Court, Mumbai Fort	}	
area, Mumbai, Mumbai	}	
Tal. Dist. Mumbai.	}	

3. The Hon'ble Judge	}	
Shri. Abhay Shriniwasji Oka	}	
High Court, through Registrar	}	
General, High Court, Mumbai Fort	}	
area, Mumbai, Mumbai	}	
Tal. Dist. Mumbai (Maharashtra)	}	
	}	
4. The Hon'ble Judge	}	
Shri. Anil Kumar Menon	}	
High Court, through Registrar	}	
General, High Court, Mumbai Fort	}	
area, Mumbai, Mumbai	}	
Tal. Dist. Mumbai (Maharashtra)	}	
	}	
5. State Government of	}	
Maharashtra, through Chief	}	
Secretary, Law and Judiciary	}	
Department, Mantralaya,	}	
Mumbai - 32	}	
	}	
6. The Government of India	}	
through Chief Secretary,	}	
Law and Judiciary Department	}	
4 th floor, A Wing, Shastri Bhavan,	}	
New Delhi.	}	Respondents

Mr. Rakesh Agrawal - petitioner in person
[General Secretary of Common Citizen of
India (Common Man)] and Mr. Arun
Ghode - (President) present.

Mr. V. R. Dhond - Senior Advocate with
Mr. Sanjay Udeshi i/b. M/s. Sanjay Udeshi
and Co. for respondent no. 1.

**CORAM :- S. C. DHARMADHIKARI &
G. S. PATEL, JJ.**

**Reserved on 17th February, 2016
Pronounced on 6th May, 2016**

JUDGMENT:- (Per S. C. Dharmadhikari, J.)

1. On this writ petition, along with two civil applications, a Division Bench of this court (Bench at Aurangabad) on 23rd October, 2015 passed the following order:-

“Party in person present

1) In the present petition the petitioner/party in person has impleaded the High Court as Respondent No.1; Hon'ble the Chief Justice as Respondent No. 2; Hon'ble Shri Justice A. S. Oak, as Respondent No. 3 and Hon'ble Shri Justice Anil Kumar Menon as Respondent No. 4. Secondly, vide one of the prayers, the petitioner is seeking addition of some provision in the Circular/Order dated 6th January, 2010 issued by the High Court.

2) In view of the above, in terms of Circular/Order dated 6th January, 2010, this matter will have to be heard by the principal seat at Mumbai. Hence, the present writ petition along with the Civil Applications filed therein, be placed before the principal seat.”

2. It is in the above circumstances that the writ petition, along with two civil applications was placed before Hon'ble the Acting Chief Justice on the administrative side and Her Ladyship was pleased to pass an administrative direction assigning these matters to a bench presided over by S. C. Dharmadhikari, J.

3. Accordingly, with advance intimations and as per convenience of the party appearing in person, we heard these matters and reserved judgment on 17th February, 2016. The petitioner party in person has, by this petition, submitted that a writ petition was filed at Aurangabad Bench of this court being Writ Petition No. 3696 of 2012. That writ petition essentially projected the grievance stated to be of common helpless citizens

in not being able to present and file petitions and applications in Marathi language in this court. A grievance was raised in that petition about alleged discrimination and differential treatment to litigants who wish to present and institute proceedings in Marathi and press and argue them in that language. It appears that the grievance was that this being the language of the State, the petitioner party in person must be allowed to file and institute petitions and equally to argue them in Marathi.

4. On that petition, a detailed judgment and order was passed, copy of which is annexed as Annexure 'Q' at pages 134-142 of this petition.

5. The petitioner was not satisfied with this judgment and order and sought review of the same. He filed Civil Application No. 7378 of 2012. Both, the original petition and the review petition/application were placed before a Division Bench at Aurangabad Bench of this court. On the review petition/application, on 27th November, 2012, the Division Bench at Aurangabad passed a detailed order, but that detailed order took care of some other grievance of the petitioner before us. That was with regard to recusal of Hon'ble Mr. Justice Sunil P. Deshmukh as a member of the Bench hearing the review application. Since it was directed to be placed before a Bench of which Hon'ble Mr. Justice Sunil P. Deshmukh is not a member, thereafter, the said review petition/application was placed before a Bench at Aurangabad on 30th September, 2013. That Bench passed an order, copy of which is at page 102 of the paper book.

6. The petition does not indicate the fate of review application. Thereafter, that review application, which was originally numbered as Review Application (St) No. 15820 of 2012 and then numbered as Review Application No. 191 of 2013, along with other civil applications and one Writ Petition No. 3696 of 2012, was placed before a Bench presided over by Hon'ble Mr. Justice A. H. Joshi and Hon'ble Mr. Justice R. V. Ghuge at Aurangabad. That Bench passed an order on 19th November, 2013 holding that the petitioners accept the position that this court in para 11 of order dated 27th April, 2012 had taken care of prayer clauses (d), (e) and (f) of the writ petition. Yet, the petitioner was heard by the Bench and the Bench observed that the court had, on the earlier occasion, advised the petitioner to make an appropriate representation to the appropriate authority. It is not capable of being reviewed. Once again, the petitioner was granted liberty by this order of the Division Bench dated 19th November, 2013 to approach the appropriate forum i.e. the State Government. If after due persuasion, the Government does not pay attention to the petitioner's representation, he would be free to take recourse to other forum under writ jurisdiction and that is how the review petition/application and all the civil applications came to be disposed of. Thereafter, what appears from the record is that the petitioner accepted the orders of the Division Bench and approached the State Government by a representation, copy of which is at Annexure 'B' at page 76 of the paper book. That was followed by another representation dated 21st April, 2015. It was then followed up by reminders after reminders and copies of which are to be found up till page 88 of the paper book. Then, the

record indicates that the petitioner had already filed Writ Petition No. 7943 of 2013. That was placed before a Division Bench of this court at Aurangabad Bench on 30th September, 2013. The petitioner was not satisfied with this order dated 30th September, 2013 (page 102 of the paper book) and filed a review application being Review Application No. 157 of 2013 in that writ petition. That was also placed at Aurangabad and the record indicates that the court was trying to assist the petitioner by appointing an advocate so as to better appreciate his point of view.

7. The record further indicates that these proceedings were placed on 20th February, 2014 at Aurangabad before the Division Bench presided over by one of us (S. C. Dharmadhikari, J.). The Bench found that the petitioner/applicant questions some decisions of the High Court and has impleaded the Registrar (Judicial) and equally Hon'ble The Chief Justice as party respondents. Hence, in terms of the circular, the matter will have to be heard at the Principal Seat at Mumbai. That is how the matter was placed before the Principal Seat. The record indicates that the petitioner was not satisfied with the transfer of the proceedings from the Bench at Aurangabad to the Principal Seat and the circular dated 6th January, 2010 of the High Court. The petitioner then got involved in those proceedings and which together with the transferred matters from Aurangabad Bench came up before a Division Bench of this court, which segregated the matters, namely, Review Petition No. 60 of 2014 in Writ Petition No. 4259 of 2014 and two writ petitions being Writ Petition No. 5097 of 2012 and Writ Petition No. 5098 of 2012.

The record further indicates that these matters were placed on 22nd August, 2014, 9th March, 2015 and 1st April, 2015. Finally, the review petition and the writ petitions came to be dismissed for want of prosecution.

8. With such chequered history of the proceedings, what the petitioners are now seeking to do is to recall several orders passed by this court. They are not only seeking to recall the order dated 20th February, 2014 passed at Aurangabad Bench and relying on the circular of this court dated 6th January, 2010, but are seeking to recall the Division Bench judgment of this court upholding that circular.

9. Upon hearing the party in person at great length and perusing, with his assistance, this petition and all the annexures thereto, we do not see how we can entertain this petition. What the petitioner has now done is to file a writ petition and which was placed before a Bench at Aurangabad together with two civil applications, namely, Writ Petition No. 8505 of 2015 now numbered as Writ Petition No. 10972 of 2015 and Civil Application Nos. 9839 of 2015 and 11819 of 2015, which are now numbered as Civil Application No. 3164 of 2015 and Civil Application No. 3165 of 2015.

10. These petitions were initially placed before a Division Bench on 23rd October, 2015 at Aurangabad and the petitioner was present. The Bench heard the petitioner, perused the petition and passed a order, which we have reproduced above.

11. Thus, the petitioner has filed a substantive petition and is raising the same issues which he had raised during the course of his arguments in the various writ petitions, including during the course of arguments in writ petition challenging the circular of this court issued on the administrative side dated 6th January, 2010. The legality and validity of that circular has been upheld.

12. Mr. Dhond learned Senior Counsel appearing for respondent nos. 1 and 2 in this case has placed before us a copy of the Division Bench judgment dated 11th December, 2014 upholding the circular. It is well settled that final orders in a PIL or a writ petition filed in public interest litigation binds all. The orders passed in a PIL would be operative in rem. (See AIR 2012 SC 3230). We found, from a perusal of that judgment, that all the issues raised have been considered. In fact, the Division Bench judgment, in upholding the power of the Hon'ble the Chief Justice, has declared the proviso to Rule 2 of Chapter XXXI of the Appellate Side Rules as illegal and invalid and being in contravention of section 126 of the Civil Procedure Code, 1908. All the writ petitions and review petitions have thus been disposed of in terms of the operative order in para 55.

13. We do not see how now a substantive writ petition raising similar issues can be entertained. The petitioner has impleaded not only the Hon'ble the Chief Justice, High Court Bombay as respondent, but also impleaded two sitting Judges, namely, Hon'ble Mr. Justice A. S. Oka and Hon'ble Mr. Justice A. K. Menon as party respondents. These Hon'ble Judges have passed orders

referred in para 7 above. Thus, all the proceedings arising out of the initial order dated 27th April, 2012 are disposed of. The petitioners are aware that language of the High Court is not determined by the High Court, but in terms of Article 348 of the constitution by the Parliament.

14. We have given a very patient hearing to the petitioner, because he appeared in person. Secondly, we have also perused the writ petition, which is filed in Marathi, without insisting on a translation. We have done so since Marathi is the mother tongue of one of us (S. C. Dharmadhikari, J) and the other (G. S. Patel, J) is sufficiently conversant and able to read and speak it, though it is not his mother tongue. On an earlier occasion when the Bench included the Hon'ble Mr. Justice B. P. Colabawalla, we directed the High Court Registry itself to translate this petition into English. At no stage did we give any impression to the petitioner that he cannot rely upon the original pleadings in Marathi and put across his views and submissions in Marathi. We took great pains and care to ensure that the petitioner gets a fair and just opportunity to place his views. Therefore, we allowed him to tender a compilation of judgments as well.

15. We find that this writ petition is nothing but an attempt of the petitioner to seek rehearing of all the pleas and proceedings in which they have been raised though all of them are disposed of by detailed orders earlier. Though the orders were sought to be reviewed by the petitioner, even those review petitions have been also disposed of. In the garb of a fresh petition, we cannot reopen

concluded matters. There is a limit to which this court can reconsider and rehear disposed of cases on the grounds as are now raised above. We do not think that in the garb of some paragraphs of the writ petitions but raising concluded issues we can entertain this petition.

16. The attempt of the petitioners to implead the Judges of this court deserves to be strongly deprecated. A litigant cannot, even if he is appearing in person and just because he is unsuccessful in the initial round, while seeking a review of the orders passed by this court, implead the Hon'ble Judges and the Bench sitting collectively or individually as party respondents. The review petition, as is ordinarily well settled, has to be heard by the same Judge for the review goes to the Judge and appeal goes to the court. If the review has to be heard by the very same Judge, then we do not see how the petitioner can complain that the said review petition should not be heard by one of the Judges comprising the Bench or if that is heard by a distinct Bench and dismissed, he can go on impleading and arraying all the Judges as party respondents and seeking reliefs against them personally. We do not think that the petitioner's prayers in that behalf can be granted.

17. A party in person does not enjoy special privilege or a different treatment. He cannot dictate to the court what orders and reliefs should be granted in his case. All parties and litigants must bear in mind that justice is rendered in accordance with law and not as per their notions, ideas and view of law. The courts

interpret law and apply it to facts and circumstances of a given case. If a law enacted by a competent legislature is not unconstitutional, null, void and of no legal effect, then, that has to be applied, come what may litigants feel about it. Courts do not make law but they interpret and apply a existing law. A reiteration of these elementary principles is necessary because of present day tendencies of litigants and parties, their approach towards legal proceedings. They do not have a absolute, uncontrolled, unregulated right of approaching a court of law again and again and on the same cause of action, with same prayers after the main proceedings are disposed of by a judgment and order. There are exceptions to the principle of finality of judgments and orders, but these are also set out in law. If the law permits intervention in final judgments on limited grounds, then, the courts cannot ignore that law and reconsider its judgment and order by a fresh hearing on the same concluded issues as if it is repository of all powers, namely, original, appellate, revisional etc. The remedy of those aggrieved by a final judgment and order is to prefer an appeal which lies to a appellate court. The same court cannot hear that appeal. A discipline, regime and definite legal principle controls an adjudication before a court of law. Public policy and public interest demand a quietus or end or finality to adjudication of cases before a court of law. It is well settled that statutes of limitation and provisions like res-judicata or constructive res-judicial work towards and ensuring public peace. Legal proceedings ought not be a tool of harassment, oppression, exploitation by vexing one's opponent, in a adversarial judicial system, repeatedly. One can duly imagine his

agony for one who asserts a plea against the other on failure to prove it must suffer all legal consequences. By this process alone all the rights and equities can be balanced. There is a certainly a gain and advantage to the public for they know what is the ultimate status of a legal cause and their position on account of its final conclusion. A just and peaceful society is built on this foundation which none should weaken.

18. The judgments relied upon by the petitioner set out salutary principles and namely of guarantee of justice to all by application of principles of natural justice and fair and just hearing. All these judgments do not have any relevance to the issue at hand. The petitioner having failed to satisfy us as to how he can file repeated petitions on the same cause of action, which is dealt with and is a subject matter of several final judgments and orders of this court, a fresh writ petition, which even if termed as curative one but only seeking to recall and review the judgments as above is thus not maintainable. We proceed to dismiss the same. None of the arguments persuade us to hold that the petitioners have been denied justice or denied access to justice.

19. We had indicated to the petitioner already that Civil Application No. 3164 of 2015 would not survive. It would not survive for the simple reason that there is no question of granting any relief under Order I Rule 8 of the Civil Procedure Code, 1908. Once there is no lis or cause which is entertained by this court, the question of granting any leave under this provision will not arise.

20. As far as Civil Application No. 3165 of 2015, that seeks to raise the same contentions as have been already dealt with by this court. The petitioner is aggrieved by the manner in which this court has disposed of his earlier writ petitions. We do not think that this civil application as well can be entertained.

21. As far as the another civil application, which the petitioner has filed, namely Civil Application No. 428 of 2016, we are of the opinion that the notification issued by this court bearing number P. 1602/2015 dated 23rd September, 2015, which is sought to be challenged, deals with a completely distinct issue. That, according to the petitioner/applicant, puts undue and unreasonable restrictions on the right of parties in person to file matters and argue them before this court.

22. The petitioner in person was allowed to argue this case. We heard him patiently and in the language in which he claims to be familiar and conversant. Therefore, no restrictions, much less undue and unreasonable ones, were placed on him. Yet, if he desires to raise the issue of the legality and validity of the above circular, then, that can be raised in appropriate proceedings and before appropriate forum. We do not think that the prayers in this Civil Application No. 428 of 2016 as well can be entertained. Those are being raised in disposed of proceedings. Hence, granting the above liberty, this civil application is also disposed of.

23. Before parting, we must once again reiterate our strong disapproval of the practice which appears to be prevailing in the Registry of the Aurangabad Bench of this court. The Registry there does not seem to think it necessary to object to the impleadment of the Hon'ble Judges comprising a Division Bench or a Judge sitting singly as party respondents to review petitions or applications in that nature.

24. We have not been shown any rule which requires such impleadment. We, therefore, strongly recommend that hereafter, the Registrar (Judicial) shall insist upon parties/litigants and their advocates deleting the names of Hon'ble Judges as party respondents to review petitions and until such deletion, the matter should be treated as not ready or under objections. Despite opportunity being given to the litigants and their advocates to delete such names and references to the Hon'ble Judges and personal allegations against them, if the same are not deleted by carrying out appropriate amendments, the Registry shall append a note on the proceedings themselves stating clearly that parties and lawyers were asked to delete such references, but there being no compliance, the matter comes to be placed before an appropriate court for directions. That would enable the appropriate court to dismiss such proceedings only on this ground. Just as there is enough justification for discontinuance of such practice because none can insist on such impleadment, its discontinuance upholds a salutary principle. The sanctity and purity of court proceedings lies in protection to Judges and presiding officers against personal attacks by litigants and

lawyers on them. It is too well settled to require any reference to a judgment or a precedent that there is freedom to be critical of a judgment, but the language of such criticism must be sober and respectful. The discourse of law is the discourse of civility. Even in the memo of review petitions or appeals, criticism of the judgment should not reflect any personal attack of the litigant or the draftsman on the Judge or presiding officer. None can claim a freedom to mount an attack, and that too contemptuous, on a Judge while criticising or assailing his judgment. If this much protection to the Judge is not ensured or there is no safeguard against malicious personal allegations, no court or no Judge can function fearlessly and independently. Sometimes, a court is required to be severely critical of the conduct of parties before it. It does not demean or show any disrespect to them much less personally, but ensures that the hand of the law is strong enough, and its arm long enough to punish every guilty person howsoever high he may be and to reach injustice wherever it is found.

25. The practice of impleading Judges to review petition also overlooks another settled principle and as highlighted above that a review lies against an order of Judge and review applications must be placed before him necessarily. Whether he is impleaded or not, the matter is bound to be placed before him if he/she is available. In a decision in the case of *State of Orissa and Ors. vs. Commissioner of Land Records and Settlement, Cuttack and Ors.*¹ in the context of review jurisdiction, this is what the Hon'ble Supreme Court of India held:-

1 (1998) 7 SCC 162

“28. It may be argued that if the order of the delegate is tantamount to the order of the principal, then the principal can review such an order of the delegate. This appears to be plausible at first blush but is, in our opinion, not correct because of the intervention of another fundamental principle relating to “review” of orders. The important principle that has to be kept in mind here is that a review application is to be made only to the same Judge or if he is not physically available, to his successor.

29. The decision of the Privy Council in *Maharajah Moheshur Singh v. Bengal Govt. (1857-60)* 7 MIA 283 : 3 WR 45 (PC) to which reference was made by learned Senior Counsel, Shri T. L. Vishwanath Iyer, is very apt in this connection. Adverting to the basic concept of review, it was observed by the Privy Council: (p. 47)

“It must be borne in mind that a review is perfectly distinct from an appeal; that is quite clear from all these Regulations that the primary intention of granting a review was a reconsideration of the same subject by the *same Judge*, as contradistinguished to an appeal which is a hearing before another Tribunal.”

Their Lordships added:

“We do not say that there might not be cases in which a review might take place before another and a different Judge; because death or some other unexpected and unavoidable cause might prevent the Judge who made the decision from reviewing it; but we do say that such exceptions are allowable only *ex necessitate*. We do say that in all practicable cases the *same Judge* ought to review;.... ”

It is, therefore, clear that the same Judge who disposes of a matter, if available, must “review” the earlier order passed by him inasmuch as he is best suited to remove any mistake or error apparent on the face of his own order. Again, he alone will be able to remember what was earlier argued before him or what was not argued.

In our opinion, the above principle is equally applicable in respect of orders of review passed by quasi-judicial authorities.”

26. We say nothing more and expect this much to be enough reminder to all concerned.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)