

ingale

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 3651 OF 2015
ALONG WITH
WRIT PETITION (L) NO. 3652 OF 2015
ALONG WITH
WRIT PETITION (L) NO. 3653 OF 2015

Ashok Kirtibhai Mehta and another ... Petitioners

Vs.

K.B.Kenga and others ... Respondents

Mr.Hemant Mehta i/b Mehta and Co., Advocate for the Petitioners.
Mr.D.S.Sakhalkar i/b Rishi Mishra, Advocate for Respondent No.2 in WP/3651/15.
Mr.Vaibhav M.Pararshurami, Advocate for MHADA.
Mr.Rui Rodrigues, Advocate for Respondent No. 2 in WP/ 3652/15 & WP/3653/15.

CORAM : R.G.KETKAR, J.
DATE : 04th JANUARY, 2016

P.C. :

. As the regular Court presided over by Hon'ble Mr.Justice M.S. Sonak is not available, parties have moved this Court as per the administrative order passed by the Hon'ble the Acting Chief Justice.

2. Heard Mr.Hemant Mehta, learned Counsel for the petitioners, Mr.D.S.Sakhalkar, learned Counsel for respondent No.2 in Writ Petition No. 3651/15, Mr.Vaibhav M.Pararshurami, learned Counsel for MHADA, respondent No.3 and Mr.Rui Rodrigues, learned

Counsel for respondent No.2 in Writ Petition No. 3652/15 & Writ Petition No. 3653/15 at length.

3. Mr.Mehta orally applies for deleting respondent No.1 from all the Petitions on the ground that no reliefs are claimed against the first respondent and is impleaded as a formal party. On the motion made by the Mr.Mehta, leave to delete respondent No.1 from all the Petitions is granted. Amendment shall be carried out forthwith. Rule. Learned Counsel for the respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petitions are taken up for final hearing.

4. By these Petitions under Articles 226 & 227 of the Constitution of India, petitioners have challenged the orders dated 15/12/2015 passed by the Appellate Officer in Miscellaneous Applications filed by them in the pending Appeals. By these orders, the Appellate Officer rejected the applications made by the petitioners for adjourning the Appeals on the ground of personal difficulty of their Counsel. While rejecting the applications, the Appellate Officer observed in paragraph 4 that he did not find any merit in the applications and accordingly, rejected the applications.

5. In support of these Petitions, Mr.Mehta submitted that the Appellate Officer did not record any reason while rejecting the applications and simply observed that on hearing both the sides, he

did not find any merit in the applications.

6. On the other hand, learned Counsel for the respondents supported the impugned orders.

7. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, the Appellate Officer has rejected the Applications on the following ground.

“4. On hearing both the sides, I find no merit in the present application and hence, the same is hereby rejected.”

8. Perusal of paragraph 4 extracted hereinabove shows that the Appellate Officer did not record any reason while rejecting the applications. On this short count alone, the impugned orders are required to be set aside thereby restoring the applications filed by the petitioners in all the Appeals, more so when applications for adjournment were made on the ground of Counsel's personal difficulty.

9. Mr. Mehta submitted that Appeals are fixed tomorrow for passing judgment. He assures that the petitioners in all above Petitions, will appear before the Appellate Officer and for that purpose, fresh notice need not be issued to them. He further assures that the petitioners will extend full co-operation for disposal of their applications and will not seek any adjournment. In view thereof, Petitions are disposed of in the following terms.

- i) The impugned orders dated 15/12/2015 passed by the Appellate Officer in Miscellaneous Applications are quashed and set aside. Miscellaneous Applications are restored to the file of the Appellate Officer.
 - ii) The parties will appear before the Appellate Officer tomorrow i.e. on 05/01/2016 and for that purpose, fresh notice need not be issued to them.
 - iii) The parties assure that they will extend full co-operation for disposal of the Miscellaneous Applications and will not seek any adjournment.
 - iv) The Appellate Officer is requested to decide the applications as early as possible, preferably within 2 weeks from tomorrow.
 - v) All the contentions of the parties on merits are expressly kept open.
 - vi) All the parties, including the Appellate Officer, shall act upon authenticated copy of this order.
10. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)