

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 910 OF 2012

Darshan Vilayati Ram Khanna .. Appellant
vs.
Varinder @ Rajan Darshan Khanna .. Respondent

Mr. Surel Shah with Mr. Ashish M for Mr. S. Shukla for Appellant.
None for Respondent.

CORAM : M. S. SONAK, J.
DATE : 21 MARCH 2017

P.C :

1] The City Civil Court, by order dated 17 February 2011 in S. C. Suit No. 1272 of 2010 ordered the return of the plaint for presentation before the appropriate court.

2] The plaintiff i.e. Darshan Khanna, appealed against order dated 17 February 2011, wherein Appeal from Order No. 910 of 2012 was disposed of by order dated 5 January 2017. The Appeal was dismissed and the learned trial Judge's order dated 17 February 2011 was upheld. However, liberty was granted to the plaintiff to present the plaint before the Small Causes Court in terms of the impugned order within a period of six weeks from 5 January 2017. Directions were also issued to the Small Causes Court to dispose of the suit as expeditiously as possible.

3] At the stage when the order dated 5 January 2017 was made, no disclosures were made to the effect that the plaintiff, through his Advocate Mr. Vazrani had already collected the original plaint on 15 March 2011 from the Registry of the City Civil Court, Mumbai.

4] On 16 February 2017, a praecipe was taken out seeking for extension of time to present the plaint before the Small Causes Court. Mr. S. Shukla, who appeared on the said date, submitted that the plaint before the City Civil Court is not traceable and therefore extension is applied for.

5] On 16 February 2017, relying entirely upon the statements made by Mr. S. Shukla, this Court made the following order :

“1] Upon production, taken on board.

2] By order dated 5 January 2017, the appellant was granted six weeks time to obtain the return of the plaint from the City Civil Court and present the same before the Small Causes Court. In this praecipe, the complaint is that the plaint before the City Civil Court is not traceable and on that ground, extension is applied for.

3] Extension is granted by a period of two weeks only. The Principal Judge, City Civil Court, is requested to take cognizance of this matter and enquire into why the plaint in S.C. Suit No. 1272 of 2010 is not traceable. In case, the plaint is not traced within a period of one week from today, the Principal Judge is requested to furnish a report to this court as to the circumstances in which the plaint has allegedly disappeared from the court records.

4] Mr. Shukla, learned counsel for the appellant states that they have for the last six weeks made efforts and persuaded the matter with the Registrar of the City Civil Court in order to trace the plaint and because, the plaint is untraceable, they are constrained to seek for extension of time.

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

6] In pursuance of directions in paragraph 3 of the order dated 16 February 2017, the Principal Judge, City Civil Court, held an enquiry and has submitted a report dated 28 February 2017. In the report the Principal Judge has stated that the plaintiff's Advocate

Mr. H. K. Vazrani on 15 March 2011, has collected the original plaint from the Registry of the City Civil Court, Mumbai. Along with the report, necessary documents were produced, on basis of which, it is very clear that Mr. Vazrani, for and on behalf of the plaintiff, applied for return of the plaint and such plaint, was duly returned to him for presentation before the appropriate court.

7] After the receipt of the report, this matter was directed to be placed for further consideration, since, it was apparent that the order made by this court on 16 February 2017, was on the basis of representation made by the learned counsel for the appellant that the Registry of the City Civil Court, had reported that the plaint was not traceable and therefore, could not be returned for presentation before the appropriate court.

8] On 7 March 2017, this Court made the following order :

1] On 16 February 2017, Mr. S. Shukla, learned counsel for the appellant, prima facie, made a false statement before this court and secured an order. This order, was made on basis of the representation made by Mr. S. Shukla that the appellant had for last six weeks made efforts and persuaded the matter with the Registry of the City Civil Court, Greater Mumbai in order to trace the plaint, which was ordered to be returned to the appellant. Relying upon such statement, not only an extension was granted, but further the Principal Judge of the City Civil Court, Greater Mumbai was requested to order an enquiry and furnish a report to this court as to the circumstances in which the plaint allegedly disappeared from the court record.

2] Today, despite the matter being specifically placed on the board and the request being made to the counsel to remain present, Mr. S. Shukla is not present in this court and on his behalf a request is made by Mr. Ashish Mishra, learned counsel to keep the matter back till 1.00 p.m. This is the serious matter and it was expected that Mr. Shukla takes this matter with required degree of seriousness. The seriousness is on account of the report which is now been furnished by the

Principal Judge of the City Civil Court.

3] *The report dated 28 February 2017, states that the original plaint in this case was already returned to the advocate for the appellant Mr. H.K. Vazrani on 15 March 2011. Alongwith the report is annexed a document which indicates the receipt of endorsement and the signature of Mr. H.K. Vazrani.*

4] *All this was suppressed and instead, a motion was made to this court that the plaint has disappeared and therefore, the extension of time was applied for and such extension was even granted. At least prima facie , it appears that the order was obtained from this court on basis of a false statement.*

5] *Mr. S. Shukla, is directed to file an affidavit within a period of one week from today explaining the circumstances in which the prima facie a false statement was made and the order dated 16 February 2017 obtained.*

6] *Until the next date, the operation of the order dated 16 February 2017 is suspended. This means that if the plaint has not yet been presented before the Small Causes Court, the same shall not be presented before the Small Causes Court. Further, if the plaint has been presented before the Small Causes Court, the Small Causes Court shall not proceed with the matter until further orders. The appellant is also directed to deposit in this court, by way of security towards costs of an amount of Rs.25,000/- (Rs. Twenty Five Thousand) within a period of one week from today.*

7] *In the order dated 16 February 2017, it is indicated that Mr. S. Shukla was instructed by Mr. P.S. Gidwani. Today, Mr. P.S. Gidwani, learned counsel appears in the court and states that he has no concern whatsoever with this matter. He states that he has neither filed vakalatnama in this matter after 5 January 2017 and further, he has definitely not given any instructions to Mr. S. Shukla to make the statement reflected in the order dated 16 February 2017*

8] *Place this matter for further consideration on 21 March 2017 on supplementary board (HOB)."*

9] Today, Mr. Shukla has appeared before the Court and has

filed an affidavit. In paragraphs 2 and 3 of the affidavit, this is what Mr. Shukla has stated :

"2. I hereby give an unconditional apology to this Hon'ble Court and further state that whatever I have stated herein above is true and correct to my knowledge. I have utmost respect for majesty and the orders of this Hon'ble Court. I say that as an officer of this Court, I will never engage in illegal acts including making of wrong statements. I again tender my unconditional apology which I humbly request be kindly accepted in case this Hon'ble Court comes to a conclusion that a wrong statement is made by me.

3. I say that I have 6 years of practice and I am practicing in Hon'ble High Court and other Sub-ordinate Courts."

10] Mr. Shukla has further sought to explain that Mr. Ashish Mishra who had instructed him in the matter had made efforts to seek return of the plaint before the Registry of the City Civil Court. In the affidavit it is stated that Mr. Mishra had no knowledge that the plaint had already been returned to Mr. H. K. Vazrani.

11] The contents of the affidavit, do not inspire much confidence. However, there is no point in pursuing the matter any further, taking into consideration the scarce judicial time, for such purposes. The matter was pursued to this extent because this Court felt that at least in future, the Court should be able to rely without any hesitation upon statements made by the Advocates, who are also Officers of this Court.

12] Since, I am satisfied that the order dated 16 February 2017 made by me was on the basis of a patently incorrect statement made, it is only proper that the order dated 16 February 2017 is recalled. Accordingly, the extension of time granted to the appellant vide order dated 16 February 2017 is recalled.

13] The material on record indicates that the appellant / plaintiff, through his Advocate Mr. Vazrani had already received original copy of the plaint way back on 15 March 2011. This means that there was no difficulty in presenting such plaint before the Small Causes Court within the period prescribed by this court. This is a *prima facie* observation, since, it is not the intention of this Court to preclude the plaintiff / appellant from filing a proper Civil Application in this regard. Such Civil Application, as and when filed, will be considered on its own merits. At least in such a Civil Application, it is expected that the appellant / plaintiff makes true and candid disclosures.

14] Mr. Shukla is present in the Court, today. He tenders an apology and more important than that he assures this Court is that there will be no similar occasions in future, where orders are obtained on basis of statements which are not correct. At this stage, it cannot be ruled out that Mr. Shukla was acting on basis of instructions which were obviously incorrect. In such circumstances, this apology and statement is accepted.

15] The order dated 16 February 2017 is recalled. The enquiry report furnished by the Principal Judge, City Civil Court, is accepted. The appellant is however granted liberty to take out a Civil Application, in case, the appellant is desirous of seeking extension of time in order to present the plaint before the appropriate Court. The appellant / plaintiff shall pay costs of Rs.25,000/- (Rupees Twenty Five Thousand). Today Mr. Shah, learned counsel who appears for Mr. Shukla states that the costs have already been deposited in this Court. If so, the costs be paid over by the Registry to the Kirtikar Law Library, Mumbai.