

In the Matter Between :

V/s.

Mr.Abhinav Chandrachud with Ms.Devanshi Sethi i/b. ALMT
Legal, Advocate for the Applicant.
Mrs.Anita Agarwal, Advocate for the Respondent No.9.
Mr.Y.R.Mishra with Upendra Lokegaonkar, Advocate for the
Respondent/UOI.

DATED : 14th June 2017.

P.C.

1] Heard Shri.Chandrachud learned counsel appearing on behalf of applicant and learned counsel appearing on behalf of Respondents.

2] Shri.Chandrachud learned counsel for the applicant seeks time to file rejoinder to the affidavit in reply dated

17/7/2014 filed by Original Petitioner No.9 – Laxman Bhosale
There is delay of 958 days or approximately 18 months in filing this Review Petition. In the application for condonation of delay which was filed following reasons have been given :

(a) It is stated that after the impugned order was passed on 22nd November 2011 and after modification of the said order by an order dated 16th April 2012 and further modification on 24th August 2012, the original petitioners addressed a letter to the applicant informing them to implement the order passed by this Court on 22/11/2011. On 17th January 2013, the original petitioner/respondent No.9 herein again issued a legal notice asking them to implement the order of the High Court.

(b) In paragraph 10 of the application it is stated that on 23rd November 2012, the applicant herein informed its erstwhile attorneys that there was never any direction given by the applicant to the Advocate appearing on behalf of the applicant to give any concession before this Court that the applicant was not interested in the recovering the amount that was paid to the respondent by the applicant.

(c) In paragraph 13, following averments are made :

“The Applicant submits that the earlier Chief Executive Officer Mr.SVR Chandrasekhar who was looking after the above matter has been transferred from the Cantonment Board and on or around 19.06.2013 and new CEO Mrs.KJS Chauhan is appointed, the present Civil Application and the Review Petition has been signed by the new CEO.”

(d) In paragraph 14 it is stated as under :

“.... there is delay of 958 days in filing this Review Petition and the same may be condoned.”

3] In our view, though no reason whatsoever has been given in the Civil Application for condoning the delay caused in filing the Review Petition, we have heard this Review Petition on merit. In fact, the Review Petitioner was aware of the order dated 22nd November, 2011. However, no steps were taken by the Review Petitioner for implementation of the said order. Thereafter in meeting, which was held, the Review Petitioner had taken a decision to implement the said order. Review Petitioner neither

filed SLP in the Apex Court against the said order nor a Review Petition immediately after the said order was communicated.

4] Under these circumstances, applicant/Review Petitioner cannot be now permitted to further file an affidavit in reply. It cannot be forgotten that the original Petitioners are Havaldars working in the Army and after completing their tenure of service, they were re-employed by the Cantonment Board and they have not received the benefits of the order dated 22nd November 2011 for the last 6 to 7 years and granting of further time to the Review Petitioner would tantamount to further delaying the implementation of the said order.

5] Moreover, one fact which needs to be mentioned here is that after several attempts were made by the original Petitioners to get the order implemented, they had no other option but to file a Contempt Petition. Only after the original Petitioners approached this Court by filing Writ Petition No.2754 of 2014 and after this Court directed the original Petitioners to file Contempt Petition, which was in fact filed in 2014, two months before the Contempt Petition was filed, the present Review Petition has been filed. We are of the view that sufficient cause has not been shown to condone the delay and, in fact, it appears that only to gain some time and give an explanation to the proceedings for contempt, the present Review Petition appears to have been filed.

6] Even if the Review Petition is considered on merits, no case is made out for reviewing the said order.

7] Principal fact which needs to be mentioned here is that the original Petitioners were working in the Army and thereafter were re-employed in the Cantonment Board. It is the case of original Petitioners that they are entitled to get salary as per the last drawn pay scale in the Army. The learned Single Judge has been pleased to record a finding of fact that the Maharashtra Civil Service Rules are applicable to the Cantonment Board. However the stand which is now sought to be taken by the Review Petitioner is that the Central Service Rules are applicable and not the Maharashtra Civil Service Rules. It appears that after having lost, instead of gracefully accepting the said order and implementing it, the Review Petitioner is now sought to raise new ground only to defeat the order passed by this Court. Apparently, it appears that all this has happened after the learned counsel Shri.K.J.Presswala who was appointed had taken a stand that respondent nos.2 and 3 were not interested in seeking recovery of the amount that was paid to the original Petitioners, in view of the interim order.

8] Shri.Chandrachud learned counsel appearing on behalf of the Review Petitioner invited our attention to the concession

made by the learned Counsel Mr.Presswala appearing for Cantonment Board in paragraph 5 of the order, which reads as under :

“5. Mr.K.J.Presswala, learned counsel for respondent nos.2 and 3 in all fairness submits that respondent nos.2 and 3 are not interested in seeking recovery of the amount that was paid, in view of the interim order. In the circumstances, this petition is dismissed for non-prosecution.”

9] Thereafter, in fact, though in the said order dated 22/11/2011 it was mentioned that petition was dismissed for non-prosecution, by subsequent order dated 16th April, 2012, the said order dated 22/11/2011 was modified and in place of the sentence “In the circumstances, this petition is dismissed for non-prosecution”, the sentence “In the circumstances, this petition is dismissed. Rule is discharged” was substituted. Again, thereafter, the another application was made by the original petitioners for deleting the word “dismissed” and substituting the word “disposed off”. This application was also allowed on 24th August 2012. On both occasions, the applicant/review petitioner herein was represented through counsel. It is quite obvious that this new ground, which has been raised by the Review Petitioner is nothing but an after thought. Apart from that, the said concession does not in any manner cause any prejudice to the Review Petitioner.

10] It has to be noted that, in fact, when the interim order was passed, in one of the conditions viz. “clause (b) of paragraph 5”, it is mentioned as under :

“(b) In the event of the petitioners loosing in this petition, they shall be liable to repay back”

11] In view of the interim order passed in the original Writ Petition, the question of paying back did not occur and, therefore, even assuming that the concession was made without specific instructions, it would not cause any prejudice to the Review Petitioner since the said order dated 22/11/2011 passed by the Division Bench headed by Justice D.B.Bhosale was again modified by Division Bench headed by Justice Bobade by orders dated 16/4/2012 and 24/08/2012.

12] Shri.Chandrachud the learned counsel appearing on behalf of the Review Petitioner relied on the Judgment of the Apex Court in the case of *Himalayan Co-operative Group Housing Society v. Balwan Singh & Ors.*, reported in (2015) 7 Supreme Court Cases 373. He submitted that three Judges Bench of the Supreme Court had considered the scope of concession/statement/ admission/compromise/settlement made without obtaining instructions/authority from the client.

13] There cannot be any dispute about the ratio laid down

by the Apex Court in respect of the said proposition in ***Himalayan Co-operative Group Housing Society (supra)***. In our view, ratio of the said judgment, however, would not be applicable to the facts of the present case and assuming that no instructions were given to Mr. Presswala, who is a senior counsel practicing in this Court and has an impeccable record about his honesty and integrity, it would not cause any prejudice to the Review Petitioner since the question of recovering any money from the original petitioners did not arise at any time. Secondly, the Division Bench headed by Justice D.B.Bhosale did not partly allow the petition, but had confirmed the interim order as a final order.

14] We are of the view that the case is decided on the stand taken by the Cantonment Board. The original petitioners are Havalendars working in the Army. They were re-employed by the Cantonment Board and they were supposed to be given salary on the last drawn pay scale instead. However, in our considered view the Cantonment Board instead of complying with the said order has delayed the implementation of the said order.

15] In view of these circumstances, Review Petition is dismissed. Since Review Petition itself is dismissed, Civil Application does not survive and it is disposed of accordingly.

(A. M. BADAR J.)

(V. M. KANADE J.)