

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION (L) NO.3524 OF 2017

...
M/s.Prithvi Bricks and Mortar Pvt.Ltd. ...Petitioner

v/s.

Board of Directors of Vijaya Bank
and ors. ...Respondents

...
Mr.Mathews J.Nedumpura with Mr.Amritpal Singh i/b J.J.V.Ruvathur for the
Petitioner.
Mr.Madhur Rai with Mr.Sanjiv Punalekar i/b PRS Legal for the Respondent
No.3.

...
CORAM : A.A. SAYED &
MANISH PITALE, JJ.
DATED : 15 DECEMBER 2017

P.C.:

The Petitioner had earlier filed a Writ Petition being Writ Petition (L) No.2239 of 2017, wherein identical reliefs were sought as in the present Petition. The Division Bench while dismissing the said Writ Petition observed in the order dated 8 November 2017 as follows:

“15] It could thus be seen that under the provisions of Order II Rule 2, Plaintiff is required to include all the claims which he is making in respect of the cause of action. Not only that, Mr. Nedumpara fairly states that it was done not only once but twice. If a challenge which is sought to be raised now,

was already raised on two earlier occasions and on the first occasion when the Court did not find it appropriate to entertain the challenge and on second occasion the Petitioner himself has withdrawn the Petition raising the very same challenge, we find that public policy behind the provisions of Order II Rule 2 of the CPC would prohibit the Court from entertaining the present Petition. At the cost of repetition, we may say that if the present Petition is permitted to be entertained, it would permit Bench hunting by the Petitioner inasmuch as, if a particular Bench refuses to entertain the challenge and at that stage Petitioner withdraws the Petition, subsequently the Petitioner may again file another Petition after withdrawal of the first Petition with the change in assignment. We are of the considered view that in view of non-entertaining of the first Petition and withdrawal of the second Petition, the judicial propriety and public policy requires that we should stay our hands away from the present Petition.

16] It would appear from the record that the Petitioner in Writ Petition (L) No.763 2017, had approached the Hon'ble Supreme Court being aggrieved by the order of Division Bench of this Court dated 02/05/2017. It will be relevant to refer to the order passed by the Hon'ble Supreme Court in Diary No.24654/2017 on 30/10/2017, which reads as under:-

“UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

The petitioner in the first case i.e. Diary No.24654/2017 is before this Court, aggrieved by the order dated 2.5.2017 in Writ Petition No.763/2017 passed by the High Court of Judicature at Bombay.

During the course of hearing the Petitioner in SLP(C) No.27638/2017 has brought to the notice of this Court that the petitioner in special leave petition @ Diary No.24654/2017 has already filed a Writ Petition (L) No.2239/2017 and the same is pending before the High Court wherein also the prayers are identical. We also found that there is an interim order of status quo operating in the said case.

Therefore, we request the High Court to dispose of the Writ Petition (L) No.2239/2017 expeditiously, preferably within two weeks from the date of next date of listing. It is open to the parties to take all available contentions before the High Court.

Undertaking by the learned counsel on both the sides that they will not ask for adjournment is also recorded.

Subject to the above, both the special leave petitions are dismissed.

Pending application(s), if any, shall stand disposed of.”

It could thus be seen that the Petitioner, when the matter was listed before the Hon'ble Supreme Court on 30/10/2017, challenged the order dated 02/05/2017 in Writ Petition (L)

No.763 of 2017 and only brought to the notice of Their Lordships the fact regarding pendency of the present Petition. However, perusal of the order passed by the Hon'ble Supreme Court, would reveal that the Petitioner has not brought to the notice of Their Lordship the fact regarding filing of the second Petition being Writ Petition (L) No. 1490 of 2017, which was listed on 06/07/2017 before Division Bench of this Court to which, one of us (B.R. Gavai, J.) was a party. The reliefs sought in the said Petition were almost identical with the reliefs which were sought in Writ Petition (L) No.763 of 2017 and the present Petition. In the said Petition, learned Counsel for the Petitioner, after arguing for considerable period, sought liberty to withdraw the said Petition. The said Writ Petition (L) No.1490 of 2017 was allowed to be withdrawn by the Division Bench vide Order dated 06/07/2017, which reads thus:-

“1. Shri Nedumpara, the learned Counsel for the Petitioner, after arguing at length, seeks liberty to withdraw the Writ Petition. Writ Petition is allowed to be withdrawn.”

It is pertinent to note that the said matter was argued before this Court by the same Counsel, who had argued the matter before the Hon'ble Supreme Court. Perusal of the order passed by Their Lordships of the Supreme Court would reveal that the fact regarding withdrawal of Writ Petition (L) No. 1490 of 2017 was suppressed from Their Lordships of the Supreme Court. In

our considered view, suppression of material fact would disentitle a party from invoking equitable jurisdiction of this Court.

16] Petition is therefore found to be without any merit and dismissed as such with costs which is quantified at Rs 1 lakh. Costs to be paid by the Petitioner to the Maharashtra Legal Services Authority within a period of two weeks from today.

17] Insofar as statement of Mr. Nedumpara that it may be his last appearance in this court is concerned, we do not possess any advisory jurisdiction to advise a lawyer. If Mr. Nedumpara chooses, he may appear before us in any other case and we would always welcome him to address the Court but if he chooses not to appear and refuses brief, in this Court, it is his sweet will to do so.”

2. It is an admitted position that the prayers in the present Petition are identical to the aforesaid Writ Petition (L) No.2239 of 2017 as also the earlier two Writ Petitions filed by the Petitioner being Writ Petition (L) No.763 of 2017 and Writ Petition (L) No.1490 of 2017. We, therefore, suggested to the learned Counsel that the Petitioner ought to challenge the order dated 8 November 2017 before the Apex Court, only to be told by the learned Counsel that it is not the business of the Court to say what the

Petitioner ought to do.

3. It later transpired that the Petitioner has also filed a Review Petition being Review Petition (L) No.71 of 2017 impugning the order dated 8 November 2017 passed by the Division Bench of this Court.

4. When we asked the learned Counsel to satisfy us as regards the maintainability of this Writ Petition, the learned Counsel insisted that this Court is obliged to hear him to 'his' satisfaction. We have heard him for about 20 minutes which, inter alia, included his unwarranted comments that he is more senior at the bar than the judges on this Bench and that he would stop practice in this Court. We have shown restraint to his histrionics including his intermittent break to quench his thirst by borrowing water bottle from the Associate of this Court.

5. Inasmuch as the Petitioner has already filed a Review Petition seeking review of the order dated 8 November 2017, we are of the view that this Petition is nothing but another attempt at forum shopping by the Petitioner and the learned Counsel and is an abuse of process of law.

6. In view of the above, we refrain from entertaining the present Petition. The Petition is accordingly dismissed with costs of Rs. 2 lakhs to be paid by the Petitioner to the High Court legal Services Committee within two weeks from today.

(MANISH PITALE, J.)

(A.A.SAYED, J.)