

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

M.C.A. NO.1239/2017
IN
WRIT PETITION NO.5350/2016(D)

M/s. ABB Ltd., Nagpur
..Vs..
Ramnath Developers Pvt. Ltd., Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri V.S. Mishra, Advocate for the applicant.

CORAM : Z.A. HAQ, J.
DATE : 12.10.2017.

Heard.

The applicant had filed Writ Petition No. 5350/2016 to challenge the order passed by the trial Court by which the applications (Exh. Nos.14 and 15) filed by the applicant / petitioner are rejected. By the application (Exh. No.14) the applicant prayed that order passed on 27th February, 2015 directing that the suit to proceed without written statement of applicant be set aside. By the application (Exh. No.15), the applicant had sought review of the order passed on the application (Exh. No.14).

This Court directed issuance of notice by order dated 20th September, 2016 and stayed the proceedings of civil suit. The civil suit filed by the

non-applicant / respondent is for recovery of amount of Rs.7,95,000/-.

The applicant had not taken steps to ensure service of notice on the non-applicant / respondent. The matter was listed under objection before the Registrar (J.) on 16th June, 2017, 14th July, 2017, 11th August, 2017 and 1st September, 2017 and time was granted to the applicant to take steps, however, the applicant failed to take steps. The matter was listed before Registrar (J.) on 29th September, 2017 on which date no one appeared on behalf of the applicant and, therefore, the learned Registrar passed the order dismissing the petition in default.

The learned Advocate for the applicant / petitioner has submitted that pursis dated 14th September, 2017 is filed pointing out that the copy of petition is served on the respondent No.1 and overlooking this, the learned Registrar (J.) has dismissed the petition in default. The objection marked by the office was that the correct address of the respondent is required so that the notice of the petition can be served on the respondent. If the petitioner wanted to rely on the fact that he has served copy of petition on the respondent and there is no further requirement of service of notice through the process of Court on the respondent, the petitioner ought to have filed appropriate application and obtained orders from the Court that notice through process of Court is not required to be served on the respondent.

The facts on record show that the applicant is prolonging the matter and civil suit for recovery of huge amount is pending since 2014.

Though the facts on record show that there are no *bona fides* on the part of the applicant, in my view, the interests of justice would be sub-served by passing the following order:

The order dated 29th September, 2017 passed by the learned Registrar (J.) is set aside.

The petition is restored.

The applicant / petitioner shall deposit Rs. 10,000/- with the High Court Legal Services Sub-Committee, Nagpur and produce receipt on record of the petition till 1st November, 2017.

The applicant shall supply the correct address of the respondent till 1st November, 2017.

If the above directions are complied with, issue fresh notice to the respondent.

The respondent may file reply / affidavit, if so advised, till 21st November, 2017.

List the petition for further consideration on 27th November, 2017.

If the applicant fails to comply with any part of this order, the petition shall stand dismissed without reference to Court.

The interim order passed by this Court on 20th September, 2016 is not restored. This issue will be considered after the notice of petition is served on the respondent.

Miscellaneous civil application is **allowed** in the above terms.

JUDGE

Tambaskar.