

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12077 OF 2017

BILAL ISAK SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH
CIVIL APPLICATION NO.8327 OF 2018
IN
WRIT PETITION NO.12077 OF 2017

MINAJ SUBEDAR SHAIKH AND ANOTHER.
-VERSUS-
THE STATE OF MAHARASHTRA AND OTHERS.

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Advocate for the Petitioner : Shri Thombre S.S.
AGP for Respondents 1 to 4 : Shri S.K.Tambe.
Advocate for Respondent 5 : Shri C.R.Thorat.
Advocate for the Applicants in CA 8327/2018 : Shri P.B.Jadhav h/f Shri
A.K.Bhosale and Shri V.B.Dhage.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th July, 2018

Oral Order :

1 When this petition was heard on 11.10.2017, this Court had
passed the following order :-

- "1. *The petitioner / original disputant / complainant is aggrieved by the order passed by the Additional Divisional Commissioner, dated 4.9.2017, thereby allowing the appeal of respondent No.5 and quashing the order of the Additional Collector, dated*

27.3.2016, by which, respondent No.5 was held disqualified as a member of the Gram Panchayat for having children more than two, who were born after the cut off date 12.9.2001.

2. *Shri Thombre, learned Advocate for the petitioner submits the following dates with regard to the four children of respondent No.5:-*
 - (i) *Sarfaraz- 30.4.2000,*
 - (ii) *Taufiq - 16.1.2001,*
 - (iii) *Faizan - 18.3.2004 and*
 - (iv) *Sayama - 30.8.2006.*
3. *Shri Thorat, learned Advocate appearing on behalf of respondent No.5 submits that Sayama is not his biological daughter and is the daughter of his brother - Minaz. He states the following three dates with regard to the first three children as follows:-*
 - (i) *Sarfaraz - 3.9.1998,*
 - (ii) *Taufiq - 2.1.2000 and*
 - (iii) *Faizan - 1.7.2001.*
4. *Issue notice before admission to the respondents, returnable on 22.11.2017. Matter shall appear in the supplementary board.*
5. *Learned AGP waives service for respondents 1 to 3 and Shri Thorat, waives service for respondent No.5.*
6. *The petitioner and respondent No. 5 are put to notice that on the next date in this matter, this Court is likely to issue an order directing the DNA test of Ms. Sayama, respondent No.5 Munaf and his wife Niloffar, the brother of respondent No.5 Minaz Shaikh and Smt. Sumaiya Minaj Shaikh.*
7. *They are also put to notice that if it is found that either of the two or any other person connected with these litigating sides have attempted to play a fraud on the Government and this Court, this Court is likely to impose costs of Rs.5,00,000/- (Rs.Five Lakh only/-) and also direct initiation of criminal*

proceedings against the person, who has committed the fraud. It is made clear that this order of costs and registering of a criminal offence will be only after this Court comes to a conclusion that some fraud was played."

2 The litigating sides were thus, preempted that if any attempt to play a fraud on the Court is noticed, costs of Rs.5 lac would be imposed on the person committing the fraud, besides initiation of criminal proceedings against the said person.

3 After this Court (Coram : Myself) passed the above stated order, Respondent No.5 (Munaf Subedar Shaikh), presently Upa-Sarpanch of the Village Panchayat, filed an affidavit in reply on 20.12.2017 stating on oath that he has only three children, namely, Sarfaraz Munaf Shaikh (born on 03.09.1998), Toufiq Munaf Shaikh (born on 02.01.2000) and Faijan Munaf Shaikh (born on 01.07.2001), who are all born before the cut off date. It was stated on oath that Sayama is not the daughter of Munaf. Her date of birth is 30.08.2006 and she is the daughter of his brother Minaj Shaikh. In the entire affidavit running into 12 pages, Munaf has stated that the Additional Commissioner has rightly observed that Sayama is the daughter of Minaj and Mrs.Sumayya and this is evidenced by the birth record of the Gram Panchayat.

4 It was, therefore, emphatically canvassed on oath that Minaj Shaikh, who is the real brother of Munaf, is the biological father of

Sayama. Munaf has placed on record certain documents pertaining to the birth record of the children of Minaj and the school register. It is canvassed that these documents would evidence that Sayama is not the daughter of Munaf and his wife Nilofar.

5 In view of the above, after hearing the learned Advocates for the respective sides, the statement of the Petitioner/ original Complainant and Munaf (elected candidate) was recorded in the order dated 14.06.2018. The relevant paragraphs of the said order are as under :-

- "2. *Learned counsel for respondent No. 5 submits on instructions that he and his wife, Minaz and Smt.Sumaiya are ready and willing to undergo the DNA test along with Sayama who, according to respondent No. 5 and his wife is not their biological daughter. It is reiterated that she is the daughter of Minaz, the brother of the respondent No. 5. All of them are willing to undergo a DNA test and all of them state that they would be subject to the observations of this Court in paragraph No. 7 of the order dated 11/10/2017.*
3. *Learned counsel for the petitioner submits that if Sayama is proved to be a biological daughter of Minaz Shaikh and Smt. Sumaiya Minaz Shaikh, the petitioner would be willing to suffer the consequences set out in paragraph No. 7 of the earlier order of this Court.*
4. *As such, the following persons shall appear before the Deputy Director, Regional Forensic Science Laboratory at Cantonment (Chavani), Aurangabad on 02/07/2018 at 11.00 a.m. :-*
 - a) *Munaf Subedar Shaikh.*
 - b) *Smt. Nillofar W/o. Munaf.*
 - c) *Ms. Sayama.*

- d) *Minaz S. Shaikh.*
- e) *Smt. Sumaiya Minaz Shaikh.*

5. *The concerned department shall collect the blood samples of all these five persons and conduct the DNA test to decide the paternity of Ms.Sayama. The petitioner shall pay the entire charges of these DNA tests. The Deputy Director shall submit his report in a sealed envelop to the Registrar (Judicial) of this Court, forthwith.*
6. *Stand over to 13th July, 2018."*

6 This case took a serious turn when the Petitioner approached this Court with a motion for correcting the name of Sayama as there were two daughters of the brother of Munaf, educating in the Zilla Parishad Central Primary School, Pimpalwadi, Taluka Paithan. A serious apprehension was expressed that Minaj Shaikh, who has volunteered to subject himself for the DNA test along with his wife(Sumayya), would produce his real daughter Ms.Shaikh Bushra for the DNA test and botch the DNA test. Considering this serious apprehension and after hearing the litigating sides, I had passed the following order on 28.06.2018 :-

- "1. *A motion is moved by the learned advocate for the petitioner for correction in paragraph No. 4 of the order dated 14/06/2018. It is stated that in the Zilla Parishad Central Primary School, Pimpalwadi, Taluka Paithan, District Aurangabad, two daughters of Mr.Minaj Shaikh, as is claimed by defendant No. 5 are taking education in 6th Std. Entry at Serial No. 13 with admission No. 4367 is Ms.Shaikh Mahevish Minaj who is said to be a daughter of Minaj Shaikh (brother of respondent No.5) and the mother is*

shown as Sumaiya. The date of birth is 30/08/2006. At Sr. No. 25, the admission No.4693 indicates another daughter of Shaikh Minaj by name Ms.Shaikh Bushra and the mother's name is Sumaiya. Her date of birth is 21/07/2006.

- 2. Shri Thombre submits that these two daughters of Shaikh Minaj, born on 21/07/2006 and 39 days latter on 30/08/2006, are in the same school and one of them is Sayama whose name in school is different. It is, therefore, prayed that in paragraph No. 4, the name of Ms. Sayama should be written as Ms. Sayama alias Shaikh Mahewish Minaj. Serious apprehension is that respondent No. 5, in connivance with brother Minaj Shaikh, will present Miss Shaikh Bushra Minaj as Sayama and botch the DNA tests. He, therefore, submits that even Ms.Shaikh Bushra needs to be subjected to the DNA Test.*
- 3. Learned advocate for respondent No.5 who has gathered instructions from his client submits that his client is non-committal and does not desire to express any view or divulge anything as regards the two daughters of his brother who are said to be born 39 days apart.*
- 4. Considering the above, paragraph No.4 of the order dated 14/06/2018 shall be corrected and the name of Ms.Sayama at clause 'c' would reflect as Miss Sayama alias Shaikh Mahevish Minaj and Miss Shaikh Bushra will be added at clause 'f' under paragraph No.4, for being subjected to the DNA tests.*
- 5. The order dated 14/06/2018 shall be corrected accordingly and a corrected copy be uploaded."*

7 The case then took a curious turn when Minaj filed Civil Application No.8327/2018 stating that he and his wife (Sumayya) are not the biological parents of Sayama. However, he has refused to divulge the

whereabouts of the girl child Sayama and as to who are her biological parents. He has only declared that he and his wife are not the biological parents of Sayama. It was prayed that he and his wife be excluded from the DNA test.

8 When the said Civil Application was heard by this Court on 04.07.2018 in the backdrop of the earlier order dated 28.06.2018, the elected candidate Munaf submitted an affidavit dated 04.07.2018 that he is tendering an unconditional apology and is submitting his resignation from the post of Upa-Sarpanch. He prayed that he should be excused and neither the costs should be imposed, nor should the criminal prosecution be ordered. The contentions of the rival sides were recorded by me in the order dated 04.07.2018, which reads as under :-

- "1. *An affidavit dt. 4.7.2018 is filed by Munaf Subhedar Shaikh declaring that he is tendering an unconditional apology and he would be submitting his resignation from the post of Member / Up-sarpanch of the Gram Panchayat. The affidavit is taken on record and marked as Exhibit "X-1" for identification.*
2. *The learned AGP rightly points out that though the affidavit has been filed by Munaf and a Civil Application is filed by his brother Minaj, the fate of the girl child Ms. Sayma hangs in balance as neither of the two couples i.e. Munaf and his wife Nilofar and Minaj and his wife Sumayya are willing to disclose as to who is the biological father and mother of the girl child. There is, however, no dispute that the girl child Ms. Sayma is alive on this earth.*

3. *Learned counsel for Shri Munaf submits, on instructions, that an affidavit sworn by Munaf and his wife Nilofar would be filed tomorrow and the petition filed by the petitioner can be allowed.*
4. *By consent of the parties, S.O. to 5.7.2018 for passing orders. The issue of costs and criminal prosecution would be dealt with tomorrow."*

9 Today, Munaf has filed an affidavit dated 05.07.2018 stating that Ms.Mahevish @Sayama Minaj Shaikh, appearing in the school record and birth record created by his brother Minaj, is actually the daughter of himself (Munaf) and his wife Nilofar. The said affidavit is taken on record and marked as "X-2" for identification. A further statement is made that Munaf will get the school and birth records properly corrected so as to indicate that Mahevish @ Sayama is the daughter of Munaf and his wife Nilofar.

10 Shri Thorat, learned Advocate appearing on behalf of Respondent No.5/ Munaf, has strenuously requested that Munaf has realized his mistake and has learnt a lesson. His blood pressure has risen and presently, he is in hospital. Since this is his first misdemeanor and which he has done unconscious of the effects of his conduct, he should be pardoned as he has decided to quit politics and would not contest any election, whether or not, having more than two children after the cut off date is prescribed as a disqualification. He has tendered an unconditional

apology and prays for pardon.

11 The learned AGP and the learned Advocate for the Petitioner/ original Complainant have strenuously contended that such elements in politics have lost the fear of law and will have the courage of defrauding the Government as well as the legal system. Merely because Munaf has realized that he will have to suffer consequences for the fraud played on the Government as well as on the Court, that he is now pleading guilty to rescue himself. This Court should not get carried away by his plea for sympathy contending that he is taking treatment because of rise in blood pressure.

12 From the various orders passed by this Court in this case, it is quite evident that all these litigating sides were put to a specific notice that if Munaf and his wife take a stand that Sayama is not their daughter and Minaj and his wife take a stand that Sayama is their daughter, a DNA test would be ordered and one who is found to have played a fraud on the Government and the Court, would suffer the costs of Rs.5 lac besides initiation of criminal proceedings. Despite this preemption, Munaf has dared to file an affidavit running into 10 pages taking a bold stand, on the basis of the birth register, school record and Gram Panchayat record, that Sayama is not his daughter and Minaj and Sumayya are her parents. It is prayed in the affidavit that the Writ Petition should be dismissed and it is contended that the Additional Commissioner has rightly understood

the facts of this case and has rightly concluded that Sayama is the daughter of Minaj and Sumayya.

13 Things have become more grave when Minaj appeared in the Civil Application filed by him and by taking a diagonally opposite stand, has sworn on oath that Sayama is not his daughter and he does not know who is Sayama and he has no knowledge whether, Munaf and his wife have a girl child by name Sayama. He, therefore, disowned being the father of Sayama and tried to save his skin by filing the Civil Application. When controverted with how he would explain that his two daughters studying in the same school and in the same 6th standard, one (Ms.Bushra) is born on 21.07.2006 and other daughter (Ms.Mahevish @ Sayama) is born after 39 days on 30.08.2006, who is now disclosed to be Sayama, Minaj has no explanation on this count and he concedes that all birth records of Sayama have been prepared so as to indicate that Minaj and his wife Sumayya are the biological parents of Ms.Mahevish @ Sayama.

14 I, therefore, find in the above fact situation that Munaf is now attempting to rescue himself since he has realized that a DNA test would indicate that Sayama is his daughter and Nilofar is her mother. An unconditional apology, affidavit dated 04.07.2018 and affidavit dated 05.07.2018 appear to have been filed only to rescue himself. Fearing the action at the hands of law, he seems to have taken this stand. Until the

order directing the DNA test was passed on 14.06.2018, he was remorseless, unregretful and had dared the law. Even when the order was passed on 28.06.2018 directing that both the teenaged girls Mahevish and Bushra would be subjected to DNA test, Munaf felt that probably his acts would not be exposed. Shri Thorat apologetically submits that Munaf has committed one mistake and therefore, he should be pardoned.

15 Shri Jadhav, learned Advocate appearing on behalf of Minaj, is not even willing to make a statement whether, he would suffer the costs which were directed earlier so as to seek a pardon.

16 As is rightly pointed out by the learned AGP Shri Tambe that the origin of this mischief is not the present election. There is a specific preplanned strategy by Munaf and his brother Minaj to register Sayama's birth as being the girl child of Minaj and Sumayya. He rightly submits that the political aspirations cherished by Munaf are the root cause for falsely registering the birth of Sayama in 2006. Minaj is apparently a party to all this though he now has disassociated himself with his brother after realizing that the arm of law would apprehend him.

17 The learned AGP has pointed out from the birth records produced by Munaf along with his affidavit dated 05.10.2017, that both these brothers have well planned from 2006 to pass off Sayama as being the daughter of Minaj.

18 The Honourable Supreme Court, in the matter of

S.P.Chengalvaraya Naidu vs. Jagannath and others, (1994) 1 SCC 1, has dealt with an act of fraud on the court and has observed on the said aspect in paragraph 6 as under:-

"6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants- defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

19 The Honourable Supreme Court, in the matter of Kishore Samrite v/s State of Uttar Pradesh, (2013) 2 SCC 398, has observed in strict words that a litigant should not be permitted to play mischief for

seeking benefits from the Court. Relevant observations of the Apex Court read thus:-

“Abuse of the process of Court :

31. *Now, we shall deal with the question whether both or any of the petitioners in Civil Writ Petition Nos. 111/2011 and 125/2011 are guilty of suppression of material facts, not approaching the Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the facts and circumstances of the case in hand, let us refer to some case laws which would help us in dealing with the present situation with greater precision.*
32. *The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:-*
 - 32.1 *Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with ‘unclean hands’. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.*
 - 32.2 *The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.*
 - 32.3 *The obligation to approach the Court with clean*

hands is an absolute obligation and has repeatedly been reiterated by this Court.

- 32.4 Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.
- 32.5 A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.
- 32.6 The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.
- 32.7 Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.
- 32.8 The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it.

[Refer : Dalip Singh v. State of U.P. & Ors. (2010) 2 SCC 114; Amar Singh v. Union of India & Ors. (2011) 7 SCC 69 and State of Uttaranchal v Balwant Singh Chaufal & Ors. (2010) 3 SCC 402].

33. Access jurisprudence requires Courts to deal with the legitimate litigation whatever be its form but decline to exercise jurisdiction, if such litigation is an abuse of the process of the Court. In P.S.R. Sadhanantham v. Arunachalam & Anr. (1980) 3

SCC 141, the Court held:-

“15. The crucial significance of access jurisprudence has been best expressed by Cappelletti:

“The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement the most basic ‘human-right’ of a system which purports to guarantee legal rights.”

16. We are thus satisfied that the bogey of busybodies blackmailing adversaries through frivolous invocation of Article 136 is chimerical. Access to justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as public interest litigation, class action, pro bono proceedings, are. We cannot dwell in the home of processual obsolescence when our Constitution highlights social justice as a goal. We hold that there is no merit in the contentions of the writ petitioner and dismiss the petition.”

34. *It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.*
35. *With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of*

justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

36. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts". (Refer : Tilokchand H.B. Motichand & Ors. v. Munshi & Anr. [1969 (1) SCC 110]; A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr. [(2012) 6 SCC 430]; Chandra Shashi v. Anil Kumar Verma [(1995) SCC 1 421];

Abhyudya Sanstha v. Union of India & Ors. [(2011) 6 SCC 145]; *State of Madhya Pradesh v. Narmada Bachao Andolan & Anr.* [(2011) 7 SCC 639]; *Kalyaneshwari v. Union of India & Anr.* [(2011) 3 SCC 287].

37. *The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiolem, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.*
38. *No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. {K.D. Sharma v. Steel Authority of India Ltd. & Ors. [(2008) 12 SCC 481].*
39. *Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to*

file misconceived and frivolous petitions. (Buddhi Kota Subbarao (Dr.) v. K. Parasaran, (1996) 5 SCC 530).

40. *In light of these settled principles, if we examine the facts of the present case, next friends in both the petitions are guilty of suppressing material facts, approaching the court with unclean hands, filing petitions with ulterior motive and finally for abusing the process of the court."*

20 The Honourable Supreme Court, in the matter of *Dnyandeo Sabaji Naik and another vs. Pradnya Prakash Khadekar and others, (2017) 5 SCC 496*, has observed in paragraphs 13 and 14 as under:-

- "13. *This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth.*
14. *Courts across the legal system - this Court not being an exception – are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes. No litigant can have a vested interest in delay. Unfortunately, as the present case exemplifies, the process of dispensing justice is misused by the unscrupulous to the detriment of the*

legitimate. The present case is an illustration of how a simple issue has occupied the time of the courts and of how successive applications have been filed to prolong the inevitable. The person in whose favour the balance of justice lies has in the process been left in the lurch by repeated attempts to revive a stale issue. This tendency can be curbed only if courts across the system adopt an institutional approach which penalizes such behavior. Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner."

21 Considering the above, I find that this is one of those fit cases wherein, the proposed action set out in paragraph 7 of the order dated 11.10.2017, should be given effect to.

22 Consequent to the above, this Writ Petition is allowed. The impugned order of the Additional Divisional Commissioner, which displays an apparent non application of mind and casualness on the part of Shri Shivanand Taksale, Additional Divisional Commissioner, Aurangabad, is rendered perverse and unsustainable. The said order dated 04.09.2017 is, therefore, quashed and set aside and the order of the Additional District Collector dated 27.03.2016 is sustained.

23 Since Munaf and Minaj have been parties to the fraud being played upon the Court and the Government and have put the future of a girl child Ms.Sayama @ Mahevish at stake, they shall jointly pay costs of Rs.5 lac, which shall be deposited in this Court on or before 31.08.2018.

24 The learned AGP and the learned Advocate for the Petitioner submit that an amount of Rs.1 lac each out of the said costs be donated to the public cause for the treatment of poverty stricken people in the Government Hospital at Aurangabad and the Government Cancer Hospital at Aurangabad.

25 The learned Advocate for the Petitioner, on instructions, submits that even the rest of the amount of Rs.3 lac can be donated to a public cause like the Chief Minister Relief Fund keeping in view that hundreds of farmers have committed suicides in Marathwada region.

26 As such, out of the costs of Rs.5 lac after being deposited in this Court, the Registry shall transmit an amount of Rs.1 lac as donation

for the Ghati Hospital, Aurangabad (Government Medical College and Hospital, Aurangabad), to be deposited with the Medical Officer, High Court Dispensary, Aurangabad, by Cheque or Demand Draft, to be drawn in the name of "Dean, Government Medical College and Hospital, Aurangabad CSR Fund".

27 On the request of the learned Advocate for the Petitioner and by his consent, Rs.1 lac would be donated to the Government Cancer Hospital at Aurangabad and the remaining amount of Rs.3 lac would be donated to the Chief Minister Relief Fund (CMRF), Maharashtra State. The Registry shall act accordingly.

28 If the said amount of costs of Rs.5 lac is not deposited by Munaf and Minaj as directed above, the concerned Revenue Authority shall recover the said amount as arrears of land revenue from both of them in equal proportions, besides this Court initiating suo moto contempt proceedings.

29 The Registrar (Judicial) of this Court is directed to register the criminal offence against Munaf Subedar Shaikh and Minaj Subedar Shaikh with the concerned Police Station in view of the above and initiate criminal proceedings in accordance with law.

30 The DNA test shall not be performed and the Petitioner is, therefore, exempted from depositing the charges of the DNA test with the concerned Regional Forensic Science Laboratory, Aurangabad.

31 The pending Civil Application does not survive and stands disposed of.

kps

(RAVINDRA V. GHUGE, J.)