

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (ST.) NO. 2830 OF 2018
IN
WRIT PETITION NO. 13759 OF 2017

Vikas Gajanan Kamble	...	Applicant
<u>In the matter between</u>		
M/s.Shah Housecon Pvt. Ltd. & Anr.	...	Petitioners
V/s.		
Vikas Gajanan Kamble & Ors.	...	Respondents

- Mr.Manoj Kumar Upadhyay for the Applicant.
- Mr.Simlan Purohit for Original Petitioner.
- Mr.Atul Damle, Sr. Advocate i/b. Mr.Jagdish G. Reddy for Respondent No.2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 4th MAY, 2018.

P.C. :

- 1] Heard learned counsel for the parties.
- 2] This Civil Application is preferred by Respondent No.1 in Writ Petition No.13759 of 2017 contending *inter-alia* that this Writ Petition was to be placed before the Court on 16th January 2018. However, the matter was taken up by *praecipe* and/or by mentioning before this Court on 9th or 10th January 2018 and the order was

obtained in collusion.

3] It is contended that, as per the order passed by this Court on 11th January 2018, the presence and appearance of Advocate Mr.Jagdish G. Reddy was shown on behalf of Respondent No.1 and on the basis of the 'no objection' given by him, on the request of learned counsel for the Petitioners therein this Court has passed the order directing the trial Court to decide the Chamber Summons and the Notice of Motion as expeditiously as possible. It is submitted that Advocate Mr.Reddy was not appearing on behalf of Respondent No.1 and hence, he has no authority to give no objection for deciding the Chamber Summons and the Notice of Motion by the trial Court as expeditiously as possible.

4] It is submitted that Advocate Mr.Reddy has thereafter moved a *praecipe* on 16th January 2018 for “Speaking to the Minutes”, in order to show his presence on behalf of Respondent No.2. This Court has allowed the said *praecipe* holding that the presence of Advocate Mr.Reddy was 'inadvertently' shown on behalf of Respondent No.1.

5] It is contended by the Applicant that this is a collusive tactics, on the basis of which Advocate for the Petitioners and Advocate Mr.Reddy, for Respondent No.2 has obtained such order

behind the back of the Applicant by giving impression to the Court that Advocate Mr.Reddy is representing the interest of Respondent No.1. In fact the Applicant was neither served with notice of the *praecipe* nor he or his Advocate was appearing in the Court on that day to give 'no objection'. Hence, it is prayed that, necessary action be taken against Advocate Mr.Reddy and the order passed by this Court on 11th January 2018 and corrected on 16th January 2018 be set-aside.

6] It is further submitted that as the Applicant was not at all served in the said Writ Petition, the order passed in the Writ Petition, is adversely affecting his interest, hence it needs to be reviewed.

7] This request is strongly resisted by learned counsel for the Petitioners and Mr.Damle, learned Senior Counsel for Advocate Mr.Reddy, and in my considered opinion, rightly so.

8] At the outset itself, it has to be observed that when this Court has passed the order dated 11th January 2018, this Court was very much aware that Advocate Mr.Reddy was representing Respondent No.1-the Slum Rehabilitation Authority (S.R.A.), as he is the standing Counsel of the S.R.A.. The Court was also aware that, no notice of the Writ Petition was served on Respondent No.1 i.e. present Applicant. However, as a very limited relief was sought on that day to

the extent of only expediting the hearing of Chamber Summons and Notice of Motion pending before the trial Court, this Court thought it fit to grant the said relief, even without issuing notice to Respondent No.1. Especially when Advocate Mr.Reddy, representing Respondent No.2, the Slum Rehabilitation Authority was present before the Court, this Court thought it fit that instead of wasting the time in issuing notice to Respondent No.1 i.e. the present Applicant, it would be proper to expedite the hearing of Notice of Motion and Chamber Summons itself. This Court does not think that said order is of such a nature, which needs to be obtained in collusion or which is likely to cause any prejudice to the Applicant.

9] As a matter of fact, this Court has not decided the dispute between the parties on merits but only directed the trial Court to decide the same as expeditiously as possible, considering that the order of ad-interim relief was already passed in favour of the present Applicant and it was running for a period of more than one and half year against the Petitioner and Respondent No.2. It cannot be said that there is anything affecting the interest of the Applicant in any way by the said order.

10] It is also pertinent to note that, after the Writ Petition was disposed of by this Court with direction to the trial Court to expedite

the hearing of the Notice of Motion and the Chamber Summons, the Applicant has appeared in the trial Court and the Chamber Summons is already decided on 9th April 2018. In such situation, now he cannot raise a grievance against the order passed by this Court. If he was agitated by the said order, at the earliest opportunity he should have filed Review Petition or a *Praecipe* for “Speaking to the Minutes” of the order, instead of participating in the hearing of the Chamber Summons.

11] In the backdrop of these facts, the allegations made by the Applicant against Advocate Mr.Jagdish G. Reddy of acting in collusion and the insinuation made against this Court, are totally unwarranted and unsubstantiated. This conduct on the part of the Applicant to make such averments and allegations is deprecable and needs to be contemned outrightly. Making complaint against Advocate Mr.Reddy to various authorities with an allegation that he has acted in collusion by representing the Applicant in this Court on 11th January 2018 is again a misuse of the process. Therefore, the allegations made in this Civil Application and in the Complaint made against Advocate Mr.Jagdish G. Reddy are required to be expunged and they stand expunged.

12] As a result, I do not find any merit in this application. As a matter of fact, the Application deserves to be dismissed with costs; but this Court does not want to do so.

13] The Civil Application therefore stands dismissed with no order as to costs.

14] The concerned parties to act on the basis of the authenticated copy of this order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]