

Vijaya
Gourishankar
Yadav

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6344 OF 2018

Digitally signed
by Vijaya
Gourishankar
Yadav
Date: 2018.07.17
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1. Shobha Atmaram Prabhu
Age 82 Years, Occu-Home Maker
2. Rajeev Atmaram Prabhu
Age 58 Years, Occu-Self employed
3. Deepa Rajeev Prabhu
Age 45 Years, Occu-Home Maker
4. Sonia Atmaram Prabhu
Age 50 Years, Occu-Advocate

All Petitioners are Resident at
Mukundanand, 1145/2 F. C. Road,
Shivajinagar, Pune - 411 016.

... Petitioners

V E R S U S

1. State of Maharashtra
2. Shivajirao Madhavrao Mankar
Age 55 Years, Occu-Business
R/at Sai Bungalow, Yashwantnagar,
MSEB Colony, Pune – 411 020.
3. Purnima Atmaram Prabhu
Age 55 Years, Occu – Self employed
R/at Mukundanand 1st & 2nd Floor,
1145/2 F. C. Road, Shivajinagar,
Pune – 411 016.

... Respondents

Ms. Sonia Prabhu, Petitioner No.4 in person present for all Petitioners.
Mr. M. M. Pabale, AGP for Respondent No.1 – State.
Ms. Purnima Atmaram Prabhu, Respondent No.3 in person present in Court.

**CORAM : SHANTANU KEMKAR AND
NITIN W. SAMBRE, JJ.**

DATE : JULY 3, 2018

ORDER [PER : NITIN W. SAMBRE, J.]

. Heard Petitioner No.4 in person, who is a Lawyer by profession and who represents the interest of other Petitioners.

2. The Petitioner No.1 appears to be the mother of Petitioner Nos. 2, 4 and Respondent No. 3 and mother-in-law of Petitioner No. 3. The Petitioner Nos. 2 and 3 appears to be husband and wife.

3. The Petition is filed with following prayers :-

“(A) By an appropriate writ, order and/or direction of this Hon'ble Court, this Hon'ble Court be kind enough to assign C.A.No.1061/2012 to any appropriate Hon'ble Judge from District Court Shivajinagar Pune, other than the Hon'ble Judge

hearing C.A.No.123/2016 and Hon'ble Shri S. M. Modak, the appeal may kindly be made time bound, preferably within 30 days, the parties may kindly be restricted to filing of purshis and applications of adjournment, that too on genuine grounds.

(B) Pending the hearing and order of prayer clause (A), this Hon'ble Court be kind enough to issue an appropriate writ, order and/or direction to say the proceedings of C.A.No.1061/2012.

(C) Ad-interim and interim reliefs in terms of prayer clause (B) may kindly be granted.

(D) This Hon'ble Court be kind enough to give guidelines, whether a Judge can rescue himself/herself from hearing a particular matter, on the ground that the Advocate/party of the pending matter before him/her, has visited his/her Facebook page and/or his account on any other social media.

(E) By an appropriate writ, order and/or direction of this Hon'ble Court, this Hon'ble Court be kind enough to take appropriate action against Hon'ble Shri S. M. Modak and Hon'ble Shri S. B. Bahalkar, for misusing their powers to violate the rights of the appellants of C.A.No.1061/2012, especially of 82 years old Appellant No.1.

(F) For such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

4. In Special Civil Suit No. 331 of 2010 filed by the Respondent No.2 against the present Petitioners, a decree came to be passed vide Judgment and Order dated August 13, 2012 which is the subject matter of challenge in Regular Civil Appeal No. 123 of 2016 at the behest of present Petitioners. The said Civil Appeal is pending on the file of learned District Judge-18 & Additional Sessions Judge, Pune.

5. In Small Cause Suit No. 71 of 2010 vide Judgment and Decree dated August 16, 2012 a decree for eviction and possession came to be passed against the Petitioners which is the subject matter of challenge in Regular Civil Appeal No. 1061 of 2012. Respondent No.2 – landlord moved Application (Exhibit – 25) in Regular Civil Appeal No. 1061 of 2012 seeking clubbing of both these Civil Appeals bearing Regular Civil Appeal No. 1061 of 2012 and Regular Civil Appeal No. 123 of 2016. Considering the issue involved in both these Appeals, the learned District Judge rejected the prayer for clubbing of both these Appeals.

6. On 13th April 2018 the learned Principal District Judge & Sessions Judge, Pune in exercise of powers under Section 24 (3) of the Code of Civil Procedure, 1908 (for short, 'the Code') passed an order on the administrative side directing transfer of the Regular Civil Appeal No. 1061 of 2012 to the Court of Mr. J. D. Wadane, District Judge-12 & Additional Sessions Judge, Pune. According to Petitioner, Mr. S. B. Bahalkar, the learned District Judge – 9 & Additional Sessions Judge, Pune who has already heard said Regular Civil Appeal, was transferred. On the basis of the ground narrated in the Petition, a prayer is made that Regular Civil Appeal No. 1061 of 2012 be transferred to any other Court than the Judge dealing with the hearing of Regular Civil Appeal No.123 of 2016 and also the Principal District Judge, Pune.

7. According to learned Counsel for the Petitioners, the subject matter of both the Appeals bearing Regular Civil Appeal No. 1061 of 2012 and Regular Civil Appeal No. 123 of 2016 are based on altogether different factual matrix. The issues which are required to be considered are also different and as such if both these Appeals are heard and decided by the same Judge, there is every likelihood that the Petitioners may suffer

substantial prejudice. The Petitioners have also claimed that the then District Judge, Pune (Mr. S. B. Bahalkar) was dealing with the Appeal No. 1061 of 2012 for almost last three years and has completed the final hearing. As such, the matter should have been decided by the same Judge.

8. The Respondent No.3 who appears in person and being sister of Petitioner No.4, supports the aforesaid contentions.

9. If the submissions of the Petitioners are appreciated, the Petitioners have taken shelter of Petitioner No.1 i.e. their mother, who is at the advanced age of 82 years, for creating the case under Section 24 of the Code. It is the contention of the Petitioners that the power is vested in this Court under Section 24 of the Code to transfer the Regular Civil Appeal No. 1061 of 2012 to any other court at Shivajinagar, Pune other than the Hon'ble Judge hearing Regular Civil Appeal No.123 of 2016 and Mr. S. M. Modak, the Principal District Judge, Pune.

10. If the prayer is appreciated in the background of Section 24 of the Code, wherein the general power of transfer and withdrawal of the

suit or appeal is vested in the High Court or the District Court, as the case may be, such power of transfer of proceedings can be exercised on an application of any of the parties and upon hearing the parties affected or even the court on its own motion without issuing notice at any stage of the said proceeding transfer the suit, appeal or such other proceedings which are pending before it for trial or disposal to any court subordinate to it and competent to try and dispose of the same.

11. The High Court or District Court has also power to withdraw the suit, appeal or other proceeding pending in any court subordinate to it, and try or dispose of the same, or transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or if required, may retransfer the same or on its own may try or dispose of the same.

12. Sub-section 3 of Section 24 provides that the courts of District Judge & Additional Sessions Judge are deemed to be subordinate to the District Judge. The power under Section 24 of the Code for ordering transfer of the proceedings, viz – appeal or suit or execution proceedings is not restricted to the extent of want of jurisdiction, but also on

administrative ground or if there is likelihood of bias, the High Court or District Court has every authority to transfer the proceeding. What is required is, the court while exercising powers under Section 24 of the Code, needs to be act judicially as powers conferred are discretionary in nature. Appropriate support can be drawn by relying upon the Judgment of this Court in the matter of *Bell Finvest (India) Limited V/s Official Liquidator of M/s. Rtec System(I) Pvt.Ltd.*¹

13. In the aforesaid backdrop of provisions of Section 24 of the Code, what is required to be noticed is, the parties before this Court particularly Petitioners are Appellants in the Appeals wherein a dispute relates to possession and injunction in relation to an immovable property. On 13th April 2018 the learned Principal District Judge, Pune under his administrative powers issued an office order transferring Regular Civil Appeal No. 1061 of 2012 initiated by the Petitioners from the court of Mr. S. B. Bahalkar, District Judge-9 & Additional Sessions Judge, Pune to the court of Mr. J. D. Wadane, District Judge-12 & Additional Sessions Judge, Pune.

1 2015(2) BomC.R.247

14. Before the said administrative order of transfer, the Respondent No.2 – original Plaintiff moved an Application (Exhibit – 25) pointing out that in Misc. Application No. 728 of 2011 under Section 24 of the Code in regard to the transfer of both the suits to the file of one and the same Judge which was allowed and suits were tried and decided by one and the same Judge. According to him, Regular Civil Appeal No. 123 of 2016 pending on the file of District Judge-18, Pune needs to be transferred to the file of District Judge-15 & Additional Sessions Judge, Pune presided over by Mr. S. B. Bahalkar or to consolidate both the Appeals bearing Regular Civil Appeal No. 1061 of 2012 and Regular Civil Appeal No. 123 of 2016. The said application was rejected on 26th April 2017.

15. As a consequences of above, the Petitioners in the Petition claims that on 1st November 2017 the court of learned District Judge fixed the matter for arguments of the Respondents.

16. Thereafter the matter was adjourned time and again and on 28th March 2018 when the matter was adjourned on 16th April 2018, Mr. S. B. Bahalkar, the District Judge-9, Pune, taking up the hearing of the

matter, came to be transferred to Thane from Pune and Mr. J. D. Wadane, the District Judge-12, Pune was transferred from Pune to Osmanabad. According to the Petitioners, Mr. S. B. Bahalkar, the District Judge should have heard and decided the matter during the vacation, however, the matter before him take a different turn, as according to the Petitioners, it is the Respondent No.2 who awaited a conduct of the matter before the said Judge.

17. In the meantime, it appears that the Petitioner No. 4, a Lawyer by profession commented on a facebook post of the said Judge Mr. Bahalkar and as such the Judge was required to bring the said fact to the notice of learned Principal District Judge, who then ordered transfer of the matter on 13th April 2018.

18. In the aforesaid background, keeping in mind the scheme of Section 24 of the Code, the claim of the present Petitioners that Regular Civil Appeal No. 1061 of 2012 needs to be transferred to some other District Court Shivajinagar, Pune other than the Judge hearing Regular Civil Appeal No. 123 of 2016 and also to the court of Mr. S. M. Modak, the Principal District Judge, Pune is without any legal basis.

19. It is what to note here that the District Judge Mr. S. B. Bahalkar and Mr. J. D. Wadane both are transferred and as such the Principal District Judge, Pune, the administrative head has every power to allot the judicial business to be directed by each of the Judge who is posted under him. The claim of the Petitioner that the Principal District Judge or Judge taking up Regular Civil Appeal No.123 of 2016 should not hear the Regular Civil Appeal No. 1061 of 2012, is virtually amounting to forum-hunting which practice and approach on the part of the Petitioner No. 4 is deprecated, particularly when the Petitioner No.4 is practicing as a Lawyer.

20. The conduct of the Petitioner No. 4 in responding to the facebook post of a Judge who was hearing their Appeals, in the aforesaid background, for most unfault for conduct and could be viewed as professional misconduct upon examining the same in detail.

21. In the matter of *Chetak Construction Ltd. V/s Om Prakash and Others*¹ while dealing with the conduct of a Lawyer and the litigation, in paragraph nos. 16 and 17 has observed thus :

¹ (1998) 4 Supreme Court Cases 577

“16. *Indeed, no lawyer or litigant can be permitted to browbeat the court or malign the presiding officer with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a casualty and rule of law would receive a setback. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot be allowed to “terrorize” or “intimidate” Judges with a view to “secure” orders which they want. This basic and fundamental and no civilized system of administration of justice can permit it. We certainly, cannot approve of any attempt on the part of any litigant to go “forum-shopping.” A litigant cannot be permitted “choice” of the “forum” and every attempt at “forum-shopping” must be crushed with a heavy hand.*

17. *At the same time, it is of utmost importance to remember that Judges must act as impartial referees and decide cases objectively, uninfluenced by any personal bias or prejudice. A Judge should not allow his judicial position to be compromised at any cost. This is essential for maintaining the integrity of the institution and public confidence in it. The credibility of this institution rests on the fairness and impartiality of the Judges at all levels. It is the principle of highest importance for the proper administration of justice that judicial powers must be exercised impartially and within the*

bounds of law. Public confidence in the judiciary rests on legitimacy of judicial process. Sources of legitimacy are in the impersonal application by the Judge of recognised objective principles which owe their existence to a system as distinguished from subjective moods, predilections, emotions and prejudices. Judges must always ensure that they do not allow the credibility of the institution to be eroded. We must always remember that justice must not only be done but it must also be seen to be done.”

22. In the aforesaid background, the order of the learned Principal District Judge in transferring the matter from the file of District Judge-9, Pune to District Judge-12, Pune is justified, particularly looking to the pleadings raised by the Petitioners in the present Petition.

23. Apart from above, it is to be noted that the Petitioners in clear terms could establish that the Principal District Judge Mr. S. M. Modak should not be allotted such matter for hearing as a bias approach towards the Petitioners' case. As a consequences of above, the claim made vide prayer clause (A) for transfer of the proceedings, in our opinion, does not warrant any consideration, as same is devoid of merits and as such is rejected.

24. So far as the prayer clause (D), wherein the Petitioners have prayed this Court to issue guidelines as to the circumstances in which a Judge can be recuse himself from hearing of a particular case is concerned, recusal by a Judge in a case held to be an issue within his personal domain. A Judge may recuse himself on the basis of his personal or private interest in the subject-matter of the litigation, his intimacy with the party/parties to a *lis* which is brought before him, his own conscience about the matter or the parties or his perception about conflict of interest in taking up the matter etc. Such decision whether to recuse or not is purely within the domain of the said Judge who is dealing with the matter.

25. Asking a Judge to recuse himself by a party or a litigant is required to be viewed very seriously unless by such request certain issues are brought to the notice of the Judge taking up the matter which disqualifies him from taking such matter on the issues *referred supra*, viz – personal or private interest, intimacy with the party/parties to a *lis* etc.

26. The Apex Court in the matter of ***R. K. Anand V/s Registrar***,

Delhi High Court¹ in paragraph nos. 259, 264, 266 to 268 has observed thus :

“259. In one glance, the grounds on which recusal was asked for appear fit to be rejected out of hands. But the Court gave the matter far greater importance than it merited, apparently because it saw a personal angle in it. The petition was heard for three days before it was rejected by the order dated 4-10-2007. It is a long order running into twenty-seven pages authored by Sarin, J. The order dealt with all the grounds advanced in support of the recusal petition and effectively showed that there was no truth or substance in any of those grounds.

264. We are constrained to pause here for a moment and to express grave concern over the fact that lately such tendencies and practices are on the increase. We have come across instances where one would simply throw a stone on a Judge (who is quite defenceless in such matters) and later on cite the gratuitous attack as a ground to ask the Judge to recuse himself from hearing a case in which he would be appearing. Such conduct is bound to cause deep hurt to the Judge concerned but what is of far greater importance is that it defies the very fundamentals of administration of justice. A motivated application for recusal, therefore, needs to be dealt with sternly

1 (2009) 8 Supreme Court Cases 106

and should be viewed ordinarily as interference in the due course of justice leading to penal consequences.

266. *This development provided R. K. Anand with another opportunity to carry on his offensive further. He unhesitatingly availed of the opportunity and filed an application (Cri.M.No.11677 of 2007) for clarification/review of the order dated 4-10-2007 dismissing his recusal petition. Review was sought primarily on the ground that the order of Sarin, J. was not the order by the Bench since the other Judge had declined to concur with him.*

267. *After the other Judge opted out of the Bench, the Chief Justice put Lokur, J. in his place. Consequently, the clarification/review application came before Sarin, J., sitting with Lokur, J., and the first thing this Bench was told, and with some assertiveness, too, was that it was not competent to hear the application and it could only be heard by the previous Bench as it arose from an order passed by the Bench. The clarification/review application was rejected by a long order dated 29-11-2007 authored by Lokur, J. As we shall see, henceforth all substantive orders in the proceeding were written, not by the Presiding Judge, but by Lokur, J. and the significance of it is not lost on us. The application for recusal though rejected was not completely unsuccessful. It left a lasting shadow on the proceeding.*

268. *Here, it may be noted that apart from filing an application for its clarification/review before the High Court, the order rejecting the recusal application was also sought to be challenged before this Court by filing SLP (Crl.) No. 7374 of 2007. The SLP was, however, withdrawn on 14-12-2007. Nevertheless, the challenge to the High Court order rejecting the recusal application is still not given up and Paras H and I of the grounds in the present memo of appeal expressly seek to assail that order.”*

27. The issue of recusal is considered by the Nagpur Bench of this Court in the matter of ***Satish Mahadeorao Uke V/s Registrar, High Court of Bombay, Bench at Nagpur***¹. This Court in para no. 25 while dealing with the issue of recusal has observed thus :

“25. *A Judge may recuse at his own choice from a case entrusted to him by the Chief Justice and it would be a matter of his own choosing. But recusal at the asking of the litigating party, unless justified, must never be acceded to. This is what the Apex Court has held recently in NJAC case instituted by the Supreme Court Advocates-on-Record Association and another vs. Union of India, reported in 2015(11) SCALE 1. The question of recusal is normally decided by a Judge on the basis of his personal or private interest in the subject-matter of the*

1 2016(4) Mh.L.J.406

litigation, his intimacy with the party/parties to a lis before him, his perception about conflict of interest in taking up the matter, and his own conscience. Such decision does not depend upon the dictates of lawyers or litigants. There can be numerous such cases, where the question of recusal arises, some of which can be broadly cited as under :

(i) The relations between the lawyers and their clients are always considered to be professional. While in practice of law as a Standing Counsel of corporate or statutory bodies or authorities, may not deter taking up or dealing with the matters of such bodies or authorities as a Judge unless the subject-matter of the litigation was handled as a professional. Day in and day out, such matters are taken up and the orders are passed either in favour or against such bodies or authorities.

(ii) Many times, personal matters of lawyers regularly practising in the Court, who are the members of the Bar Association, are required to be dealt with. Merely because some such lawyer was a professional colleague while in practice may not act as a disqualification for taking up his matter, and a Judge decides it on the basis of his intimacy with such lawyer and the subject-matter of the litigation or his conscience.

(iii) The participation of lawyers in political activities or the activities of the Bar Association or in the voluntary organizations and the local bodies is phenomenal. Such lawyers

frequently come before the Court as a litigant in public interest litigations to espouse or defend the common cause. The fact that such a lawyer is a regular practitioner before this Court, does not come in the way of adjudicating such matters, as the Court is concerned with the subject-matter of litigation and the beneficiaries of it.

(iv) Many times, it happens that a lawyer having personal matter before the Court occupies the highest position in the Bar Association and shares the dais with the Judges in the official functions organized by the High Court or the Bar Association, or visits the Judges at their residence to express the condolences. These facts can hardly be a ground or reason for recusal by a Judge to take up the matters of such lawyers.”

28. Having regard to the observations made by the Apex Court and this Court in the above referred Judgments, a prayer clause (D) moved by the Petitioners seeking directions to frame guidelines in regard to the issue of recusal of a Judge in a given case cannot be entertained.

29. As such, the Writ Petition is devoid of merits. The same stands dismissed.

(NITIN W. SAMBRE, J.)

(SHANTANU KEMKAR, J.)