

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

967 WRIT PETITION NO.2967 OF 2019

SHAIKH SHAKEEL SHAIKH GULAB

.. Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

.. Respondents

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Advocate for Petitioner : Shri P.D. Jarare

AGP for Respondents No.1 & 2 : Shri S.D. Ghayal

Advocate for Respondent Nos.4A to 4E : Shri Rahul Joshi,

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CORAM : P.R. BORA, J.

Dated: April 12, 2019

PER COURT :-

1. Heard learned Counsel appearing for the parties.
2. The petitioner has filed the present petition taking exception to the order dated 27.02.2019 passed by 15th Jt. Civil Judge, Jr. Division, Aurangabad (hereinafter referred to as the 'Trial Court') below Application at Exh.37 in Regular Civil Suit No.892 of 2017.
3. The present petitioner had filed the aforesaid application seeking the order of status-quo in respect of disbursement of amount of compensation to respondent nos.4A to 4E. The material on record reveals that, the petitioner had filed Writ Petition No.1529 of 2018 against the order dated 11.01.2018 passed by present respondent

no.3. In the said writ petition, an interim order was passed by this Court on 07.02.2018 in terms of prayer clause 'C', which reads thus :

“(C) Pending hearing and final disposal of this writ petition, the respondent authorities may kindly be restrained from disbursing the compensation amount as per impugned order dt.11/01/2018.”

4. The said writ petition came to be finally disposed of on 20.02.2019. While disposing of the said writ petition, this Court granted liberty to the petitioner to obtain the orders as may be permissible in law in the pending civil suit or as may be permissible and the interim order passed on 07.02.2018, reproduced herein above, was continued for the period of 7 days only. It was also clarified that, on lapse of 7 days, the said interim order shall come to an end.

5. The petitioner filed an application on 27.02.2019 with the following prayer :

“An application u/s. 151 of the Civil Procedure Code may kindly be allowed. Restraining the respondents particularly Respondent No.1 not to withdraw the Compensation amount from the Competent Authority till final disposal of the Suit by granting 'STATUS-QUO ORDER’ in respect of withdraw of the Compensation Amount. Any other suitable relief may please be granted in favour of the Plaintiff for which they may found entitle in the facts and may circumstances of the present case.”

. The learned Trial Court had rejected the said application with the observations as are appearing in para-4 of the said order, which reads thus:

“4. The aforesaid order is passed by Hon'ble High Court on 20.02.2019. From counting 07 days period from 20.02.2019 today is 8th day and not seventh day. The effect of interim order is already lapsed. The conduct of plaintiff shows that, from 20.02.2019 he has not appeared at the earliest. He is appearing today and not offered even explanation as to why he did not appear at the earliest. The interim injunction application is pending as per order below Exh.21 notice to LRs of defendant no.1 and 9 has already been issued and they are yet to appear. In such circumstances I find no extreme urgency to grant “status quo” as prayed by plaintiff and it is necessary to hear defendants especially defendant no.1 before passing any order against him.”

6. It is the contention of the learned Counsel appearing for the petitioner that, the learned Trial Court has erred in recording a finding that, the petitioner did not file the said application within the period of 7 days as per the order passed by the Division Bench of this Court in Writ Petition No.1529 of 2018 on 20.02.2019. The learned Counsel submitted that, the period of 7 days was liable to be computed from the next day of the said order and was, therefore, to expire on 27.02.2019 and on the same day, the petitioner filed the application at Exh.37 before the Trial Court. The learned Counsel submitted that, the Trial Court has failed in computing the period of 7 days, which has resulted in passing the impugned order, which is

likely to cause serious prejudice to the present petitioner. The learned Counsel, in the circumstances, has prayed for setting aside the said order and a further direction to the Trial Court to decide the application at Exh.5 filed by the petitioner in the said civil suit by maintaining the status-quo as was directed to be maintained by this Court vide order passed on 11.01.2018 in Writ Petition No.1529 of 2018.

7. The submissions so made are strongly opposed by Shri Joshi, learned Counsel appearing for respondent nos.4A to 4E. The learned Counsel submitted that, the Trial Court has not committed any error in rejecting the application. The learned Counsel referring to the observations made by the Court in para-4 of the said order submitted that, on all counts, the Trial Court negated the request of the petitioner and no interference is required in the order so passed. The learned Counsel submitted that, though the period of 7 days was provided by the Division Bench, without assigning any reason, the plaintiff had filed the aforesaid application on the fag end of the period of limitation, according to his own calculation and the Trial Court has rightly observed that, there seems no urgency in the matter. The learned Counsel submitted that, as has been observed by the Trial Court, notices have already been issued

and though the notices have already been issued, the concerned respondents have yet to appear in the matter. In the circumstances, according to the learned Counsel, no interference is required in the impugned order. It is also submitted by Shri Joshi that, the amount of compensation has already been transmitted to the accounts of respondent no.4 and as such, the application filed by the petitioner itself has become infructuous.

7. Shri Jarare, learned Counsel appearing for the petitioner has disputed the aforesaid contentions stating that unless respondent no.3 endorses his 'no objection', the amount deposited in the said account cannot be permitted to be withdrawn by the respondent and in such circumstances, according to him, the present petitioner was quite justified in seeking the order of status-quo as was directed by this Court vide order passed on 07.02.2018.

8. I have carefully considered the submissions advanced by the learned Counsel appearing for the parties. I have also perused the impugned order. It is not in dispute that, while disposing of Writ Petition No.1529 of 2018, this Court had given liberty to the present petitioner to approach the Civil Court within 7 days of passing the said order and to secure the necessary orders by the said Court. The

question is, how the period of 7 days is to be computed. The learned Trial Court seems to have computed it from the date of passing of the order and as such, according to the computation so made by the Trial Court, the period had expired on 26.02.2019 itself and the effect of the order passed by the Division Bench had thus come to an end. As against it, as noted herein above, according to the learned Counsel appearing for the petitioner, the period of 7 days must have been computed from the next day of passing of the order and if so computed, the application filed by him was well within the period of 7 days.

9. After having considered the submissions, I have no doubt in my mind that, the Trial Court has erred in computing the period of limitation.

10. Considering the provision under The Limitation Act and more particularly, Section 12 (2) of said Act, the day, on which, the order was passed by the Division Bench, was liable to be excluded and the period of 7 days was to be reckoned from 21.02.2019 and if computed so, the application filed by the petitioner was perfectly within the period of 7 days as provided in the order passed by the Division Bench. The Trial Court has adopted a hipertechnical

approach, which has resulted in passing an erroneous order. Considering the avernments in the application filed at Exh.37, the finding recorded by the Trial Court without hearing the said application on merits that, there is no urgency also appears to be unsustainable. In the circumstances, the impugned order cannot be sustained and deserves to be set aside. Hence, the following order is passed.

ORDER

(i) The order dated 27.02.2019 impugned in the present petition is set aside.

(ii) The Trial Court is directed to hear and decide the application at Exh.37 on its own merits. Till then, the effect of the order passed by this Court on 11.01.2018 shall remain in force.

(iii) The Writ Petition stands disposed of with the aforesaid order.

(P.R. BORA, J.)

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