

(Reportable)

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

WRIT PETITION NO.7379 OF 2019

SUREKHA MUKUND DABHADE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Shri R.B.Dhakane, Advocate for the petitioner.
Shri N.T.Bhagat, AGP, for respondent nos.1 to 4.

...

**CORAM: RAVINDRA V. GHUGE, J.
DATE :- 21st June, 2019**

Oral Order :

1 I have heard the learned advocate for the petitioner and the learned AGP on behalf of respondent nos.1 to 4.

2 This case has brought up a mysterious second wife of Mukund Dabhade, husband of the petitioner, who disappeared forever after giving birth to a son. This case also indicates the level to which a person can stoop low for fulfilling political aspirations.

3 The submissions of the petitioner can be summarized as under :-

- (a) The petitioner (Surekha) is the first wife of Mukund Dabhade and they have three children prior to 13.09.2000.
- (b) Mukund Dabhade claims to have a second wife by name Dipali @ Surekha and she has one child by name Aniket born

out of the said relationship. The petitioner asserts this position.

- (c) Dipali @ Surekha suddenly disappeared when Aniket was 1 and ½ years old, after being born in 2006.
- (d) Dipali @ Surekha is untraceable and Mukund has not lodged any missing complaint with any police station stating that she is missing.
- (e) The petitioner was earlier disqualified by the order of the District Collector dated 21.08.2017 for having more than two children and the third child having been born after 13.09.2000.
- (f) The petitioner preferred an appeal before the Additional Divisional Commissioner, who dismissed the same by order dated 21.08.2017.
- (g) The petitioner then approached this Court in Writ Petition No.1412/2018 and the same was dismissed as withdrawn.
- (h) The petitioner then approached the Additional Divisional Commissioner by filing a review application and the same was allowed thereby, remitting the matter to the Additional Collector for reconsideration.
- (i) It is by the impugned order dated 19.11.2018 that the District Collector has concluded that there is no such human being by

name Dipali @ Surekha and the petitioner could not establish that there are two ladies by name Surekha as two wives of Mukund.

- (j) The petitioner then approached the Additional Divisional Commissioner, Aurangabad belatedly and by the impugned order, the Additional Divisional Commissioner has declined to entertain the appeal filed by the petitioner.

4 The learned AGP submits that the petitioner has created a make believe picture of the second wife of Mukund terming her to be Dipali @ Surekh. It is conspicuous that Mukund has not lodged any police complaint as regards the purported missing of Dipali @ Surekha.

5 I find the entire situation to be quite unusual. If the second wife (not a legitimate wife) after giving birth to the son Aniket goes missing, it is impossible that anyone from her parental side would not have filed any complaint about the daughter going missing. I, therefore, called upon the learned advocate for the petitioner to take instructions as to whether, the petitioner would cooperate in an investigation, which I would direct for finding out the truth and for locating the purported Dipali @ Surekha.

6 The learned advocate for the petitioner submits, on instructions from Mukund present in the court, that the petitioner desires

to withdraw this writ petition and will withdraw the pending proceedings. She does not want any steps to be taken to search for his (Mukund's) second wife.

7 I found this approach to be suspicious. Hence, I directed that the printout of the earlier order dated 09.03.2018 passed by this Court in Writ Petition No.1412/2018, which was the earlier round of litigation referred to herein above, to be placed before me. Upon going through the earlier order passed, I found that this court had heard the same petitioner and had recorded in the order dated 23.02.2018 as under :-

- "1. Learned AGP appears for 1 to 3. The petitioner seeks leave to delete respondent No.4. Deletion granted. Mr.Wagh, learned Advocate appears for respondent No.5.
2. The petitioner/elected representative states on an affidavit that though she has 3 children namely Abhijeet Mukund, Vishakha Mukund and Sneha Mukund born prior to 2001, Aniket Mukund born on 24/07/2006 is not her biological child and is the biological child of her husband Mukund begotten from a second wife by name Deepali who has left the house and Mukund is not aware about her whereabouts.
3. Issue is as regards disqualification since the petitioner is held to be the mother of 4 children and Aniket is said to have been born on 24/07/2006.
4. A copy of the birth certificate produced by respondent No.5 caveator is marked as X-1 for identification, which indicates the name of the mother as Surekha Mukund and the name of the child as Aniket. The petitioner has produced a copy of a another birth certificate which is practically identical to X-1 except that the name of the mother is shown as Deepali @ Surekha Mukund. The said certificate is issued by the Deputy Registrar of Birth and Death, Municipal

Corporation, Aurangabad, which is placed at page No.38 alongwith the affidavit of the petitioner.

5. *The petitioner as well as her husband Mukund submit that as Deepali is missing, both of them will file an affidavit declaring that they are willing to undergo a DNA test alongwith Aniket who is about 12 years old.*
6. *On the request of the petitioner and by recording her statement alongwith her husband, who is present in the Court, the affidavit shall be filed on or before 03/03/2018. It is made clear that after the affidavit is filed and considering the consent of the petitioner and her husband, further direction for conducting a DNA test would be ordered.*
7. *Until further orders, no interim relief."*

8 It is, therefore, apparent that after this Court had directed the petitioner and her husband to file an affidavit, that a statement was made by the petitioner on 09.03.2018 that the petitioner had not filed a specific affidavit and desires to withdraw this petition. These observations are found in paragraphs 2, 3 and 4 of the order dated 09.03.2018 in the earlier petition, which read as under :-

- "2. *An additional affidavit has been filed by the petitioner, in which, the statement that was made in the Court as is recorded in paragraph 5, has been shrewdly not entered in the additional affidavit filed by the petitioner on 22.01.2018.*
3. *Learned counsel for the petitioner submits that the petitioner desires to withdraw this petition and retract from the challenge posed in this petition.*
4. *Considering the above, this petition is dismissed as withdrawn."*

9 Having brought the above aspects before this court, I called

upon the learned advocate for the petitioner to take instructions as to whether, the petitioner admits that Aniket is her fourth child born on 24.07.2006. The husband of the petitioner present in the Court, after much probing by the learned advocate, made a statement that there is no such person by name Dipali and the petitioner/ Surekha is the only wife and Aniket is her fourth child. This is indeed shocking.

10 All the above aspects were suppressed even from the Additional Divisional Commissioner in the review application and a favourable order was procured from the Additional Divisional Commissioner and the matter again got remanded to the District Collector. I must record my appreciation for the District Collector Shri Ravindra Binwade for having noticed the suspicious story put up and having concluded that there is no person as Dipali @ Surekha.

11 At this stage, the petitioner has again sought liberty to withdraw this petition. She had made a similar request in her earlier Writ Petition No.1412/2018 and I had accepted the said request and the said petition was dismissed as withdrawn. I find that persons like the petitioner and her husband, in order to fulfill their political ambitions, do not hesitate to abuse the process of law by playing a fraud not only on the authorities below, but even on this Court. Such tribe is growing.

12 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.*"

13 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 locupletiore, 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."*

(Emphasis supplied)

14 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."

(Emphasis supplied)

15 In somewhat similar circumstances in **Writ Petition No.1092/2018, Sangita Ambadas Khandagale vs. The State of Maharashtra and others**, decided on 31.01.2018, I had relied upon the judgments in **S.P.Chengalvaraya Naidu (supra)**, **Kishore Samrite**

(*supra*) and **Dnyandeo Sabaji Naik** (*supra*) and had passed the following order :-

"13 *In this backdrop, in order to ensure that clean persons remain in the political arena and, for that reason, in all walks of life, I am directing the Collector, Ahmednagar, to lodge a criminal offence with the concerned Police Station against the Petitioner, her husband (Ambadas Khandagale), Chief Doctor of Dr.Kamble's Hospital and the concerned Headmaster of Shri Tukaram Patil Gadakh Vidyalaya, within TWO WEEKS from today.*

14 *Needless to state, after lodging the criminal offence, the Police Authorities would cause an investigation and deal with the offence against those stated above, by following the procedure laid down in law."*

16 In a similar case of disqualification for having more than two children *in Writ Petition No.12077/2017, Bilal Isak Shaikh vs. The State of Maharashtra and others*, decided on 05.07.2018, I had imposed costs of Rs.2.5 lac each against the petitioner, who was an elected representative and his brother, for playing a fraud on this Court.

17 Similarly, in *Writ Petition No.6794/2017, Subhash Hanmantrao More vs. The State of Maharashtra and others*, decided on 11.06.2018, the petitioner had taken a stand before this Court that he has only two children and the third child was his sister born to his father, who was 65 years of age and his mother, who was about 60 years of age. When I directed the petitioner and his wife to file an affidavit to that effect and preempted them that I would then be ordering a DNA test, that the

petitioner tendered an apology and declared that he would not contest any election in future. The said writ petition was, thus, dismissed as withdrawn.

18 The situation is, therefore, quite grim and alarming. It is astonishing that the litigants dare to abuse the process of law by blatantly lying before this Court. Affidavits are filed by the elected representatives disowning their children for avoiding a disqualification for having more than two children born after the cut off date 13.09.2000.

19 Considering the above, I am disallowing the petitioner to withdraw this petition and I am dismissing this petition by imposing costs of Rs.1 lac, which the petitioner shall deposit in this Court on or before 31.07.2019, failing which, the District Collector, Jalna would recover the said amount from the petitioner as arrears of land revenue.

20 I was also inclined to direct registering of an offence against the petitioner and her husband for having played a fraud on the court as well as the statutory authorities. However, the learned advocate for the petitioner submits that the petitioner and her husband are tendering an unconditional apology and pray that the criminal offence may not be registered. As such, I deem it appropriate to observe that the petitioner Surekha and her husband Mukund shall stand disqualified from contesting any election which attracts a disqualification for having more than two children.

21 By the consent of the respondents, out of the amount of costs of Rs.1 lac, Registry of this Court shall transfer an amount of Rs.50,000/- (Rupees Fifty Thousand) to the Government Cancer Hospital at Aurangabad and Rs.50,000/- (Rupees Fifty Thousand) shall be transferred to the Government Medical College and Hospital, Aurangabad (Ghati Hospital, Aurangabad), for the treatment of poor patients.

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(RAVINDRA V. GHUGE, J.)