

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.9477 OF 2018
AND
WRIT PETITION NO. 14301 OF 2017

KAZI SAYYED AHMED ALI AND ANR
VERSUS
AMOD INVESTMENTS PVT. LTD. THROUGH ITS DIRECTOR

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Applicants : In person
Respondent : In person
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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 06, 2019
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PER COURT :-

1. When this matter was called out, Shri Kazi Sayyed Ahemed Ali projected to the Court that his brother is authorized to cause an appearance in this matter. The name of his brother is Kazi Sayyed Bashir Ali.

2. This matter was passed-over in order to take the details from the Writ Section as to why hundreds of loose papers had become a part of the record without there being any pagination. The concerned Section Clerk informed that several papers have been tendered across the bar and some have been sent by post. They are neither paginated nor are in continuation to the Writ Petition No.14301 of 2017.

3. Shri K.S.Bashir Ali started addressing the Court indicating that he has been authorized to appear along with Shri K.S. Ahemed Ali who is the sole petitioner on record. It was Mr. Amit Ashok Agarwal, respondent in person, who has been granted a certificate by the Committee of the Registrar (J) and Administration dated 10.1.2019 to appear in person, stated that Shri K.S. Bashir Ali has not been impleaded either as a co-petitioner or respondent, inasmuch as, his application for appearing in person has been rejected by the Committee of the Registrar (J).

4. While addressing the Court, Shri K.S.Bashir Ali has made an acrid comment against the respondent-in-person and Shri Agarwal objected to the same stating that he should not threaten or intimidate him. Shri K.S.Ahemed Ali interjected to say that the comment was made by Shri K.S.Bashir against him and it was not directed to the respondent. A heated exchange followed.

5. I verified from the record that Shri Bashir Ali's request to appear in this proceeding, has been rejected on 21.8.2018. This was suppressed from the Court on 21.8.2018.

6. In view of the above, I find that the conduct of Shri K.S. Bashir Ali would not entitle him to appear in person in this Court. In the

event, a Civil Application is filed for seeking impleadment, he is at liberty to engage an Advocate and such Civil Application can then be considered after hearing the concerned party, through an Advocate.

7. After the above order was dictated, Shri K.S. Bashir Ali started prompting the petitioner in person and therefore, this Court was constrained to directed the Police Constable to take Shri K.S.Bashir Ali out of the Court. When this was ordered, Shri K.S.Bashir Ali left the Court.

8. I have heard the applicant / petitioner in person in Civil Application No.9744 of 2018, in which, the following prayer was made by the applicant:-

“i. to allow affected members under Audi Alteram Partem principle to be heard and, if such injustice done to unconnected non party family members, as manifest in respondent DH, attachment application usurping by abuse the non-party property S.No.2217/B/2, Nasirabad Dist. Jalgaon, MS [AA-10 at item 4 of attachment bold perjury, fraud and abuse of process on record”

ii. Any other just and equitable order this Honourable Court may deem fit and proper in interest of justice may be passed.”

9. An affidavit to the said application has been subsequently filed

by Shri K.S. Bashir Ali, without being a party to the proceedings. A further application titled as Civil Application No. 9477 of 2018 running into 39 pages is placed on record and the following prayers are put forth, without seeking leave of the Court to amend the Civil Application:-

“i. To kindly allow this application with modified analogous prayer as below:

ii. TO DECLARE the subject MOU DATED 24-01-2012 AS ILLEGAL, NULL AND VOID AND UNENFORCEABLE IN ANY Court of law, since MOU IS IN TEETH OF PROHIBITIVE BAR OF Sec.19(5) of Legal Services Authority Act, 1987, as para 8 (ii) deals with prohibited non-compoundable cases for Lok Adalat, THAT ISSUED DECREE DATED 28-01-2012, subjecting them to TERM 3 inseparability of MOU from decree; consequently proceedings emanating from subject common inherently void MOU DT. 24-01-2012 [AA-02] are also inherently void, illegal and not maintainable in any Court of law and there arises no adjudication of any application but dismiss in limini; Consequently the said proceedings liable to be dismissed, i.e. 19 EP Darkhawsts No. 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 / 2013 junior division and 20002, 20003, 20005, 20006, senior division 20004/2013 and 4 other applications (20002, 20003, 20005, 20006) before Judicial Magistrate, Civil Court, District Jalgaon, Maharashtra;

iii. To declare that as per recorded scheme in Para 6 B, the security cheques are subjected to sale consideration and

thereupon void ab-initio Execution application [AA-07], subjecting the said MOU are being subjected to illegal void MOU are not legal liability for purpose of Section 139 of NI Act requirement in any malicious compliant under sec.138 of NI Act; consequently complaints S.138 NI Act, before SCC No.275,276,277,475,476 of 2015 batch JFMC JALGAON, M.S.; maliciously filing recovery complaint from the security cheques on common inherently void MOU 24-01-2012, are inherently void and illegal, as such not legal liability for S.139 of N.I. Act; consequently are liable to be dismissed in limini;

iv. *To grant ex-parte ad interim stay in item (ii) & (iii) above to stop further abuse of process in inherent and manifest void proceedings, if the prayer in (i) and (ii) till sui juris body under law for such refusal to exercise jurisdiction in void proceedings, as sought before this Court for harmonic Construction with Art. 21 of Constitution of India as law laid in Prem Chand Garg case AIR 1963 SC 996 (@ para 12 “An order which this court (Supreme Court) between the parties, must not only be consistent with the fundamental rights guaranteed by the constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws, i.e. in the instance case all the impugned proceedings subjecting MOU date 24.01.2011 are hit by section 19 (5) of Legal Services Authorities Act, 1987.*

v. *To allow to implead and defend deprivation by abuse, even when not a party, is a gravious abuse of process, as the legal principle, “ACTUS CURIAE NEMINEM GRAVABIT”, THAT AN ACT OF THE Court shall not prejudice no man; it is travesty of justice here the properties under exclusive*

ownership of persons are not arrayed as parties in subject MOU, nor in any void applications made till date, are applied by opposite party for attachment process in application [AA-10, ITEM NO. 4] AND pending void proceeding objections; opposite party forcing steps, maliciously alleging delay in void decrees execution as intentional and lower Court failed to see non-party names and hence audialterampartem, affected party may be heard consequently declare all affected non-parties may be arrayed as co-petitioners; consequently to allow affected members under Audi AlteramPartem principle to be heard and, if such injustice done to unconnected non party family members as manifest in respondent DH, attachment application usurping by abuse the non-party property S.No. 2217/B/2, Nasirabad Dist. Jalgaon, MS [AA-10 AT ITEM 4 OF ATTACHMENT BOLD PERJURY, FRAUD AND ABUSE OF PROCESS ON RECORD],

vi. *To refer for harmonic Construction to Sui Juris body for necessary reforms in Court Rules, reliefs and preventions of violations of the rights and guarantees of Citizens under Art.21 of Constitution of India;*

vii. *Permission under INFRINGING OF Art. 21 (Art.32 remedies) vide settled law AIR 1999 SC 340 ON TECHNICALITY WAIVER; to circulate for listed 24-07-2018, waive curing of any formatting defect in such extraordinary 24 cases void forced proceedings and as such also to allow written submissions only for objectivity to avoid miscarriage of justice in void volley of applications and orders thereon in void jurisdiction.*

viii. Any other just and equitable order this Honorable Court may deem fit and proper in interest of justice may be passed.”

An affidavit or verification in support of such application has not been filed.

10. Having heard the applicant / party in person for a long time, it appears that the Civil Application is filed seeking permission to allow all affected members, affected unconnected non-party family members and K.S.Bashir Ali to participate in this proceeding. The prayers in such an application are completely different from the prayers made in the Writ Petition which is pending. The applicant has not worked out the petition. Even notices are still not issued in the last two years.

11. The respondent / in-person submits that this Court (Coram : Sunil P. Deshmukh, J.) heard the applicant in person and in a single line order stayed further action in furtherance of attachment when no such relief was granted to the applicant / petitioner in person, in the Writ Petition. He then points out that the second purported application filed on 23.7.2018, running into 39 pages is an outcome of the habit of the applicant in person, in filing such applications in 19 Regular Darkhast cases pending against him. He adds that the Writ Petition is filed only to challenge two orders passed by the

executing Court, dated 30.6.2017 below application Exhibit 23 and 27.9.2017 passed below application Exhibit 28 in the same proceedings.

12. The respondent in person submits that 19 compromise decrees were arrived at in 19 proceedings before the Lok-Adalat. Pursuant to the agreement in the Lok-Adalat, the petitioner / applicant in person withdrew all cases against the respondent in person and similarly, the respondent in person, withdrew all cases against the petitioner in person. When it came to payment of money as per the M.O.U. submitted in the Lok-Adalat, the petitioner in person resiled and hence the respondent preferred 19 execution proceedings. Even today, 19 decrees passed in the Lok-Adalat on the basis of the compromise terms have not been set aside by this Court as no challenge has been posed before this Court as against the said decree.

13. Vide Exhibit 23, the petitioner in person has prayed as under:-

“7. In the above facts, circumstances and evidence on record it is clearly established that the impugned decree which is passed is not in accordance with the provisions of the Act and liable to be set aside in view of the Settled Law laid by the Honourable Supreme Court in Jugal Kishor Saraf (Supra).

8. The applicant submits that apart from the above, the

applicant craves leave to submit more grounds as and when they become known to him or documents become available to him.

9. *Therefore, it is prayed that : This Honourable Court may be please to dismiss the present execution proceeding filed by the opposite party herein and consequently set-aside the Decree passed Dt. 28.1.2012 as null and void in Summary Suit No. ____-B/2011 in the interest of justice. ”*

14. The executing Court has rejected Exhibit 23 with a detailed order by concluding that a compromise decree arrived at between the parties in the Lok-Adalat proceedings cannot be set aside by the executing Court as it does not have the powers to do so while entertaining execution proceedings.

15. In Exhibit 28, the applicant in person had prayed for the following reliefs:-

“ In view of the above lack of jurisdiction to lok Adalat and non maintainability, voidability, statutory bars, citations and fraudulent contradictions on the face of the records, leading to infringement of life and liberty of old lady and her depressed son JD No.2, is a serious violation of guarantees under Art.21 and 14 of Constitution of India. Hence it is most respectfully prayed that this Hon'ble Executing Court may in the interest of justice be pleased:

i. *To allow the present application by dismissing in limini*

the D.H. Execution Petition/s (Darkhawst No.200002/13 to 200006/13 Senior Division; 200051/13 to 20064/13 Junior Division, Judicial Magistrate - Class 1, Jalgaon, Maharashtra (A-5) and all connected attachment and jail warrants applications, say, etc. in corresponding void ab-initio decrees dt. 28.1.2012 (A-5) that are not enforceable on the anvil of law; since Lok Adalat could not issue the said decrees, as it had no jurisdiction over non-compoundable offences (In said MOU dated 24.12.2010 in para 8(ii), compromise case, C.C. 76/2005 - Sections 193, 196, 465, 468, 469, 471, 468, 469, 477 of IPC are non-compoundable (A-5) In view of the proviso of Sub-Section 5 of Section 19 of the Legal Services Act, 1987 and several other reasons as detailed above.

ii. To forward the prayer to the Apex Court for a direction to prevent the gross abuse of the process of law by enacting necessary Central legislation and special Fast Track Courts for vexatious and multiple case between same parties to be decided analogously within a fixed time.

Moreso for secondary abuse in view of case at hand in which the terms scheme and tenor of MOU was overlooked apart jurisdiction in the MOU, dated 24.1.2012, which was inherently void, since hit by Sec.35 & 36 of the Indian Contract Act, as the said Term 2 of MOU stipulated condition contingent to a uncertain and impossible event happening, as stated above was existed before and concealed by DH in voidable MOU, rendering the MOU as inherently void, hence to make a procedure to prevent miscarriage of justice and accountability.

And for such Act of kindness and justice, the applicant and his

old suffering mother and the nation shall be grateful to this Hon'ble Court."

16. The executing Court considered the prayers and after realizing that the executing Court does not have such powers to consider these prayers, rejected Exhibit 28 by order dated 27.9.2017.

17. I find from the record that the Writ Petition lodged by the applicant in person on 5.12.2017, is still pending before this Court. No reliefs are granted to the petitioner in person. Instead of pursuing the petition, the Civil Application is filed on the pretext of allowing affected members and unaffected family members to participate in the proceedings without being parties to the Darkhast proceedings and this Court (Coram : Sunil P. Deshmukh, J.) granted a stay to action in furtherance of attachment in 19 execution proceedings.

18. It is settled law that this Court, while exercising its supervisory jurisdiction and exercising powers under the Writ of Certiorari has to consider the impugned order in view of the proceedings pending before the lower Court. When the impugned orders on Exhibits 23 and 28 are pending hearing, I find it appropriate to continue the ad-interim protection granted by this Court on 21.8.2018 and that too on an application, in which, aggrieved and unconnected family members desired to participate in the proceedings in this Court.

19. Considering the above, Civil Application No.9477 of 2018 stands rejected. Needless to state, ad-interim protection granted earlier stands vacated forthwith.

20. The respondent in person submits that he has still not received the copy of the writ petition, which is pending since 2017. The applicant in person submits that he would supply a copy to the respondent on 10.6.2019, when both the parties would be appearing in the pending execution proceedings.

21. With the above understanding, at the request of the petitioner in person, the Writ Petition shall be listed for urgent admission on 14.6.2019.

(RAVINDRA V. GHUGE, J.)

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akl/d