

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 475 OF 2019
IN
CIVIL APPLICATION NO. 2642 OF 2018
IN
WRIT PETITION NO. 11983 OF 2018

Sagun Vasant Naik. ..Applicant.

Shaikh Mohammed Rafique Mustafa. ..Petitioner.

Versus

Sagun Vasant Naik & Another. ..Respondents.

Dr. Sujay Kantawala, i/b B. V. Salunkhe for the Applicant.

Mr. V. A. Thorat, Senior Advocate with Mr. P. J. Thorat for Respondent No. 1.

Coram : RANJIT MORE &
REVATI MOHITE DERE, JJ.

Date : **March 5, 2019.**

P. C. :

1. Heard Mr. Kantawala, learned counsel for the Applicant and Mr. V. A. Thorat, learned senior counsel for the Petitioner.
2. This civil application is filed by the Respondent in writ petition for following reliefs :

"(a) this Hon'ble Court be pleased to release the Applicant from undertaking filed by him on 30.1.2019 before this Hon'ble Court stating that he will not ask for further extension, considering the peculiar facts and circumstances.

(b) that this Hon'ble Court be pleased to extend the time to decide the Election Petition No. 65 of 2017 pending before the Ld. Small Causes Court, Mumbai for further 3 months on in the alternative, this Hon'ble

Court be pleased to stay the proceedings of Election Petition No. 65 of 2017 till the Review Petition Lodging No. 76 of 2018 is finally decided by this Hon'ble Court."

3. By the order dated 3rd December 2018 passed in Writ Petition No.11983 of 2018, we directed the Small Causes Court, Mumbai to decide the election petition, namely, Election Petition No. 65 of 2017, as expeditiously as possible and in any case before 28th February 2019. This order was passed on the spacious ground that the Applicant's caste claim was invalidated by the caste scrutiny committee on 20th June 2018.

4. The Applicant challenged the order of the caste scrutiny committee invaliding his caste claim before this Court and thereafter by filing SLP before the Apex Court, however, he could not succeed. The Applicant thereafter filed review petition before this Court. Review petition was dismissed and therefore the Applicant had approached the Apex Court. In the second round of litigation before the Apex Court, the Apex Court set aside the order of the High Court in review petition and directed this Court to hear the review petition afresh.

5. In the above circumstances, the Applicant had again approached this Court by filing civil application, being CAW. No. 2642 of 2018 claiming extension to decide the election petition filed by

Respondent No.1 in Small Causes Court, Mumbai. By the order dated 25th January 2019, we disposed of this civil application by passing following order :

"1] Time to dispose of Election Petition No. 65 of 2017 granted under the order dated 3rd December 2018 is extended till 10th March 2019 subject to the Applicant's filing an undertaking in this Court that no further extension would be asked for by him.

2] Undertaking to be filed within a week from today.

3] It is expressly made clear that whatever order that may be passed by the Small Causes Court in the said election petition would be subject to the final outcome of the Review Petition No. 76 of 2018.

4] Civil application is disposed of."

6. The Applicant has now once again approached this Court by filing the present civil application for the reliefs mentioned hereinabove. Mr. Kantawala, learned counsel for the Applicant submitted that in case the Applicant's review petition is allowed and simultaneously the election petition filed by Respondent No.1 is allowed and Respondent No.1 is declared as elected, in that contingency there would be two corporaters from the same ward. We do not find any merit in this submission inasmuch as in Clause (3) of the operative order dated 25th January 2019 passed in Civil Application No. 2642 of 2018, we have expressly made it clear that the order of

the Small Causes Court would be subject to the final outcome of the Review petition No.76 of 2018. That apart, in pursuance of the said order, the Applicant has given an undertaking and now it is not permissible for him to once again ask for time. We find no merit in the application and the same is therefore, dismissed.

[REVATI MOHITE DERE, J.]

[RANJIT MORE, J.]