

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Misc. Civil Application No.102/2018

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. Pawankumar R. Prasad for the Applicant
Mr. Anoop Patil for Respondent Nos.1 and 2.
Mr. Alefiya Mandviwala with Prasad Dube Patil i/b.
Jay & Co. for Respondent nos.3 and 4.

CORAM : K.K.TATED, J.
DATED : JUNE 13, 2019

P.C.

1 Heard. By this Civil Application, filed under section 24 of the Code of Civil Procedure, 1908, the Applicant is seeking to transfer Appeal No.BAMU-01/2017 (said appeal) filed by him before the Presiding Officer, University and College Tribunal at Aurangabad to the College and University Tribunal, Mumbai for hearing on merits.

2 The learned counsel for the Applicant submits that the member of the Tribunal at Aurangabad is biased. He submits that the said Member is not permitting the Applicant to argue his entire matter. He submits that the Applicant has apprehension that he may not get justice before the said Member. Therefore, the Applicant has filed the present Application. In support of his contention, the learned

counsel for the Applicant relies on paragraph 2 to 4 of the Civil Application, which read thus:

“2 The Applicant states that despite Applicant’s continuous request to hear his say before passing any order, and to consider the contents and the grounds set out in the Appeal and Stay Application which is on merit from the Applicant’s side, the Hon’ble Tribunal at Aurangabad ought to have considered the Applicant’s grounds as set out in the Appeal and Stay Application, but failed to give satisfactory opportunity to the Applicant and passed an order against the Applicant. The Applicant crave leave and rely upon the said order as and when produced. However, the Applicant filed a Stay Application in changing circumstances (Advertisement Notice for Fresh Post), the Respondent No.1 again passed an order against the Applicant. Hereto marked and annexed Exhibit-B, the copy of Stay Application for the order passed in changing circumstance, against the Applicant.

3 The Applicant states that he aggrieved by the Hon’ble Tribunal at Aurangabad for not giving sufficient opportunity to the Applicant for explaining the contents raised in the Appeal and the grounds set out in the said Appeal & stay Application, but the same has good merit in this case.

4 The Applicant states that, in the above circumstance, the Applicant left with no option, save and except showed his desire to prefer to transfer this case to the Tribunal at Mumbai and seeking the justice to give him an opportunity to explain the contents and grounds set out in the Appeal and Stay Application.”

3 On the basis of this submission and aforesaid para graph 2 to 4, the learned counsel for the Applicant submits that in the interest of justice, this Hon'ble Court be pleased to transfer the said appeal from Aurangabad to Mumbai for hearing on merits. He submits that the if the Civil Application is not allowed, irreparable loss will be caused to him.

4 On the other hand, the learned counsel for the Respondent Nos.1 and 2 has vehemently opposed the Civil Application. He submits that they filed Affidavit in Reply dated 13.01.2019. He submits that during pendency of the Application, the Presiding Officer of Aurangabad is retired. He submits that at present, the Presiding Officer, Bombay is looking after the entire work of Aurangabad. Therefore, there is no question of entertaining the present Application on the grounds raised by the Applicant in the present Application. In support of this contentiion, he relies on para 2 of the Affidavit in Reply, which reads thus:

"2. I say that, the present Miscellaneous application is misconceived and liable to be rejected for the suppression of material facts and applicant has made false and incorrect statement in the present case to transfer the case to Mumbai. I say that, the then Presiding Officer against whom the present applicant has grievance has already retired and the charge of the College Tribunal Aurangabad is With the College Tribunal, Mumbai. Moreover, the Hon'ble Presiding Officer of College Tribunal, Mumbai also takes-up the matter at College Tribunal Aurangabad in one week in a month.

Hence, this application as such has lost its significance and become infructuous. This fact is suppressed by the present applicant therefore the application is liable to be dismissed."

5 The learned counsel for the Respondent submits that there is no case to entertain the present Application in view of the subsequent development that the Presiding Officer is retired. Hence, the Application is liable to be dismissed.

6 It is to be noted that in the present proceedings the Applicant has filed the Application for transfer of appeal No.1/2017 filed by him before the Presiding Officer, University and College Tribunal at Aurangabad only on the ground of bias. Bare reading of paragraph 2 to 4 reproduced hereinabove do not disclose any bias. Apart from that the Presiding Officer of the Tribunal at Aurangabad is already retired and the Presiding Officer, Mumbai is looking after the entire proceedings of Aurangabad for one week of every month. Hence, I do not find any substance in the Application.

- 7 Hence, following order is passed
- a. The Application stands rejected.
 - b. No order as to costs.

(K.K.TATED, J.)