

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

CIVIL APPLICATION NO.1783 OF 2019

IN

WRIT PETITION [STAMP] NO.19216 OF 2017

Prakash Mulraj Kabali] Applicant

IN THE MATTER BETWEEN:

Bhanumati Mulraj Kabali and others.] Petitioners

Vs.

Bai Tulsabai Devji Charitable Trust]
and others.] Respondents

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Mr. S.P. Srivastava, Advocate for the Applicant.

Ms. Eventa Gonsalves, Advocate for the Respondents.

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CORAM : R.G. KETKAR, J.

DATE : 30th JULY, 2019.

P.C.

Heard Mr. Srivastava, learned Counsel for the applicant and Ms. Gonsalves, learned Counsel for the respondents.

2. This is an application for recalling the order dated 16th July, 2019 passed by this Court in Civil Application No.1646 of 2019 and for issuing perjury notice to the petitioner calling her why the action should not be taken against her for making the false statement before the Court on 16th July, 2019.

3. In support of this application, Mr. Srivastava submitted that on behalf of the applicant, hereinafter referred to

as 'respondent No.2', Caveat No.3058 of 2017 was filed in this Court. Said Caveat was served on the petitioner in the main Petition. Advocate for the petitioner Legal Juris had served copy of the Writ petition upon Advocate for respondent No.2 vide letter dated 11th July, 2017. As the petitioner did not remove office objections, the Petition was dismissed on that ground. He submitted that the petitioner filed C.A. No.1646 of 2019 for condoning delay of 246 days and recalling the order dated 30th August, 2018 passed by Registrar (Judicial-I). He submitted that before this Court a false statement that no Caveat was filed on behalf of respondent No.2 was made. The petitioner obtained order from this Court without notice to respondent No.2 and also by making misrepresentation. He submitted that order dated 16th July, 2019 may be recalled and perjury notice be issued to the petitioner.

4. On the other hand, Ms. Gonsalves submitted that as mentioned in paragraph 3 of the application, the Petition was filed through Legal Juris. It was her transferred brief. She was not aware of filing of Caveat by respondent No.2 and service of Petition upon the Advocate for respondent No.2 by Legal Juris. Before moving Civil Application No.1646 of 2019 on 16th July, 2019, she had sent notices dated 12th July, 2019 through Professional Couriers to;

[1] Bai Tulsibai Devji Charitable Trust having
consignment No. KUR605738671;

[2] Kalpana Prakash Kabali having consignment No.
KUR605738672;

- [3] Prakash Kabali having consignment No.KUR
554873704.
- [4] Shashikala Suryakant Thakkar having consignment
No.KUR 605738673

She submitted that Prakash Kabali and Kalpana Kabali are the trustees of Bai Tulsibai Devji Charitable Trust and they were served on 13th July, 2019. The said notices along with consignment note and delivery run sheet are taken on record and marked 'X colly' for identification. Despite service on these persons on 13th July, 2019, they did not appear when the matter was taken up on 16th July, 2019. On the other hand, Mr. Sirvastava submitted that these notices were not served on these persons.

5. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. In paragraph 3 of the order dated 16th July, 2019, statement of Ms. Gonsalves the notices were not issued in the main Petition and no caveat was filed on behalf of respondent No.2 was recorded. As mentioned earlier, the Petition was instituted through Legal Juris and brief was transferred to Ms. Gonsalves. I, therefore, find merit in the submission of Ms. Gonsalves that she was not aware of filing of Caveat by respondent No.2. That apart, the assertion made in paragraph 2 of this application shows that caveat was filed by respondent No.2 as far back as in the year 2017. The order was passed on 16th July, 2019. Mr. Srivastava is not in a position to demonstrate that on the date of passing of the order on 16th July, 2019, Caveat filed on

behalf of respondent No.2 was in force. Contention of Mr. Srivastava that notices issued to Bai Tulsibai Devji Charitable Trust, Prakaash Kabali, Kalpana Kabali and Shashikala Suryakant Thakkar were not served on 13th July, 2019 cannot be accepted in view of the notices which are taken on record and marked 'X' colly which shows service of notice on these persons. The said submission is not substantiated by Mr. Srivastava.

6. That apart, Civil Application No.1646 of 2019 was taken out for recalling the order dated 30th August, 2018 passed by the Registrar (Judicial-I) after condoning delay of 246 days. By that order, the Registrar Judicial -I had given four weeks time for removing office objections. As within the stipulated period, office objections were not removed, the Petition was dismissed in default. As the Petition was dismissed on technical grounds and not on merits, I do find that any case is made out for recalling the order dated 16th July, 2019 and for issuing perjury notice to the petitioner. A perusal of the application made by respondent No.2 shows that respondent No.2 has withheld vital information from this Court. In fact, this is a fit case for issuing perjury notice to respondent No.2 for withholding material information from this Court. As I am inclined to dismiss this application, I am not inclined to take any action against respondent No.2 and his Advocate. Civil Application is dismissed.

[R.G. KETKAR, J.]