

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION LODGING NO. 701 OF 2019

The Jalgaon Municipal Corporation	...	Petitioner
V/S		
The Housing And Urban Development Corporation Ltd. And 4 Ors.		Respondents
...		
Mr.Herbert Anthony Noronha a/w Mangesh Avhale for the Petitioner.		
Mr.V.N.Ajikumar for Respondent No.1.		

...

CORAM : A.A. SAYED &
PRAKASH D. NAIK, JJ.

DATED : 4 JULY 2019

P.C.:

The Petition has been filed impugning the order of the DRAT dated 21 January 2019, which reads as follows:

“O R D E R

This appeal posted today for final hearing as a last chance. One Mr.Chandrakant L. Vandre, claiming as a Chief Accounts & Finance Officer of appellant-Municipal Corporation, represented that their advocate on record has returned the papers and sought time and filed application. But application is not signed by appellant it is not bearing any stamp and not affixed with required court fee.

Advocate for respondent submitted that this matter is expedited by the Hon'ble High Court and initial date fixed for disposal was in January 2018 and thereafter appellant had obtained extension of time of three months and thereafter appellant

has not obtained any further extension. It is further represented that as stay is running against the respondent and decretal amount of Rs.340,74,98,627.29 could not be realized from the appellant and entire amount has not paid till today except paying an amount of Rs.3.00 crores per month as per the order of the Hon'ble High Court and remaining decretal amount is not paid. Though dates are given as requested by the appellant, appellant has not evinced any interest to proceeding with the matter. If really there was any difficulty, authorized officer of the appellant should have approached with necessary application. Filing this kind of application would show interest evinced by appellant in court matters. Even in the application nothing is whispered as to when their advocate has returned papers to the appellant and everything is kept vague. On a scrutiny of material papers, I am of the view that this attempt is only to gain time and nothing more than that.

Considering the same I am not inclined to grant any further time. As appellant failed to prosecute the case despite taking adjournments, I am of the view that appeal has to be dismissed for non prosecution.

Accordingly appeal is dismissed with costs.”

2. We have perused the earlier orders passed by this Court as also of the DRAT. It is not in dispute that for some period in the interregnum i.e. after passing of the order dated 7 November 2017 of the Division Bench of this Court in Writ Petition No.629 of 2017, due to the fire in the building where the DRAT is housed, some temporary arrangements at some other

premises were made and DRAT was taking up only urgent Appeals and the present Appeal was not being taken up for final disposal. Considering the orders passed by this Court, the Petitioner-Municipal Corporation ought to have taken necessary steps in advance for appointing a new Advocate. Learned Counsel for the Respondent No.1 has pointed out that the new Advocate had as a matter of fact appeared before DRAT earlier.

3. We find that though there is some negligence on the part of the Petitioner-Municipal Corporation, having regard to the earlier orders passed by this Court, in the interest of justice, we are of the view that an opportunity ought to have been granted to the Petitioner-Municipal Corporation to have the Appeal decided on merits. Hence, we pass the following order:

ORDER

(i) The impugned order dated 21 January 2019 is set aside, subject to cost of Rs.50,000/-, to be paid by the Petitioner to the Respondent No.1 within 3 weeks from today.

(ii) The Appeal No.79 of 2016 is restored and to be decided by DRAT within three months from the day this order is produced before the DRAT.

(iii) We record the statement of the learned Counsel for the Petitioner that Vakalatnama on behalf of the Petitioner shall be filed before the DRAT within one week from today and that no unnecessary adjournments shall be sought.

(iv) The parties would be at liberty to mention the matter before the DRAT and produce a copy of this order before it.

(v) Since the Appeal of the Petitioner is restored, it is expected of the Respondent No.1 not to precipitate the matter for recovery of the decretal amount until the disposal of the Appeal, so long as the Petitioner-Municipal Corporation continues to pay Rs.3 Crores per month as directed by the earlier orders of this Court.

4. The Petition to stand disposed of in the aforesaid terms.

(PRAKASH D. NAIK,J.)

(A.A.SAYED, J.)