

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Radhakishan
S. Ladda

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Radhakishan S.
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ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION No. 1515 of 2019

IN

SUIT No.695 of 2012

Zainab Rafiulla Shaikh,	]
Aged about 45 years,	]
Occup. business, Indian	]
Inhabitant having office	]
at : Singh House,	]
Off. No. 10 2 nd Floor,	]
23, Ambalal Doshi Marg,	] <u>Applicant.</u>
Fort, Mumbai 400 023	] Defendant No.3

In the matter between:-

Labh Singh Daya Singh	]
Aged about 71 years,	]
Indian Sikh Inhabitant of	]
Mumbai, Occupation business,	]
residing at 91, Vallabh Apartments,	]
Warden Road, Mumbai 400 006	] <u>Plaintiff.</u>

- | | | |
|----|--|---|
| 1) | Kurian Thomas, |] |
| | Age unknown, Indian Christian |] |
| | Inhabitant, Occupation: Business |] |
| | Residing at No.5,Mohammed |] |
| | Mansion, 3 rd Floor, N.S.Patkar |] |
| | Marg, Kemp's Corner, |] |
| | Mumbai 400 026. |] |
| 2) | Mr. Puthenvedu Joseph Mathew |] |
| | Age 65 years, Indian Christian |] |
| | Inhabitant, Occupation business |] |
| | having office at 2 nd Floor |] |
| | Afzal Mansion B, Bharucha Marg, |] |

Kalaghoda, Fort, Mumbai 400 001]

3) Zainab R. Shaikh,]
Age about 30 years,]
Occupation : Not known, Indian]
Sunni Muslim Inhabitant of]
Mumbai, residing at Yusuf]
Manzil, residing at Yusuf]
Manzil, 2nd Floor, Room No.42,]
Peerkhan Street, Sophia]
Zubair Road, Nagpada,]
Mumbai 400 008]**Defendants.**

Ms. Tanmayi Rajadhyaksha a/w Mr. Dinesh Parmar i/ b
DSR Legal for Plaintiff.

Mr. Simil Purohit a/w Mr. Arshil Shah, Mr Pariket Shah,
Ms Sneha Vani, Ms Jaini Shah and Mr Vishal Raman i/b
Mr. E.A. Sasi for defendant no. 2.

Mr. Vijay S. Kurle for Defendant No 3 / Applicant to the
Notice of Motion.

Mr. N.A. Bhandodkar, IInd Asstt to Court Receiver
present.

Ms. Zainab R Shaikh, Defendant No 3 present in person.

CORAM : B. P. COLABAWALLA, J.

DATED :- 4th July, 2019.

P.C. :-

1. This Notice of Motion has been filed by the
applicant (original defendant No.3) seeking rejection of
the Plaint under Order VII Rule 11 read with Section 151
of the Code of Civil Procedure, 1908 (for short “**the
CPC**”) for want of cause of action purported to be pleaded

as being sham, bogus, imaginary, made up and illusory as the plaintiff has no locus to file the present suit.

2. This matter has a checkered history and it is unfortunate what has transpired and which I shall advert to later in this order. In the above suit, the plaintiff had filed Notice of Motion No. 302/2013 seeking appointment of a Court Receiver and Injunction in respect of a premises described in Paragraph 3 of the Plaint being an area of approximately 1130 square feet carpet area on the 2nd floor of the building known as “Singh House”, Ambalal Doshi Marg, Fort, Mumbai-400 023 (for short “the suit premises”). When this Notice of Motion was moved for ad-interim reliefs, this Court, by its order dated 19th December, 2011, prima facie came to the conclusion that considering the allegations in this suit as well as in Suit (Lodging) No. 2454 of 2011 (filed by defendant No.2 herein), it was necessary to protect the rights of all the parties. In these circumstances, this Court appointed the Court Receiver, High Court Bombay as Receiver of the suit premises. However, since this was only an ad-interim Receiver, this Court ordered that at

the ad-interim stage, the Court Receiver shall appoint defendant No.3 as his Agent without the payment of any security or royalty. A further direction was passed that till the Court Receiver takes possession of the suit premises, all the parties shall maintain status-quo in respect thereof.

3. Thereafter, Notice of Motion No. 302/2013 in Suit No. 695/2012 and Notice of Motion No. 987 of 2014 in Suit (Lodging) No. 2454 of 2011(subsequently numbered as Suit No. 717 of 2013) had come up before me from time to time. In fact, the same was extensively argued wherein defendant No.3 contended that the Receiver ought not to be continued on various grounds. When I was about to pass orders in Notice of Motion No. 302/2013 in Suit No. 695/2012, it was brought to my notice that Notice of Motion No. 987/2014 in Suit No. 717/2013 (Suit Lodging No. 2454/2011) was tagged along with Notice of Motion No. 302/2013 and therefore before passing any order, I should also hear Notice of Motion No. 987/2014 in Suit No. 717/2013 (which was filed by defendant No.2 herein). Only for this limited

purpose all matters were adjourned. It was made clear to the previous Advocate of defendant No.3 that no further arguments on the issue of the appointment of Court Receiver would be allowed to be canvassed, save and except, as to which defendant in Suit No. 695/2012 should be appointed as an Agent of the Court Receiver. Thereafter, the matters were adjourned from time to time and came up before me on 19th June, 2019. All this was duly recorded by me in the said order and this was also made clear to Mr. Kurle, who is now the new Advocate appointed on behalf of defendant No.3.

4. On the said date, namely, 19th June, 2019 Mr. Kurle also brought to my notice that in Suit No. 717/2013, defendant No.3 (his client) has filed Notice of Motion No. 643/2018 inter alia under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of the Plaint on the ground that appropriate court fees have not been paid in the aforesaid suit. Mr. Kurle also made a grievance that the affidavit in reply to Notice of Motion No. 643/2018 was not served upon him and which was handed over to him in Court on the said

date. He therefore sought a short accommodation to go through this affidavit and take instructions on the same, if necessary. Acceding to this request, all the matters were thereafter stood over to 3rd July, 2019.

5. On 3rd July, 2019 (yesterday) Notice of Motion No. 643/2018 (filed by defendant No.3 for rejection of the plaint in Suit No. 717/2013) was heard and disposed of by this Court vide its speaking order. When I asked Mr. Kurle thereafter to proceed with other Notice of Motions, namely, Notice of Motion No. 302/2013 in Suit No. 695/2012 and Notice of Motion No. 987/2014 in Suit No.717/2013, Mr. Kurle brought to my attention that the present Notice of Motion No.1515/2019 was also filed by defendant No.3 for rejection of the plaint in Suit No. 695/2012. He submitted that this Notice of Motion ought to be heard first before any orders are passed either in Notice of Motion No. 302/2013 or 987/2014. Accordingly, I asked Mr. Kurle to start arguing Notice of Motion No.1515/2019 (the present Notice of Motion) when he requested that the matter be kept the next day namely 4th July, 2019. Accordingly, the matter was listed today.

6. When this matter was called out today in the morning session, a request was made on behalf of Mr. Kurle that he is held up in another Court and therefore the matter be kept back to 3:00 p.m. Acceding to this request, the matter was kept back. Now when the matter is called out at 3:00 p.m., Mr. Kurle, instead of proceeding with his Notice of Motion (No.1515/2019 in Suit No. 695/2012), has tendered a letter dated 4th July, 2019 signed by him and addressed to the Prothonotary and Senior Master of this Court. In this letter, it is stated that defendant No.3 is apprehensive that my mind is biased and prejudiced against defendant No.3 and therefore grave injustice would be caused despite defendant No.3 having a good case on merits. It is further stated in this letter that the applicant/defendant No.3 has already filed her grievances against me on 18th June, 2019 before the Hon'ble Chief Justice of this Court and the Hon'ble President of India vide Docket No. PRSEC/E/2019/11845 dated 18th June, 2019. The letter therefore requests the Prothonotary and Senior Master to seek directions from the Hon'ble Chief Justice to

Shaikh in the captioned Suits. According to the sitting list the captioned suits are assigned for hearing before the Justice Shri B.P. Colabawalla in court room No.17AC.

The defendant No.3 in the instant suit is apprehensive of bias and prejudice mind of the Justice Shri B.P. Colabawalla against the applicant and thereby grave injustice would be caused despite having very good case on merits.

Consequently, the applicant/ defendant No.3 has already filed her grievances against Justice Shri B.P. Colabawalla in details on date 18.06.2019 before the Hon'ble Chief Justice Bombay High Court and the Hon'ble President of India vide Docket No.PRSEC/E/2019/11845 dated 18.06.2019.

Considering facts, circumstances and material on record and in the interest of justice you are, therefore, requested to seek directions from the Hon'ble Chief Justice this Court to transfer captioned suits and all the proceedings pending therein from Justice Shri B.P. Colabawalla to the alternate bench as per the sitting list or any bench as per the direction of Hon'ble Chief Justice.

Today on 4th July, 2019 at Mumbai.

Yours Truly,

Sd/-

Vijay S. Kurlle

Advocate for the applicant/ Defendant No.3 in the captioned suits.

C.C. To

1) Hon'ble Chief Justice of Bombay High Court, Mumbai

2) DSR Legals

Advocate for plaintiff in Suit No. 695 of 2012
20, Rajabahdur Bldg, Grd Floor,
Ambalal Doshi Marg, Fort, Mumbai – 400 023

3) Mr E.A.Sasi,

Advocate for plaintiff in Suit No. 717 of 2013
I-C Hamam House, Hamam Street,
Fort, Mumbai – 400 023.”

7. I am really surprised with the contents of this letter. As mentioned earlier, when all these matters had come up on 19th June, 2019 I had passed a detailed order as to how these matters are to proceed. This was also made clear to Mr. Kurle who was appearing on behalf of defendant No.3. On the said date, nothing was mentioned by Mr. Kurle about any alleged grievances against me made to the Hon'ble Chief Justice of this Court vide a letter dated 18th June, 2019. Surprisingly, even on 3rd July, 2019 when I heard Notice of Motion No. 643 of 2018 in Suit No. 717/2013 (filed by defendant No.3) no such grievance was made. It is therefore rather surprising that this letter comes at this late stage. I find that this letter is nothing but to ensure that under threat

and intimidation, this Court will adjourn all these matters. In fact, as mentioned earlier, Notice of Motion No. 302/ 2013 in Suit No. 695/2012 was argued before me at great length by the erstwhile Advocates for defendant No.3. The only reason why I did not pass orders at that time was because it was brought to my notice that before passing any order in Notice of Motion No. 302/2013, Notice of Motion No. 987/2014 in Suit No. 717/2013 also ought to be heard and a common order be passed. It was only in this light that the matters were stood over from time to time. No grievance was ever made even at that time that I was biased against defendant No.3. It is clear that this letter of 4th July, 2019 and which is reproduced above, has been written only to intimidate and browbeat this Court into succumbing to adjourn these matters. It is rather unfortunate that some Advocates of this Court, rather than first being Officers of the Court, are mouthpieces of their client. The allegations made in this letter are clearly contemptuous as they not only scandalise the Court but lowers the authority of the Court and

interferes and obstructs the administration of justice.

8. I must also mention that this very Advocate has been indulging in these kind of malpractices even against other Judges of this Court as well as the Supreme Court of India. In fact, in Suo Motu Contempt Petition (Cri.) No.1 of 2019, the Hon'ble Supreme Court vide its order dated 27th March, 2019 has issued Notice of Contempt against this very Advocate (Shri Vijay Kurle) to explain as to why he should not be punished for Criminal Contempt of the Supreme Court of India. The relevant portion of the Supreme Court order reads thus :-

“COURT NO. 5 SECTION XVII
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS.

Suo Motu Contempt Petition (Crl) No. (s). 1/2019

IN RE : MATHEWS NEDUMPARA

Date:- 27.03.2019 This matter was called on for hearing today

CORAM:HON'BLE MR JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR JUSTICE VINEET SARAN

For Petitioner(s) By Courts Motion
For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

The Court came to the following conclusion, in terms of the signed reportable order:

“The punishment aspect of the contempt that was committed in the face of the Court stands disposed of.”

Given the two complaints filed, it is clear that scandalous allegations have been made against the members of this Bench. We, therefore, issue notice of contempt to (1) Shri. Vijay Kurle; (2) Shri Rashid Khan Pathan; (3) Shri Nilesh Ojha and (4) Shri Mathews Nedumpara to explain as to why they should not be punished for criminal contempt of the Supreme Court of India, returnable within two weeks from today.”

9. As can be seen from the order of the Hon'ble Supreme Court as well, this very Advocate, namely, Mr. Vijay Kurle is in the habit of making wild and reckless allegations, and with impunity, not only against Judges of this Court but also the Hon'ble Supreme Court of India. I must also mention that these allegations have surfaced for the first time only once Mr. Kurle has filed his Vakalatnama on behalf of defendant No.3 on 19th March, 2019. Prior to this date, no such allegations were made and neither did defendant No.3 or her erstwhile Advocate ever contend before me that I should recuse myself on the alleged ground that I am biased against defendant No.3. I have no hesitation in holding that this

entire exercise has been done at the instance of Mr Kurle and only after he has filed his Vakalatnama in Suit No. 695/2012 and Suit No. 717/2013. If this was an isolated incident, I would have let off Mr Kurle with a warning. However, I find that any leniency shown by the Court is often mistaken as its weakness. It is time that a message is sent to the litigants as well as Advocates appearing in this Court and which is the highest Court of the State, that such contemptuous behaviour shall not be tolerated in any manner whatsoever. If Advocates and litigants are bold enough to make wild and reckless allegations against Judges of this Court, then they also ought to face the consequences. In these circumstances, even though it pains me to do so, I direct the Registry to issue Notice of Contempt to Shri Vijay Kurle to explain as to why he should not be punished for Criminal Contempt of this Court. This Show Cause Notice is made returnable within a period of four weeks from today.

10. I must mention that when the letter dated 4th July, 2019 was tendered before me asking me to recuse myself from all these matters, I asked defendant No.3 who was present in-person, whether she agreed with what was stated in the letter

dated 4th July, 2019. In reply to my question, she stated “Yes, I agree”. In these circumstances and considering that defendant No.3 also is joining hands with her Advocate, the Registry is directed to issue Notice of Contempt even to defendant No.3 (Zainab Rafiulla Shaikh) to explain and show cause as to why she should not be punished for criminal contempt of this Court. This Show Cause Notice also shall be returnable within a period of four weeks from today.

11. Considering that both the aforesaid noticees have prima facie committed criminal contempt, the Registry, after issuance of the aforesaid Notices, shall place the same before the Bench hearing Criminal Contempt Matters as per the Regular Assignment for further orders and directions.

12. Considering Mr. Kurle refused to go on with the above Notice of Motion (Notice of Motion No. 1515 of 2019 in Suit No. 695 of 2012), the Notice of Motion is dismissed for want of prosecution.

(B.P. COLABAWALLA, J.)