

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

M.C.A. NO.988/2018

IN

WRIT PETITION NO.1877/2016

Vatsalabai W/o Wamanrao Ganjre

..Vs..

Chaware Digambar Jain Boarding Fund, Karanja (Lad) and others

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

Court's or Judge's orders

Mrs. S.A. Tiwari, Advocate for the petitioner.
Shri M.R. Johrapurkar, Advocate for respondent No.1.
Shri V.P. Maldhure, A.G.P. for respondent No.2.

CORAM : Z.A. HAQ, J.

DATE : 16.1.2019.

The present applicant had filed the Writ Petition No.1877/2016 to challenge the order passed by the Maharashtra Revenue Tribunal, Nagpur on 25th February, 2016 and order passed by the Sub-Divisional Officer, Karanja on 17th January, 2015. The writ petition was filed on 8th March, 2016. This writ petition was listed before the Court on 18th March, 2016 on which date following order came to be passed:

“Shri S. Raisuddin, advocate for the petitioner and Shri M.R. Johrapurkar, advocate for respondent no.1 submit that the matter is amicably settled between the parties. The respondent no.1 has filed pursis dated 18th March, 2016 to that effect.

In view of the above, the petitioner seeks permission to withdraw

the petition. The petition is disposed of accordingly. In the circumstances, the parties to bear their own costs.”

Now this application is filed seeking review of the order dated 18th March, 2016 and praying that Writ Petition No.1877/2017 be restored and considered on merits. According to the applicant / petitioner, the non-applicant / respondent No.1 has played a fraud on her. Submission on behalf of the applicant / petitioner is that an agreement (kararnama) dated 17th March, 2016 was prepared to which the applicant / petitioner was party, as per Clause (2) of this agreement the non-applicant No.1 had agreed to pay Rs.1,70,000/- (Rs. One Lakh Seventy Thousand) to the applicant / petitioner if the applicant / petitioner handed over possession of the suit land to the non-applicant / respondent No.1 and withdrew Writ Petition No.1877/2016. The applicant / petitioner contends that taking advantage of her illiteracy, under the garb of opening a bank account her thumb impressions / signatures were obtained on several documents, bank account was opened, cheque given by the non-applicant / respondent No.1 for Rs.1,70,000/- (Rs. One Lakh Seventy Thousand) was deposited in her account and entire amount of Rs.1,70,000/- (Rs. One Lakh Seventy Thousand) was withdrawn and all this happened on one day i.e. on 17th March, 2016. The agreement (kararnama), with signatures / thumb impressions of witnesses was also got executed on the same day i.e. 17th March, 2016. The complaint of the applicant / petitioner

is that she has not received anything and a fraud is played on her. It is submitted on behalf of the applicant that she has filed complaint with police immediately and has also filed a civil suit challenging the agreement (kararnama). The applicant / petitioner prays that the order passed by this Court on 18th March, 2016 disposing the writ petition as withdrawn be recalled, writ petition be restored and heard on merits.

The application is opposed by the non-applicant / respondent No.1. Apart from taking the objection that the order passed by this Court on 18th March, 2016 cannot be reviewed as it cannot be said that there is any error apparent on the face of record, the non-applicant / respondent No.1 has denied the allegations made by the applicant / petitioner. It is submitted that the applicant / petitioner has come up with a totally false claim. It is pointed out that the extract of passbook of the account in the name of the applicant / petitioner shows that cheque for an amount of Rs.1,70,000/- (One Lakh Seventy Thousand) was deposited in the account of the petitioner and was encashed also and in these facts it cannot be said that any fraud is played on the applicant / petitioner. It is prayed that the application be dismissed with costs.

I have examined the facts of the case and the documents placed on record alongwith the application. The applicant is an illiterate woman aged about 68 years. The applicant has put her thumb impressions on all the documents which are produced on record. In Writ

Petition No.1877/2016, this Court had not even issued notice to the respondents in the petition. Interim order was not operating in writ petition. Writ petition was circulated for hearing on 18th March, 2016 and on the same day a pursis signed by the Advocate representing the respondent No.1 in that petition was placed on record stating that the matter was amicably worked out by the parties and the petition be disposed. Advocate for the petitioner also made statement that the matter was amicably worked out by the parties. Relying on the statements made by the Advocate for the petitioner and the Advocate for the respondent, the writ petition was disposed as withdrawn. The applicant has stated in the application now filed by her that her Advocate had called her on phone and there appears to be some miscommunication.

In the facts of the case, I am of the view, that interests of justice require that the order passed by this Court on 18th March, 2016 should be recalled and Writ Petition No.1877/2016 filed by the applicant / petitioner should be considered on merits.

Hence the following order:

- (i) The order passed in Writ Petition No.1877/2016 on 18th March, 2016 is recalled.
- (ii) Writ Petition No.1877/2016 is restored.
- (iii) Miscellaneous civil application is allowed accordingly with costs of Rs.10,000/- (Rs. Ten Thousand) to be paid by the non-applicant / respondent No.1 to the applicant / petitioner.

(iv) The non-applicant / respondent No.1 shall pay the amount of costs to the applicant / petitioner by demand draft and file an affidavit of compliance alongwith photocopy of demand draft on record of the writ petition within one month.

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Office is directed to list the writ petition before appropriate Bench.

JUDGE

Tambaskar.