

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1626/2021
IN
WRIT PETITION (ST) NO.4886/2021

M/s. R. M. Parve Applicant

Vs.

State of Maharashtra & Ors. Respondents

Mr. Onkar Wable I/b Pralhad Bachate for the Applicant
Mr. R. P. Kadam, AGP for Respondent State
Mr. Kiranraj S. Khedekar for Respondent No.3.

**CORAM: K.K.TATED &
PRITHVIRAJ K. CHAVAN, JJ.**

DATED : AUGUST 18, 2021

P.C.

1 Heard. The learned counsel for the Applicant submits that all the Respondents are duly served. In spite of that none appeared for Respondent No.2 i.e. Chief Engineer (In-charge) Maharashtra Jivan Pradhikaran, Thane. Office Note shows that Respondent Nos.2 and 3 are duly served by hand delivery with acknowledgment.

2 By this Interim Application, the Applicant is seeking to recall the order dated 16.03.2021 passed by this court in Writ Petition (ST) No.4886/2021 dismissing the petition for non prosecution.

3 The learned counsel for the Applicant submits that it remained on their part to appear before this court on 16.03.2021 under impression that the matter would be heard virtually. To that effect, the learned counsel for the Applicant relies on para 2 of the Interim Application, which reads thus:

“02. The applicant submits that, the writ petition Stamp No.4886/2021 was mentioned before the Hon'ble High Court on 10th March, 2021 and the Hon'ble High Court pleased to grant circulation on 16th March, 2021. The advocate for the applicant was under impression that, the matter will be taken up through video conferencing. The matter was listed on 16th March, 2021 before the Hon'ble High Court. The advocate of the applicant could not join the hearing through video conferencing. The matter was called on 16th March, 2021 and the Hon'ble High Court was pleased to passed the order that,

"1. None appears for the Applicant although the circulation is granted.

2. The writ petition stands dismissed non-prosecution.”

*Hereto annexed and marked as **EXHIBIT "CA-1"** is the copy of order dated 16th March, 2021 passed by this Hon'ble High Court in Writ Petition (Stamp No. 4886/2021.”*

4 The learned counsel for the Applicant submits that in the interest of justice, this Hon'ble Court be pleased to recall the order dated 16.03.2021 and matter be heard on merits. He submits that they have good chance of success in the Writ Petition. He submits that if Interim Application is not allowed, irreparable loss will be caused to the Applicant.

5 On the other hand, learned counsel for Respondent No.3 has vehemently opposed the application. He submits that the Writ Petition itself is not maintainable. Hence, there is no question of entertaining the present application. He submits that the general conditions of contract, particularly, as per clause 42.2 an alternate remedy is available to the Applicant. Clause 42.2 reads thus:

“42.2 Resolving the disputes:

c. In case of disputes, between a Contractor and Engineer-in-charge the decision of the Chief Engineer, Maharashtra Jeevan Pradhikaran, Thane shall be final and binding. In case of any further dispute, the decision of Member Secretary, Maharashtra Jeevan Pradhikaran, Mumbai will be final.”

6 On the basis of these submissions, the learned counsel for Respondent No.3 submits that there is no substance in the Interim Application and same is liable to be dismissed with costs.

7 In the present proceedings the Applicant was under an impression that the matter would be heard virtually and hence none had appeared in the matter on 16.03.2021. Considering these facts and the reasons given by the Applicant in para 2 of the application, we are satisfied that the Applicant has made out a case for allowing the Interim Application.

8 Hence, following order is passed:

a. Order dated 16.03.2021 passed by this court in Writ Petition by which the Writ Petition stood dismissed for non prosecution, is recalled.

- b. Writ Petition is restored to file for hearing on merits.
- c. Interim Application stands disposed of accordingly.
- d. No order as to costs.

(PRITHVIRAJ K. CHAVAN, J.)

(K.K.TATED, J.)