

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7691 OF 2021**

Prakash Dattatraya Patil .. Petitioner

Vs.

Ismail Abdul Jamdar & Ors. .. Respondents

...

Mr. Prashant Bhavake for the petitioner.

None for the respondents.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 17TH NOVEMBER, 2021.

P.C:-

1. The present order being passed should not be taken to convey that the parties are allowed to take the court for a ride and keep on prolonging the proceedings by throwing frivolous causes, justifying setting aside of the order passed by the courts.

2. The petitioner is aggrieved by an order passed on 15/02/2021 by the Civil Judge, Junior Division, Inchalkaranji in Civil Misc. Application No.16 of 2014, below Ex-36, which is

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an application filed by the petitioner (non applicant No.2) for setting aside the 'No say' order dated 15/02/2021. The checkered history leading to the present petition can be discerned from the documents placed on record.

3. On 06/07/2017, an order came to be passed on Civil Misc. Application No.16 of 2014 by which respondent No.2 is directed to be detained in civil prison for a period of three months as the application was filed under Order 39 Rule 2-A of the CPC alleging disobedience of the order passed by the court in Regular Civil Suit No.159 of 2013. I do not propose to delve into the same but suffice it to state that by the said order, respondent No.2 was ordered to be detained in civil prison for committing willful disobedience of the order of status quo.

Respondent No.2 filed an application for setting aside the order dated 06/07/2017 on the ground that it was an ex-parte order and this prompted the Civil Judge, Junior Division, to show leniency and the order dated 06/07/2017 was set aside and Civil Misc. Application No.16 of 2014 came to be restored on file and directed to be proceeded with. Costs of Rs.5,000/- was also imposed on the applicant to be paid to the respondents.

4. On the proceedings being continued, several applications were moved; on some occasions, seeking some documents and

on some other occasions, projecting some difficulty in proceeding with the applications. Resultantly, the application came to be rejected on 15/02/2019 by passing the following order:

“The respondents failed to file say. Today, respondents are absent. No application on record. Hence, matter proceeds without say.”

5. Once again, an application is taken out by respondent No.2 requesting for setting aside of the said ‘No say’ order by preferring an application on 13/06/2019, where two reasons are vaguely stated, being one of the close relatives of the applicant having been expired and there was summer holidays for the court. This application was opposed by the other side and by the impugned order, the application came to be rejected along with costs of Rs.3,000/- for delaying the proceedings.

6. Perused the order dated 15/02/2021 and the reasoning of the learned Civil Judge, Junior Division cannot be faulted even on a single count as the order reflects the helplessness of the court when the proceedings are prolonged by the parties and the court every time entertaining the applications granting indulgence to them. Noting that on an earlier occasion also, the order directing imprisonment of respondent No.2 was set aside by showing indulgence and, despite this, he did not remain

diligent in prosecuting the application, the application came to be rejected.

7. Only one reason which prompts me to grant indulgence in favour of the applicant is the order, which is passed directing 'No say' is passed in a proceeding, where the applicant No.2 is directed to be detained in civil prison and this being a drastic order, an opportunity ought to have been afforded to the applicant before such an order is passed. This, however, must come with a heavy costs. From the proceedings on record, it can be clearly deciphered that the applicant has taken the court for a ride by taking undue advantage of the leniency. However, to avoid any injustice to the applicant, who is directed to be sent to civil prison for flouting the order of status quo, I deem it fit to grant one more opportunity to him, but this should come with a rider that the petitioner/applicant No.2 shall pay costs of Rs.15,000/- to the original plaintiff/respondent and he shall also deposit an amount of Rs.10,000/- in the account of the District Legal Services Authority, Kolhapur.

The amount as aforesaid shall be deposited within four weeks from today.

On such costs being deposited, the 'No say' order shall be set aside and the petitioner shall be permitted to submit his say within a period of two weeks. On the say being submitted, learned Judge shall proceed with the Civil Misc. Application No.16 of 2014 without undue delay and expeditiously dispose of

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the same within a period of two months. With the aforesaid direction, the impugned order dated 15/02/2021 is set aside. The writ petition is allowed in the aforesaid terms.

[SMT. BHARATI DANGRE, J.]