

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

MISC. CIVIL APPLICATION NO. 363 OF 2021

IN

WRIT PETITION NO. 7061 OF 2019

Smt. Manjulaben Indukumar Ghiya

vs.

Gunwantiben Kishorchandra Shah and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S. S. Alaspurkar, Advocate for applicant/petitioner.
Mr. P. P. Kothari, Advocate for respondent Nos.1 to 3.

CORAM : MANISH PITALE J.

DATE : 03/08/2021

By this application, the applicant (original respondent in writ petition No. 7061 of 2019) has sought recalling of judgment and order dated 24/09/2020, passed by this Court in the aforesaid writ petition. By the said judgment and order, the writ petition was allowed and the impugned order passed by the Court below was set aside. This Court also directed that the suit pending before the Court below be decided expeditiously and preferably within a period of one year from 24/09/2020.

2. The learned counsel appearing for the applicant first submitted that when this Court proceeded to decide the writ petition on 24/09/2020, notice of pendency of the said writ petition was not served on the original respondent (applicant herein). Attention of this Court was invited to an order passed by this Court permitting the original writ petitioners to place copy of the order passed by this Court in its pending suit before the Court below. This direction was given in the backdrop that applicant was deliberately avoiding the proceedings of this Court. In this backdrop, it was directed that this Court would proceed on the basis that there had been service on the original respondent.

3. It was submitted that when the suit before the Court below was fixed on 30/09/2020, the counsel appearing for the original writ petitioner before the Court below, moved an application for advancing the date of listing on 10/09/2020 and thereupon placed the aforesaid order of this Court on the record of the Court below. It was submitted that the counsel appearing for the original respondent/applicant herein was not put to notice about such advancement in the date of listing of the suit before the Court below and that therefore, there was absence of proper notice even on the counsel for

the original respondent. On this basis, it was submitted that this Court proceeded to dispose of the writ petition by judgment and order dated 24/09/2020, in the absence of original the respondent.

4. Although this Court is not impressed with the said contention raised on behalf of the original respondent/applicant herein, in the interest of justice, this Court gave an opportunity to the learned counsel appearing for applicant to advance his contention that the order dated 24/09/2020, passed by this Court needs to be recalled, for the reason that the entire factual scenario was not placed before this Court on behalf of the original writ petitioners.

5. This Court perused the contents of the present application, wherein at paragraph 21, the applicant has placed on record dates and events, in order to demonstrate that the conclusions arrived at by this Court in the judgment and order dated 24/09/2020, were not justified. It was submitted that this Court proceeded to hold that the applicant herein had deliberately delayed the proceedings in the pending suit before the Court below and that since the applicant had not acted in a diligent manner as expected from the litigant, the writ petition stood

allowed. It was submitted that the impression carried by this Court was not justified and that a perusal of the said list of dates and events would show that this Court ought to recall / review its own judgment and order dated 24/09/2020.

6. This Court has perused the said list of dates and events stated in paragraph 21 of the present application. It is difficult to understand as to how the said details can absolve the applicant (original respondent in writ petition) from the adverse findings rendered in the judgment and order dated 24/09/2020. There is nothing to dispel the findings rendered by this Court in the said judgment and order that while the suit was filed on 03/11/2014, the applicant herein being the original defendant had appeared in the the Court below through her Advocate on 09/12/2014 itself. Thereafter, it appears from the documents that are placed on record that the applicant filed various applications before the Court below in the pending suit. One such application was for rejection of plaint under Order VII Rule 11 of the Civil Procedure Code (CPC) and another was an application under Order VII Rule 14 of the CPC, seeking a direction against the original writ petitioners to produce certain documents. It is contended by the learned counsel

appearing for the applicant that so long as such applications were pending decision of the Court below, the applicant was entitled not to file her written statement. It was submitted that the application under Order VII Rule 11 was rejected on 03/02/2016 and that the writ petition filed against the same was eventually dismissed on 07/02/2017. It was then submitted that the application under Order VII Rule 14 remained pending for a long time and that it was eventually rejected on 20/02/2019. On this basis it was submitted that the Court below could not have insisted on filing of written statement of the applicant herein till such time as the said applications were decided and the challenges raised there-against were finally put to rest by appropriate orders of the Courts higher in the hierarchy. This Court is unable to appreciate the aforesaid stand taken up on behalf of the applicant. As noted in the judgment and order dated 24/09/2020, as far back as on 28/03/2016, the Court below has passed the specific order directing that the suit would proceed without written statement. It is also recorded that no effort was made on behalf of the applicant herein to seek variation of the said order, in order to file written statement before the Court below. It is after taking into consideration the said facts available on

the record that this Court came to the considered conclusion that the applicant herein had deliberately acted in a manner so as to delay the proceedings before the Court below. Such a litigant could not then be permitted to turn around and claim that she had been deprived of filing written statement, which was detrimental to her interest.

7. This Court has specifically noted in the order dated 24/09/2020, that although the time limits specified under CPC for filing written statement have been held to be directory and not mandatory, it has been also held that the Courts cannot permit laxity or gross negligence or deliberate attempts to derail proceedings before the trial Court to be condoned, while considering a prayer for filing of written statement. Adopting a liberal approach in such matters would be misplaced and it would amount to placing a premium for such behaviour on the part of the litigants, who by their conduct desire to derail the proceedings before the trial Court.

8. Therefore, having heard the learned counsel appearing for the applicant (original respondent in the writ petition), this Court is not convinced that the judgment and order dated

24/09/2020, needs to be recalled or reviewed in any manner.

9. In the said judgment and order this Court has already directed that the proceedings pending before the Court below shall be expedited and preferably disposed of within one year from the said date.

10. In view of the above, there is no merit in the present application and accordingly it is dismissed.

JUDGE