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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (CAO) NO.360 OF 2017
IN
MISC. CIVIL APPLICATION (MCA) ST. NO.25504 OF 2016
IN
WRIT PETITION NO.2986 OF 1998 (D)

Shikshan Prasarak Mandal, Thr. its Secretary Laxmanrao V. Bhedi, Wani, Dist. Yavatmal

-vs-

State of Maharashtra Thr. The Secretary, Ministry of Education, Mantralaya, Mumbai and ors.

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

Court's or Judge's Orders.

Dr Anjan De, Advocate for applicant.

Shri N. R. Patil, Assistant Government Pleader for non-applicant Nos.1 to 3.

Shri D. N. Kukdey, Advocate for non-applicant No.4.

CORAM : A. S. CHANDURKAR AND N. B. SURYAWANSHI, JJ.

DATE : January 28, 2021

Since there was no appearance on behalf of the non-applicant No.5 yesterday the matter was kept today to grant one opportunity to the non-applicant No.5. Today also there is no appearance on his behalf. Accordingly we have heard the learned counsel for the applicant as well as learned counsel for the non-applicant Nos.1 to 4.

2. Prayer is to condone delay in filing the review application on the ground that after Writ Petition No.2986/1998 was decided in the absence of counsel for the applicant, said fact

was not within the knowledge of the applicant. On the basis of the communication issued by the original petitioner-non-applicant No.5 on 03/03/2015 and reminder dated 09/06/2015 a meeting of the general body of the applicant-Society was held and resolution dated 31/10/2015 was passed in which it was decided to file a review application. Thereafter on 16/02/2016 the managing committee of the Society also resolved to file the review application. It is thus prayed that the delay in filing the review application be condoned.

3. The application is opposed by the non-applicant No.5 by filing reply dated 18/08/2017. It has been stated that the delay has not been properly explained and that only with the object of not paying the dues of the non-applicant No.5, the review application has been filed.

4. While entertaining the application for condonation of delay we had granted time to the applicant to substantiate its contention that the learned counsel representing the original respondent No.4 did not remain present on account of his inadvertence. Accordingly on 21/06/2017 an affidavit has been filed by the applicant through its Secretary in which reference

has been made to a communication dated 20/06/2017 addressed by the learned counsel representing the original respondent No.4 to the President of the applicant-Trust. The learned counsel has stated therein that his absence on 05/02/2015 before the Court was on account of inadvertence as the matter was not marked in the cause list by his Clerk. Though the non-applicant No.5 has filed an additional affidavit denying these statements we find that there are no malafides on the part of the learned counsel for the original respondent No.4 to remain absent when the writ petition was heard.

On hearing the learned counsel for the applicant and on perusal of the affidavit filed by the non-applicant No.5 we find that Writ Petition No.2986/1998 was decided in absence of the learned counsel for the original respondent No.4. After getting information about the order dated 05/02/2015 steps were taken to file the present application.

5. Thus accepting the reasons furnished as the cause of delay, we allow Civil Application No.360/2017 and condone the delay in filing the review application. This would be subject to the applicant paying costs of Rs.10,000/- (Rupees Ten Thousand only) to the non-applicant No.5 within a period of four weeks

and filing receipt of payment on record.

Civil Application No.360/2017 is accordingly disposed of.

Misc. Civil Application St. No.25504/2016

6. The applicant seeks review of the order dated 05/02/2015 principally on two grounds (a) that the learned counsel representing the applicant-original respondent No.4 was not present before the Court when Writ Petition No.2986/1998 was decided. This was on account of an inadvertent mistake on the part of the learned counsel; (b) while deciding the aforesaid writ petition the order dated 15/07/1999 passed in the said writ petition recording the undertaking of the original petitioner that he would not claim any promotion in the high school was not taken into consideration. It is urged that by virtue of such undertaking given by the original petitioner there was no reason to saddle the liability to pay the original petitioner the difference in the Pay Scale along with consequential benefits on the applicant.

7. Since there was no appearance on behalf of the non-applicant No.5 yesterday the matter was kept today to grant an opportunity to the non-applicant No.5. Today also there is no

appearance on his behalf. Accordingly we have heard the learned counsel for the applicant as well as learned counsel for the non-applicant Nos.1 to 4.

8. As regards absence of the learned counsel representing applicant-respondent No.4 in the writ petition is concerned, the said learned counsel has issued a communication to the President of the applicant-Society accepting the inadvertence in remaining present before the Court on the ground that the matter was not marked in the cause list by his Clerk. This communication is dated 20/06/2017 and we have accepted the said communication while condoning the delay. We see no malafides on the part of the learned counsel representing the applicant for remaining absent on 05/02/2015 when the writ petition was decided.

9. We also find that the order dated 05/02/2015 does not refer or take note of the earlier order dated 15/07/1999 passed in the writ petition in which it has been stated that the original petitioner had undertaken while joining the middle school that he would not claim any promotion in the high school. We find that this undertaking could have some bearing on the

entitlement of the original petitioner to the relief granted to him while deciding the said writ petition.

10. In the light of the aforesaid reasons we find that the interests of justice will be served if the order dated 05/02/2015 is recalled and Writ Petition No.2986/1998 is heard on merits afresh.

11. Accordingly Misc. Civil Application is allowed. The order dated 05/02/2015 is recalled. Writ Petition No.2986/1998 is restored for fresh adjudication in accordance with law. Parties to bear their own costs.

Misc. Civil Application is disposed of.

JUDGE

JUDGE