

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

8 CIVIL APPLICATION NO. 11518 OF 2022 IN WP/6816/2017

SHAILESH ANAND SONI
VERSUS
WOODRIDGE HIGH SCHOOL PAITHAN ROAD
THROUGH ITS HEAD MASTER AND OTHERS

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Advocate for Applicants : Mr. G.K. Naik Thigale
AGP for the respondent – State : Mrs. R.P. Gour
Advocate for respondents no. 1 and 2 : Mr. S.V. Adwant
Advocate for the respondent no. 6 : Mr. S.B. Deshpande

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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 22 AUGUST 2022

ORAL ORDER (SANDEEP V. MARNE, J.) :

This civil application has been filed by the Applicant who is petitioner no. 2 in the writ petition - Mr. Shailesh Anand Soni, seeking following reliefs :

- “A) The civil application may kindly be allowed.
- B) The Hon’ble court may graciously be pleased to direct respondent no. 1 school to hand over the original documents such as school transfer certificate, Migration certificate and mark sheet of the daughter of the applicant namely Pari Shailesh Soni forthwith to the applicant and for that purpose issue necessary directions.
- C) Pending hearing and admission of present application respondent no.1 school may kindly be directed to handover original documents such as Transfer certificate and Migration certificate of applicant daughter namely PARI Shailesh Soni forthwith.
- D) Ad-interim relief in terms of prayer Clause (C) above may kindly be granted.

- E) Any other just and equitable orders may kindly be passed in favour of the applicant in the interest of justice”

2. The dispute in the Writ Petition is about the quantum of school fees payable. Mr. Thigale, the learned counsel appearing for the applicant has relied upon order dated 4th December 2021 passed in civil application no. 12844 of 2021 in the case of Nilish Anand Soni, who is Petitioner No. 3, wherein this Court has directed return of the documents. He prays for similar order in the present Application.

3. Mr. Adwant, learned counsel appearing for school – management vehemently opposes the prayer. He invites our attention to the undertaking dated 14-03-2019 filed by the Applicant before this Court which reads as under :-

“ UNDERTAKING

I Mr. Soni Shailesh Ananad Kumar, Age : 38 years, Occ : Business, r/o Flat No. 11 Nitin Apartment, Dashmesh Nagar Aurnagabad, do hereby furnish the undertaking as follows;

1. The deponent hereby makes deposit of Rs.20,000/- by D D dated 14.03.2019 drawn in favour of “Registrar High Court of Bombay Bench at Aurangabad”

2. The deponent further undertakes to deposit Rs.25,000/- on 30th of every three months towards deposit of Rs.1,75,000/-, which would be subject to the final outcome of the orders of the Hon’ble Court, & without prejudice to contentions raised in writ petition.”

4. Mr. Adwant submits that except the amount of Rs.20,000/-, which was deposited by way of demand draft dated 14-03-2019, petitioner no. 2 has not paid any further amount in pursuance of the

undertaking. He therefore submits that a party exhibiting contemptuous conduct cannot be granted any relief by this court.

5. Today, we have decided Civil Application no. 9464 of 2021 filed by all the petitioners in the petition seeking modification of the order dated 4th April 2019. By that Order, the undertaking submitted by the Applicant herein was accepted by this Court. Interestingly, in prayer clause (B) of Civil Application No. 9464 of 2021, rest of the petitioners had prayed that the undertaking be restricted only in respect of the petitioner no. 2. Civil Application no. 9464 of 2021 has been verified by the Applicant herein. Thus, Applicant herein himself prayed in that Civil Application that he would continue to be bound by the Undertaking. Observing the breaches committed by the Applicant of the Undertaking filed by him, we have rejected the said Civil Application.

7. It is thus an admitted position that except the initial payment of Rs. 20,000/-, the Applicant had failed to pay any amount towards fess as agreed in the Undertaking. Pretext of COVID-19 pandemic has been sought to be put forth before us for Applicant's inability to pay the fees as per undertaking. However, the Undertaking is executed on 14th March 2019 and before the onset of the pandemic in March 2020, about 4 installments fell due as per the undertaking. We therefore refuse to accept the pretext of pandemic. Mr. Thigale attempted to invite our attention to the Income Tax Returns of the Applicant to show his financial position. Having filed an Undertaking before this Court, it is

too late in a day for the Applicant to raise the defence of alleged weak financial condition.

8. Mr. Thigale also sought to contend that the Applicant's daughter was denied access to online classes by the School during pandemic. Mr. Advant has stoutly denied this allegation. We do not wish to enter into the factual dispute, atleast for now, when we are deciding the application for return of documents.

9. Mr. Thigale then sought to rely upon the Judgment of Apex Court in **Indian School, Jodhpur Vs. State of Rajasthan, (2021) 10 SCC 517** in respect of direction for reducing 15% fees. We fail to understand how the directions in that judgment for reduction of 15% fees for one academic year, that too issued as a one-time measure to do complete justice by the Apex Court can save the Applicant in respect of the deplorable conduct exhibited by him.

10. However since the issue involves the educational prospects of his daughter, we still proceeded to show indulgence and sought to pardon the unacceptable conduct of the Applicant by giving an option to the Applicant to pay the amounts due under the Undertaking atleast now for release of his daughter's documents. However, Mr. Thigale has shown inability to pay any amount. The Applicant is thus not willing to show any *bona fides*.

11. Ordinarily, we would have followed the order passed by this Court on 04-12-2021 in the case of Nilesh Soni (Petitioner No. 3). However the Applicant is fully responsible for creation of the situation for his daughter. Eventhough an option was extended by us to him to make payment atleast now, he has refused to exercise that option. He has shown utter disrespect to the order passed by this Court. Despite rejection of his belated application seeking wriggling out of Undertaking by recalling the Order dated 4th April 2019, he has expressed unwillingness to act on the Undertaking. We therefore hold the Applicant responsible for the situation that has emerged before us. We are therefore not inclined to grant any equitable relief to the Petitioner.

12. The civil application is accordingly rejected.

13. Parties to act on an authenticated copy of this order.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

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