

WRIT PETITION NO. 5717 OF 2018

 V_S

Sharad S/o Dhundiraj Gulhaney -- Respondent

Court's or Judge's orders

Mr. D.L. Dharmadhikari, Advocate for Petitioner

CORAM : MANISH PITALE, J.

DATE : 08th JUNE, 2022

Heard learned counsel for the petitioner. The sole respondent is served. He is shown to be represented by counsel, but, when the petition is called out for hearing none has appeared on behalf of the respondent.

2. The subject matter of challenge in the present writ petition is order dated 28/06/2018, passed by the Principal District Judge, Nagpur in Civil Misc. Application No. 359/2018, which was an application filed by the Advocate representing the respondent, making a complaint against the Judicial Officer, claiming that the Judicial Officer then posted as District Judge-14 at Nagpur, had committed civil contempt of the order of this Court. The petitioner

contended that although he is not aggrieved by the dismissal of the said application, further directions / observations given in the impugned order without notice to the petitioner were not justified.

3. The facts leading up to filing of the present writ petition are that the respondent filed a suit for perpetual injunction and possession against the petitioner. In the said suit, the petitioner moved an application for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure (CPC). The said application was allowed. Aggrieved by the same, the respondent approached this Court and the matter remained pending for quite sometime. Later, it was pointed out that a substantial appeal could be filed against the order rejecting the plaint, as a consequence of which the writ petition was disposed of.

4. The respondent filed substantial appeal against the said order rejecting plaint along with an application for condonation of delay/exclusion of time under Section 14 of the Limitation Act, bearing Misc. Civil Application No. 283/2013. The respondent sought the benefit of Section 14 of the Limitation Act in the said application while seeking condonation of delay. The aforesaid application in the first instance was allowed by the concerned Court, against which

the petitioner filed Civil Revision Application No.96/2014. The said revision application was disposed of by order dated 05/05/2015. The order passed by this Court reads as under :

“Coram : A.V. Nirgude, J.

Dated : 05th May, 2015.

By consent, the following order is passed :-
Impugned order is set aside. The respondent / appellant shall give evidence in support of his application seeking condonation of delay and under section 14 of the Limitation Act, 1963. The learned Judge of the lower appellate Court shall then appreciate the evidence and pass appropriate order as per law”.

5. Accordingly, the respondent was expected to lead evidence in support of the aforesaid Misc. Civil Application No. 283/2018, seeking condonation of delay, but, in the meanwhile, it appears that in view of the earlier order passed by the Court below condoning the delay, appeal stood registered as R.C.A. No. 72/2014. Since this Court set aside the order condoning the delay and directed that the application would be considered afresh, further granting respondent an opportunity to lead evidence, registration of the appeal was in that sense rendered meaningless.

6. Yet, it also appears that thereafter, the said appeal was dismissed in default. In these circumstances, an application was moved by the respondent for setting aside order

dismissing the appeal in default and for restoration of the appeal. By order dated 21/04/2018, the Court of District Judge-14 at Nagpur rejected the application observing that once the application for condonation of delay bearing M.C.A. No. 283/2013, was remanded back for consideration afresh as per the order of this Court on 05/05/2015, passed in C.R.A. No. 96/2014, there was no question of registration of the appeal or the said appeal being further prosecuted. It was consequentially held that the application for restoration of such an appeal could not be granted and the application was rejected.

7. It is in the context of the said order dated 21/04/2018, passed by the District Judge-14, Nagpur, that the Advocate representing the respondent moved the aforesaid application seeking action against the Judicial Officer presiding over the said Court for having allegedly committed civil contempt. The said application dated 02/05/2018, prayed only for suitable action of civil contempt against the concerned Judicial Officer. The impugned order dated 28/06/2018, has been passed on the said application.

8. By the impugned order, the Principal District Judge at Nagpur has discussed the chronology of events in detail and it is found that there is no case made out of civil contempt

against the concerned Judicial Officer. Accordingly, the application has been dismissed. But, while dismissing the application, it is directed that the Misc. Civil Application No.283/2013, stands “restored” and further direction has been given to dispose of the said application as expeditiously as possible.

9. While the petitioner is not aggrieved by the dismissal of the application for action against the concerned Judicial Officer, the grievance is that the subsequent direction could not have been issued, without notice to the petitioner. It is claimed that if notice was to be issued to the petitioner, he would have brought to the notice of the Principal District Judge, the manner in which the respondent had deliberately delayed the matter between 2015 to 2018 and how the respondent had avoided to comply with the orders passed by this Court on 05/05/2015 in CRA No. 96/2014, for leading evidence in the application seeking condonation of delay.

10. As noted above, none has appeared on behalf of the respondent.

11. This Court is in agreement with the findings rendered by the Principal District Judge in the impugned order that no case was made out for initiating proceeding for civil contempt

against the concerned Judicial Officer. The said findings are confirmed and the dismissal of Civil Misc. Application No.359/2018, filed by the petitioner representing the respondent is also confirmed.

12. Insofar as the grievance of the petitioner regarding further direction given by the Principal District Judge, this Court is of the opinion that the Principal District Judge did commit an error in holding that Misc. Civil Application No.283/2013, was to be “restored”. There was no question of restoring the said application, for the reason that there was nothing on record to show that the said application was disposed of after it was remanded by the order dated 05/05/2015, passed by this Court in C.R.A. No.96/2014. As long as, there is nothing to show that the said application filed by the respondent for condonation of delay is disposed of in any manner, there is no question of holding that the said application stands restored. Even if the petitioner was put to notice by the Principal District Judge, he could not have opposed the direction for disposal or decision on the said MCA No.283/2013.

13. Insofar as grievance of the petitioner that he was deprived of an opportunity to place his grievance regarding delay in the proceedings at the behest of respondent, suffice it

to say that this Court has taken note of such approach of the respondent.

14. Nonetheless, the order dated 05/05/2015, passed by this Court in C.R.A. No.96/2014, requires decision on Misc. Civil Application No.283/2013, at the earliest. The respondent is expected to lead evidence in support of the prayer made in the said application at the earliest so that the said application can be decided and disposed of.

15. In view of the above, the writ petition is disposed of by holding that the Principal District Judge erred in directing that Misc. Civil Appl. No.283/2013, was to be “restored”, for the reason that such a direction was superfluous and unnecessary. As noted above, dismissal of Civil Misc. Appl. No.359/2018, was justified and it stands confirmed. The Principal District Judge is directed to allot Misc. Civil Appl. No.283/2013, to the appropriate Court within two weeks from today. The Court so allotted to decide the said application shall take up the application immediately by issuing notices to the parties. The respondent is directed to expeditiously take steps for leading evidence in support of the said application. The Court allotted the said application is

expected to decide the Misc. Civil Appl. No.283/2013, in accordance with law at the earliest.

JUDGE