

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 1 OF 2023

IN

FAMILY COURT APPEAL NO. 70 OF 2022

Rahul D Moholkar)
Age 51 years, Occupation Business)
Residing at Nirmal Niwas,)
A B 1397.794)
Subhash Tekdi,)
Ulhasnagar – 421004)..... Applicant

Versus

1. Mr. A)
Age 46 years, Occupation Advocate)
O/At Abhinandan 1st Floor,)
759/98 Prabhat Road, Lane 2)
Deccan Gymkhana, Pune- 411004)
2. Mrs. Shama Rahul Moholkar)
Age 46 years, Occupation Business)
Revati Society, Flat No.6,)
S.No. 672/6/3 Bibwewadi)
Pune – 411 037)..... Respondents

Mr.Rahul D.Moholkar, the Petitioner is present in person in RPM/1/2023 and the Applicant in IA/3745/2023.

Mr.Rohaam Cama, i/b. Ms.Sapana Rachure for the Respondent in RPM/1/2023 and for the Appellant in FCA/70/2022 and in IA/17937/2022.

Mr.Ajinkya Udane for the Respondent No.1.

**CORAM: R. D. DHANUKA AND
GAURI GODSE, JJ.**

RESERVED ON : 21ST APRIL, 2023

PRONOUNCED ON : 2ND MAY, 2023

JUDGMENT (Per R.D.Dhanuka, J.):

By this Review Petition, the Applicant (original Respondent No.2) seeks review of the order dated 20th March, 2023 passed by this Court and prays that the stay granted by this Court to the Bar Council proceedings initiated by the Review Petitioner be vacated. Some of the relevant facts for the purpose of deciding this review petition are as under :-

2. The Appellant in Family Court Appeal No. 70 of 2022 has impugned various observations made by the Family Court against the Appellant and has prayed for setting aside such observations setout in the grounds of appeal and has extracted such observations in Annexure 'A' to the appeal memo. Interim Application (St) No. 20147 of 2022 along with Interim Application (St) No. 18879 of 2022 in the Family

Court Appeal (St) No. 18877 of 2022 before this Court came on the board before the Division Bench of this Court on 17th August, 2022.

3. This Court admitted the said Family Court Appeal and allowed Interim Application (St) No. 18879 of 2022 in terms of prayer clauses (a) and (b) and directed the Office to issue notice upon the Respondents including the Review Petitioner in Interim Application (St) No. 20147 of 2022. This Court also granted *ad-interim* order in terms of prayer clauses (a) and (b) of the Interim Application (St) No. 20147 of 2022 till next date.

4. The said Family Court Appeal thereafter was heard on 2nd March, 2023 and thereafter on 20th March, 2023. Due to change of assignment, this Bench (R.D.Dhanuka and Gauri Godse, JJ.) was unable to proceed with the hearing of the Family Court Appeal at that stage de novo. Learned counsel for the Appellant in Family Court Appeal made a statement that though this Court has passed an *ad-interim* order on 17th August, 2022 allowing Interim Application (St) No. 18879 of 2022 and Interim Application (St) No. 20147 of 2022 in terms of prayer clauses (a) and (b), the Review Petitioner seeks to pursue the complaint filed

by him against the Appellant before the Bar Council of Maharashtra and Goa. We were informed that the said complaint is adjourned to April 2023.

5. This Court accordingly directed the Bar Council not to proceed with the said complaint till the Family Court Appeal filed by the learned advocate is heard and disposed off by this Court. The matter was thereafter directed to be placed on board on 6th June, 2023. The said order directed the Bar Council not to proceed with the said complaint till the Family Court Appeal filed by the learned advocate is heard and disposed off by this Court after hearing the Review Petitioner also.

6. The Review Petitioner who appears in person relied upon following judgments in support of his submissions :-

(a) The judgment of Supreme Court in case of ***K.Anjinappa vs. K.C.Krishna Reddy & Anr.*** in Civil Appeal No. 7478 of 2019 dated 17th December, 2021.

(b) The judgment of Supreme Court in case of ***M/s.Neeharika Infrastructure Pvt. Ltd. vs. State of***

Maharashtra & Others in Criminal Appeal No. 330 of
2021 dated 13th April, 2021.

7. The Review Petitioner who appears in person submitted that this Court cannot grant stay to the complaint filed by the Review Petitioner against the learned advocate before the Bar Council of Maharashtra and Goa. The Review Petitioner relied upon the aforesaid judgments in support of his submission that no reasons are recorded by this Court while granting stay of the complaint filed by the Review Petitioner against the learned advocate before the Bar Council of Maharashtra and Goa. The Review Petitioner did not raise any other ground across the bar for seeking recall of the order dated 20th March, 2023 passed by this Court.

8. Mr.Cama, learned counsel for the Appellant opposes this Review Petition on the ground that the Review Petitioner had filed a complaint against the Appellant advocate on 3rd August, 2022. The complaint was not moved by the Appellant till 28th February, 2023. The first meeting of the Bar Council came to be held on 28th February, 2023. It is submitted that this Court has already granted *ad-interim* relief on 17th

August, 2022 in the Interim Application filed by the Appellant. He submitted that though by the said interim order passed by this Court, this Court had stayed the impugned judgment and order passed by the Family Court so far as it relates to the findings/observations against the Applicant, extracted in the schedule annexed as Annexure `A' to the memo of appeal and restrained the Review Petitioner from circulating, acting on in furtherance of the said judgment and order, the Review Petitioner sought to rely upon those findings/observations made by the Family Court against the Appellant in the complaint filed by the Review Petitioner against the Appellant in the Bar Council of Maharashtra and Goa. He submitted that the reliance placed by the Review Petitioner on those findings/observations made by the Family Court which are already stayed is contrary to and in violation of the order passed by this Court in those two Interim Applications filed by the Appellant.

9. Learned counsel invited our attention to the nature of the allegations made in the complaint filed by the Review Petitioner against the Appellant before the Bar Council and the findings/observations made by the Family Court in the impugned

decree against the Appellant advocate. He submitted that the complaint filed by the Review Petitioner against the Appellant advocate is based on the findings/observations by the Family Court against the Appellant advocate and the findings/observations having been stayed by this Court by passing an *ad-interim* order, this Court after considering this aspect has rightly stayed the complaint filed by the Review Petitioner against the Appellant advocate.

10. Learned counsel for the Appellant distinguished the judgment of Supreme Court in case of ***K.Anjinappa*** (supra) on the ground that the facts before the Hon'ble Supreme Court were totally different. There was no stay granted by the Court in the said matter before the Supreme Court. Learned counsel also distinguished the judgment of Supreme Court in case of ***M/s.Neeharika Infrastructure Pvt. Ltd.*** (supra) on the ground that the said judgment does not apply to the facts of this case even remotely.

11. We have perused the findings/observations setout in the Annexure 'A' to the memo of appeal filed by the Appellant advocate made in the impugned decree passed by the Family Court and have

also perused the allegations made in the complaint filed by the Review Petitioner against the Appellant before the Bar Council of Maharashtra and Goa. It is clear beyond reasonable doubt that the Review Petitioner has filed the said complaint based on the findings/observations recorded by the Family Court against the Appellant advocate. The Family Court Appeal filed by the learned Appellant advocate is already admitted.

12. This Court has already granted Interim Relief in two *ad-interim* applications filed by the advocate. Though this Court granted *ad-interim* relief in favour of the Appellant, the Review Petitioner seeks to rely upon the findings/observations recorded by the Family Court against the Appellant advocate and seeks to pursue the said complaint during the pendency of the Family Court Appeal filed by the Appellant though *ad-interim* injunction is granted by this Court in the Interim Application filed by the Appellant.

13. This Court while granting the *ad-interim* order by the said order which is subject matter of this Review Petition had enquired whether the basis of the complaint filed by the Review Petitioner is the

findings/observations recorded by the Family Court against the Appellant advocate, the Review Petitioner admitted that the complaint was based on findings recorded against the Appellant by the Family Court. In our view, even otherwise upon comparison of the findings/observations recorded by the impugned decree of the Family Court and the basis of the complaint filed by the Review Petitioner before the Bar Council it is apparent that both are identical. This Court accordingly by the said order dated 20th March, 2023 while adjourning the matter, had directed the Bar Council not to proceed with the said complaint till the Family Court Appeal filed by the learned advocate is heard and disposed off by this Court. This Court already directed the Office to place the matter under the caption of directions on 6th June, 2023. The Review Petitioner has admittedly not challenged the said *ad-interim* order passed by this Court in two Interim Applications filed by the Appellant before the Hon'ble Supreme Court.

14. The Review Petitioner thus cannot be allowed to proceed with the said complaint which is based on the same findings/observations made by the Family Court against the Appellant which are already stayed.

15. Insofar as the judgment of Hon'ble Supreme Court in case of ***K.Anjinappa*** (supra) relied upon by the Review Petitioner is concerned, the Hon'ble Supreme Court had considered the appeal under Section 35 of the Advocates Act, 1961 filed by the original complainant whose complaint was dismissed by the Disciplinary Committee of the Bar Council of India. In the said proceedings before the Hon'ble Supreme Court, the Bar Council of India had filed an affidavit that in last five years, 1,273 complaints filed under Section 35 of the Advocates Act had been transferred to the Bar Council of India as those complaints were not disposed off by the State Bar Council under Section 35 of the Advocates Act within one year.

16. Hon'ble Supreme Court held that the disposal of a complaint received by the State Bar Council under Section 35 within a period of one year was from the date of receipt of such complaint is mandatory and the State Bar Council has to dispose of such complaints as expeditiously and in any case the proceedings shall have to be concluded within a period of one year. Only in an exceptional case, by giving valid reasons to be recorded as to why the complaint could not

be disposed of within a period of one year, such complaints are required to be transferred to the Bar Council of India as provided under Section 36B of the Advocates Act.

17. In the said judgment, the Hon'ble Supreme Court recorded the observations that for the reasons best known to the concerned Bar Council, the complaints are not been disposed off by them under Section 35 within one year. In our view, the said judgment of the Hon'ble Supreme Court would not apply and is clearly distinguishable on the facts. There was no pending proceeding before the Court of law between the same parties. In our view, the reliance placed by the Review Petitioner in the said judgment is totally misplaced.

18. Insofar as the judgment of Hon'ble Supreme Court in case of *M/s.Neeharika Infrastructure Pvt. Ltd.* (supra) is concerned, the Hon'ble Supreme Court in the said judgment held that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. In our view, the said judgment would not even apply remotely to the facts of this case. In this case admittedly the findings/observations observed by the Family Court against the

Appellant, and the allegations made in the complaint filed by the Review Petitioner against the Appellant are identical. As a matter of record, the complaint is filed on the basis of such findings/observations made by the Family Court.

19. Be that as it may, the said order passed by this Court on 20th March, 2023 is an ad-interim order and is operative till the Family Court Appeal filed by the Appellant advocate is heard and disposed off by this Court. In case, this Court does not interfere with the findings/observations made by the Family Court against the Appellant and dismisses the Family Court Appeal filed by the Appellant, the Review Petitioner in that event would be at liberty to pursue the said complaint filed by him against the Appellant advocate before the Bar Council of Maharashtra. If however, this Court comes to the conclusion that though the findings/observations made by the Family Court against the Appellant advocate deserves to be set aside, the complaint filed by the Review Petitioner against the Appellant in that event cannot be entertained based on such findings/observations which are if set aside by this Court.

20. We do not find any error apparent on the face of the record committed by this Court in the order dated 20th March, 2023. No case is made out for recall of the said order. Review Petition is thoroughly misconceived and is accordingly dismissed. There shall be no order as to costs.

[GAURI GODSE, J.]

[R. D. DHANUKA, J.]