



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

956 WRIT PETITION NO. 1707 OF 2018

The State Of Maharashtra Through District Collector Ahmednagar
.....Petitioner

VERSUS

Pradip Raghunath Gaikwad And Others

.....Respondent

.....

AGP for the Petitioner : Mrs. P.R. Bharaswadkar
Advocate for Respondents 1 & 2 : Mr. N.P. Ghanwat
Advocate for Respondents 4 to 9 : Mr. P.G. Patil

.....

AND

957 WRIT PETITION NO. 1854 OF 2018

The State Of Maharashtra Through District Collector Ahmednagar
.....Petitioner

VERSUS

Raubai Bhausahab Perne Through Gpa C B Perne And Another

.....Respondent

.....

AGP for the Petitioner : Mr. V.M. Chate
Advocate for Respondents 1 & 2 : Mr. N.P. Ghanwat

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CORAM : ARUN R. PEDNEKER, J.

Dated : January 30, 2024

PER COURT :-

1. Heard the learned counsel for the respective parties.
2. By the Writ Petition No. 1707/2018, the petitioner/State is challenging the order 19.9.2017 passed by the 6th Jt. Civil Judge, Senior Division, Ahmednagar below Exh. 71 in R.C.S. No. 146/2013. The application at Exh. 71 was filed for setting aside the no cross orders as well as evidence close order dated 17.4.2017 and 17.7.2017, which were rejected by the Trial Court on the ground that the unauthorised person i.e. clerk of the Tahsil Office has filed the affidavit, supporting the application.

3. The facts, leading to the present writ petition, can be briefly stated as under :-

The present respondent has filed R.C.S. No. 146/2013 for the relief of declaration and injunction in respect of the suit property Gat No. 682/2 at village Rahuri Bk. The present petitioner/State is the original defendant in that matter and on issuance of summons, the State appeared in the suit and filed written statement, stating there in that the original plaintiff has no right over the suit property. The original plaintiff had filed an affidavit in evidence at Exh. 42 on 17.4.2017 and since then the petitioner herein could not cross examine the plaintiff No. 1, no cross order was passed on 17.4.2017. On 17.7.2017 adjournment application was filed by the petitioner herein, but the same was rejected by the trial Court and no cross order of another witness of the plaintiff was passed on the same day.

4. Thereafter, the petitioner herein filed application on 6.9.2017 stating therein that orders dated 17.4.2017 and 17.7.2017 in respect of no cross of plaintiff and one witness of plaintiff and closing the evidence by the deponent may be set aside and the petitioner may be permitted to cross examine the witnesses of the plaintiffs. The said application was supported by the affidavit of the clerk of the Tahsil Office. The said application was objected by the original plaintiff. After hearing both the sides, the said application was rejected by the trial Court by observing that there was no authorisation to the clerk of the Tahsil Office to file the application and petitioner is not due diligent. The court further observed that though written statement is filed by the Tahsildar, affidavit in support of the application is filed by the clerk of the Tahsil office. The trial Court observed that filing of affidavit is not a mere formality and it is a very responsible work and the application is filed in very casual manner. The Trial Court observed that there is no document on record to show that Tahsil office has authorised the clerk to file affidavit. The Trial Court also observed that so many opportunities have been granted to the petitioner herein for cross examination of the plaintiff's witnesses, that too without adjournment application and thus, the conduct of the petitioner herein shows that the petitioner is negligent in conducting the matter and it is nothing, but

prolonging tactics. As such, the application, Exh. 71, is rejected by the trial Court.

5. The learned AGP appearing for the State submits that the authorisation of the Tahsil office is a procedural aspect and the same should be permitted to be rectified by the petitioner if it was objected. Then the State has relied upon the judgment in the case of **Omprakash Dinodia Vs. Ashalata wd/o Late Anant Kumar Karmarkar and ors.** reported in **2002 (2) ALL M.R. 108** and placed reliance on the last four lines of paragraph No. 5, which is as under :-

“The Appellate Court has rightly discussed the ratio of the decisions to observe that provisions of order 6 Rules 14 and 15 are merely procedural and such defects can be cured even at a latter stage of the proceedings. In this view of the matter, the first contention raised on behalf of the petitioner, to my mind, is wholly misconceived and the same is, therefore, rejected.”

6. Per contra, the learned counsel for the respondent/plaintiff submits that the judgment cited supra would not be applicable to the facts of the present case as in the case cited supra, the plaint was not signed by the plaintiff, but signed by their advocate and in the present case, the affidavit was signed by completely unauthorised person.

7. Considering the rival submissions, it cannot be said that the clerk working in the office of the Tahsil office, who is government servant, is completely unauthorised person. The authority to file affidavit could have been conferred upon him and the same could have been rectified as it is a merely procedural part. This Court, while issuing notice in the present writ petition, directed the petitioner herein to deposit cost of Rs.6000/- before the Trial Court. The learned AGP submits that the cost is deposited in the Trial Court.

8. In view of the discussion made above, the writ petition is allowed and the order 19.9.2017 passed by the 6th Jt. Civil Judge, Senior Division, Ahmednagar below Exh. 71 in R.C.S. No. 146/2013 is set aside and the application at Exh. 71 which was filed for setting aside the no cross orders

as well as evidence close order dated 17.4.2017 and 17.7.2017 are restored. The petitioner is permitted to rectify the defects in the application. Thereafter, the Trial Court to decide the application in accordance with law. The amount of Rs.6000/- deposited in trial court be paid to the plaintiffs. It is further directed that petitioner to pay further amount of Rs.4000/- to the plaintiffs i.e. total amount of Rs.10,000/-. Plaintiffs are permitted to withdraw the amount of Rs.6000/- from the trial Court. Writ petition No. 1707/2018 is disposed of accordingly.

9. For the reasons stated above, the same would be applicable in Writ Petition No. 1854/2018. However, there is no further order of cost. The writ petition No. 1854/2018 is allowed and the order dated 19.9.2017 passed by the 6th Jt. Civil Judge, Senior Division, Ahmednagar below Exh. 102 in R.C.S. No. 145/2013 is quashed and set aside. The application, Exh. 102 is restored which was filed for setting aside the no cross orders as well as evidence close order dated 17.4.2017 and 17.7.2017 and 22.8.2017. The petitioner is permitted to rectify the defects in the application. The Trial Court to decide the application in accordance with law. The writ petition No. 1854/2018 is disposed of accordingly.

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(ARUN R. PEDNEKER, J.)

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