



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 CIVIL APPLICATION NO.310 OF 2023
IN WP/6194/2006

SADASHIVRAO AMBADASRAO GAIKE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. V.D. Sapkal, Senior Counsel i/b Mr. S.R. Sapkal, Advocate for applicant

Mr. P.D. Patil, AGP for respondent Nos.1 to 4

Mr. S.D. Hiwrekar, Advocate for respondent No.5

Mr. R.S. Deshmukh, Senior Counsel i/b Mr. D.R. Deshmukh, Advocate for
respondent Nos.6, 9 to 11

Mr. R.L. Kute, Advocate for respondent No.13

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CORAM : S.G. CHAPALGAONKAR, J.

DATE : 13th JUNE, 2024

ORDER :

1 By way of present application the prayer is made to recall the order dated 24.11.2008 passed in the writ petition regarding dismissal of the writ petition against respondent Nos.7, 8, 10 and 11 for want of steps for service of notice. Mr. V.D. Sapkal, learned Senior Counsel appearing for the applicant points out that initially all these respondents were served through

the notice of the writ petition, however, after granting Rule in the writ petition necessary steps could not be taken due to inadvertence. It is further pointed out that respondent Nos.7, 8, 10 and 11 have independently filed a writ petition bearing Writ Petition No.3351 of 2007 before this Court and the same writ petition is tagged with Writ Petition No.6194 of 2006. As such, when both the writ petitions are to be heard together for selfsame cause, there would be no prejudice to the respondents if restoration of writ petition is permitted.

2 Per contra, Mr. R.S. Deshmukh, learned Senior Counsel appearing for respondent Nos.6, 9 to 11 submits that the order which is sought to be recalled is passed in the year 2008 and no steps were taken for restoration for the period of more than 17 years. The present application is filed with inordinate delay. The dismissal of the writ petition against respondent Nos.7, 8, 10 and 11 has created certain rights in their favour.

3 Having considered the submissions advanced by parties and on perusal of record it can be noticed that the substantial cause in the writ petition is pending for consideration before this Court in both writ petitions tagged together. In such cases the decision on merits has to be taken ignoring the technicalities. However, considering the delay of about 17 years in filing present application some costs can be imposed. Hence, the

application is allowed in terms of prayer clause 'B', subject to the payment of costs of Rs.5,000/- (Rupees Five Thousand only) to the Library of Bar Association of Bombay High Court at Aurangabad, within a period of two weeks.

4 Civil Application stands disposed of.

(S.G. CHAPALGAONKAR)
JUDGE

agd