

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2601 OF 2024

Balasaheb Genaba Kingare

.. Petitioner

Versus

State of Maharashtra and Ors.

.. Respondents

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- Mr. Balasaheb G. Kingare, Petitioner in-person.
 - Mr. P.G. Sawant, AGP for Respondent No.1 – State.
 - Mr. Vishwanath Patil, Advocate for Respondent No.2.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 27, 2024.

P.C.:

1. Heard Mr. Kingare, Petitioner in-person; Mr. Sawant, learned AGP for Respondent No.1 – State and Mr. Vishwanath Patil, Advocate for Respondent No.2.

2. Mr. Kingare has filed a Suit being Regular Civil Suit No.442 of 2017 for declaration and injunction. In the Suit proceedings, Defendant – Pune Municipal Corporation (for short “**Corporation**”) did not file its written statement and there was a delay of one and half year according to the Petitioner in filing the written statement. Hence Defendant – Corporation filed Application dated 07.06.2018 seeking extension of time by mentioning a specific reason in that Application. The learned Trial Court considered that Application on the very day

itself and rejected the same on the face of the Application itself without reasons. Thereafter it is seen that on the next date i.e. on 08.06.2018, Advocate for the Defendant filed a fresh Application seeking further time to file the written statement. That Application incidentally has been allowed by the learned Trial Judge on the face of the Application itself. That Application and order is at page No.51 of the Writ Petition.

3. Defendant thereafter filed Application for setting aside the No WS order, rather by Application dated 07.06.2018 so as to allow the Defendant to file its written statement. That Application is dated 06.08.2018 which is at page No.53 of the Writ Petition. The reasons given by the Corporation therein are that there was attrition in respect of the postings of Deputy Engineer / Sub-Engineer handling the Suit proceedings between March 2017 to August 2018 whereby six Engineers had worked in the said Department intermittently due to transfers and retransfers and in that view of the matter, it was stated that there was a delay in preparation of the written statement as also for the vakilpatra to be submitted.

4. The learned Trial Court passed an order thereon on 03.06.2019 recording as under:-

“Read application and say. Heard both sides. Perused record. Unless say / was is considered matter cannot be decided on merit. Defendant being institution the grounds mentioned for delay seem to be probable. In such circumstances, in order to decide the matter application is allowed subject to costs of Rs.500/-.”

4.1. The above order dated 03.06.2019 is impugned in the present Writ Petition. Mr. Kingare would submit that costs of Rs.500/- were paid by the Defendant – Corporation in the year 2020.

5. Petitioner being aggrieved has filed the present Writ Petition in 2024 on 05.02.2024. All that Mr. Kingare would submit is that there was delay in payment of costs, but he has no answer to the question posed to him about the delay of six years after the passing of order dated 03.06.2019. He has failed to explain his own due diligence.

6. In support of his submission, he has referred to a decision of this Court (Coram: Amit Borkar, J.) in the case of ***Shree Educational Trust and Anr. Vs. Dombivali Shikshan Prasarak Mandal and Ors.***¹ and would draw my attention to paragraph No.14 of the said decision which reads thus:-

“14. The Apex Court held that the extension of time can be only by way of exception and for the reasons assigned by defendant to be recorded in writing by the Court to its satisfaction. Such application needs to be allowed only in the circumstances which are exceptional, occasioned by reasons beyond control of the defendant and such extension was required in the interest of justice or to avoid injustice. It is held that in any case shall the defendant be permitted to seek extension of time when the Court is satisfied that it is the case of laxity or Court’s negligence not on the part of the defendant or his counsel.”

6.1. Applying the aforesaid decision to the facts and circumstances of the present case, it is seen that the said decision infact

¹ WP No.10917 of 2023 decided on 06.09.2023

supports the case of Defendant – Corporation and not that of the Plaintiff i.e. Petitioner before me. The learned Trial Court has duly recorded its satisfaction on the reasons assigned by the Defendant for the delay. I have also seen the Application which clearly states the nature of attrition of the Deputy Engineer / Sub-Engineer who were handling the said case between March 2017 and August 2018 which led to the delay of one and half year.

7. The facts as also the ratio in the aforesaid cited case do not support the Petitioner's case especially when the Petitioner himself is guilty of not complying due diligence at all.

8. Next Mr. Kingare has placed before me the decision of Supreme Court in the case of *Mohammed Yusuf Vs. Faij Mohammad and Ors.*² and would contend that in that case the decision of the High Court condoning the delay was set aside by the Supreme Court since no reasons were given by the High Court in its order. He has drawn my attention to paragraph No.16 of the said decision which notes that since the High Court did not arrive at a finding that there had been a substantial failure of justice or the orders passed by the Trial Court as also by the Revisional Court contained an error apparent on the face of the record warranting interference by a superior Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. The said judgment was set aside by the Supreme Court and the Appeal

² Civil Appeal No.7209 of 2008 decided on 02.12.2008

was allowed. The ratio of the aforesaid decision also does not aid and assist Mr. Kingare in the present case as reasons are given by the Trial Court herein.

9. In the present case, it is seen that the reasons which are arrived at in the Application dated 06.10.2018 are cogent reasons in the case of any Municipal Corporation and they cannot be disbelieved at all.

10. Hence, I am in agreement with the findings recorded by the learned Trial Court in allowing the said Application by order dated 03.06.2019 and I do not find any reason to interfere with the said order.

11. While departing, I need to mention that the present Writ Petition is nothing, but an abuse of the process of law by Mr. Kingare who appears in-person. He would contend that the Committee of this Court has permitted him to argue the matters in-person. I however do not find him rendering any assistance to the Court and he is unable to make any cogent submissions. I record this not merely because this matter appears today before me, but on the basis of him mentioning several Writ Petitions and proceedings which he has filed and which are pending in this Court in my Court. Hence, I cancel the permission which is granted by the Court Committee to Mr. Kingare and direct him to appoint an Advocate to represent him so as to ensure proper

assistance to the Court.

12. In so far as the present matter is concerned, as observed by me, the order dated 03.06.2019 is challenged by Mr. Kingare on 05.02.2024 and it is a sheer abuse of the process of law by the Writ Petitioner himself. One of the reason which is attributable to filing of such a Writ Petition is clearly to protract and delay the Suit proceedings.

13. In the present case, it is seen that Defendant – Corporation has issued a Demolition Notice of unauthorised structure in respect of the Suit property belonging to Mr. Kingare. I do not wish to delineate on these facts herein, but the reasons to file such Petition is clear so that the Defendant – Corporation is precluded from its defence.

14. I therefore conclude that the Petitioner himself is guilty of not observing due diligence of his own case and therefore he is directed to pay costs.

15. At this stage, Mr. Kingare would submit that he would like to withdraw the present Writ Petition. This clearly shows the mindset and conduct of the Petitioner. I reject his application for seeking withdrawal of the present Writ Petition after spending precious judicial time in hearing and dictating this order. He is directed to pay costs of Rs.5,000/- to the Kirtikar Law Library, High Court Mumbai within a

period of four weeks from today. Receipt of payment shall be placed on record before this Court after four weeks.

16. With the above directions, Writ Petition is dismissed.

17. Place the matter on Board for compliance on **26th March, 2024.**

[MILIND N. JADHAV, J.]

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by AJAY
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