

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.206 OF 2006
IN
MISCELLANEOUS APPLICATION NO.41 OF 1999

M/s. TAA Constructions

Petitioners
.. /Applicant

Versus

The Kalyan Agricultural Produce Marketing
Committee

.. Respondent

-
- Mr. Rajmani Varma i./by Udayshankar Samudrala, Advocate for Applicant.
 - Mr. Kirit Hakani a/w. Ms. Niyati Mankad, Mr. Advait Dalvi and Ms. Shreya Gosavi, Advocates for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 04, 2024

P.C.:

1. Heard Mr. Varma, learned Advocate for Applicant and Mr. Hakani, learned Advocate for Respondent.

2. On 22.12.2022, I had heard the parties and passed the following order:-

“1. Heard Mr. Chavan, learned Advocate for Applicant and Mr. Hakani, learned Advocate for Respondent for some time.

2. At the outset, Mr. Chavan submitted that since the challenge maintained in the Civil Revision Application is to an interlocutory order, the same would not be permissible and he has urged the Court to permit the Applicant to change the nomenclature of the present proceedings to a Writ Petition under Article 226 of Constitution of India.

3. To this, Mr. Hakani has objection and he submitted that it would not be permissible to the Applicant at this stage after a hiatus of almost 16 years to do so and particularly after the present Civil Revision Application having being heard by the Court on several

occasions earlier.

4. *Be that as it may, Mr. Chavan has placed on record a decision of the Supreme Court in the case of **Col. Anil Kak(Retd.) Vs. Municipal Corporation, Indore and Ors.**¹ and another decision of the learned Single Judge of this Court in the case of **Bholeshankar Awas Gruha Nirman Sahakari Sanstha Maryadit Vs. Omprakash s/o. Dwarkaprasad Malviya and Ors.**² and contended that the power to convert a proceeding would lie with the Court on its own even without making a formal application by the party in consonance with the statutory legal position.*

5. *Mr. Hakani has requested the Court to grant him some time to consider the aforesaid Judgments and make submissions accordingly on the next date.*

6. *Stand over to 5th January, 2023.”*

3. The same issue is reiterated before me today. However there is change of heart on the part of Mr. Hakani and he would submit that he has considered decision of the Supreme Court which has been noted in paragraph No.4 of the aforesaid order and leaves it to the discretion of the Court in so far as awarding of costs is concerned.

4. Mr. Hakani in his usual fairness would submit that costs can be decided by the Court and can be paid over to any institution. According to this Court, there can be no other institution other than the Kirtikar Law Library, High Court, Mumbai to whom costs should be paid as it would enure to the benefit of the legal community and young members (lawyers) of the Library who use the same. Costs are fixed at Rs.25,000/- to be paid to the Kirtikar Law Library, High Court, Mumbai which shall be paid by the Applicant within a period of one week from today.

5. This Court appreciates the gesture of Mr. Hakani in the present matter. In view of the above, the Applicant is permitted to withdraw Civil Revision Application No.206 of 2006 with leave of the Court to file a fresh civil Writ Petition for the same cause of action in this Court which shall be registered by the Registry on being filed. Needless to state that filing of the Writ Petition shall be subject to payment of costs which are directed by the Court.

6. Mr. Varma would submit that in addition to the documents exhibited to the Revision Application, liberty and leave may also be granted to the Applicant to append further documents which are also relevant. That leave is also granted by this Court. A complete copy of the Writ Petition as filed shall be served within a period of one week from date of its filing in this Court on the Respondent / Advocate for Respondent before obtaining any ad-interim urgent order. Mr. Verma assures the Court that fresh Writ Petition shall be filed within a period of four weeks from today.

7. With the above directions Civil Revision Application No.206 of 2006 is allowed to be withdrawn and stands disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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