

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 7856 OF 2024

M/s. Vaishnavi Engineers & Developers Pvt Ltd .. Petitioner

Versus

Hausabai Ramkrishna Mhatre & Ors. .. Respondents

-
- Ms. Priya Gajare for Petitioner

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 24, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 24.04.2024. Heard Ms. Gajare, learned Advocate for Petitioner.
3. Facts in the present case are peculiar. Ms. Gajare has drawn my attention to the order dated 20.04.2013 passed below Exh. 1 in RCS No. 782/2012 whereby on the Plaintiff in the said suit proceedings having filed a compromise pursis informing the Court that the matter was amicably settled between the Plaintiff and Defendants, he desires to unconditionally withdraw the suit. Learned Trial Court took on record the pursis below Exh. 38 and allowed the Suit to be disposed of as unconditionally withdrawn on 20.04.2013. After a hiatus of 9 years and 4 months, out of 5 Defendants namely original Defendant Nos. 2 to 5 i.e. 4 Defendants have filed Civil Misc. Application No. 70/2024 in

the Trial Court seeking a direction to recall and set aside the order dated 20.04.2013 on the ground that sufficient cause of action has arisen in so far as those Defendants are concerned on and from 19.01.2023. On the face of record itself, such a cause of action seeking recall of the order of withdrawal of the Suit is *prima facie* not maintainable at all. That apart delay and laches also are not explained. The said Civil Misc. Application seeking withdrawal of the order dated 20.04.2023 was filed after the delay of more than 9 years and 4 months. Hence the said Defendants filed Application seeking condonation of delay to file the said Application. That Application is at page No. 23 of the Writ Petition. That Application has been allowed by the learned Trial Court by the impugned order dated 22.02.2024 subject to payment of costs of Rs. 2000/- to the Plaintiff on the ground that the Defendants had pleaded that the Plaintiff had withdrawn the Suit by playing fraud thereby depriving rights of the Defendants. Save and except stating that such grounds are agitated by Defendants, there is nothing in the order in order to establish the element and facet of fraud. Though the provisions of Section 151 of the CPC encompasses inherent powers of the Court, such powers cannot be used in such a casual manner in which the learned Trial Court has used the said powers while determining the said Application without giving any

reasons or any discussion for condoning the humongous delay in the facts and circumstances of the present case.

4. An arguable case is made out by Ms. Gajare for issuance of notice and for stay of the order dated 22.02.2024. Hence, the order dated 22.02.2024 is stayed. Trial Court is directed to defer proceedings in CMA No. 70/2024 until the present Petition is determined.

5. In the meanwhile issue notice to the Respondents made returnable on 08.05.2024. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve copy of the Petition along with copy of this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioner.

6. Respondents are directed to remain present either themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, this Writ Petition shall be heard and disposed of at the stage of admission in the absence of the Respondents.

7. Stand over to 8th May, 2024.

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[MILIND N. JADHAV, J.]

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by RAVINDRA
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