

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6208 OF 2024

Rizvi Education Society and Anr. .. Petitioners
Versus
Pushpa Bhide and Anr. .. Respondents

WITH
WRIT PETITION NO.3660 OF 2021

Pushpa Bhide .. Petitioner
Versus
Rizvi Education Society and Ors. .. Respondents

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- Mr. Yashodeep Deshmukh a/w. Mr. Mahesh Mishra, Advocates for Petitioners in Writ Petition No.6208 of 2024 and Respondent Nos.1 and 2 in Writ Petition No.3660 of 2021.
 - Mr. Prashant P. Chaturvedi, Advocate for Respondent No.1 in Writ Petition No.6208 of 2024 and Petitioner in Writ Petition No.3660 of 2021.
 - Ms. Vrishali Raje, AGP for Respondent No.2 in Writ Petition No.6208 of 2024 and Respondent Nos.3 and 5 in Writ Petition No.3660 of 2021.

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CORAM : MILIND N. JADHAV, J.
DATE : SEPTEMBER 24, 2024

P.C.:

1. Heard Mr. Deshmukh, learned Advocate for Petitioners in Writ Petition No.6208 of 2024 and Respondent Nos.1 and 2 in Writ Petition No.3660 of 2021; Mr. Chaturvedi, learned Advocate for Respondent No.1 in Writ Petition No.6208 of 2024 and Petitioner in Writ Petition No.3660 of 2021 and Ms. Raje, learned AGP for Respondent No.2 in Writ Petition No.6208 of 2024 and Respondent

Nos.3 and 5 in Writ Petition No.3660 of 2021.

2. This Court is seized with hearing of Writ Petition No.6208 of 2024 filed by Rizvi Education Society and another to challenge twin orders, viz dated 04.12.2023 and 30.01.2024 passed by the City Civil Court and Additional Sessions Judge, Dindoshi, Mumbai which are appended at page Nos.35 and 36 of the Writ Petition. Since both these orders emanate from Execution proceedings in the Civil Court, challenge to them in Writ Petition pertains to the roster of this Court.

3. When this Writ Petition was heard by me on 08.05.2024, Mr. Prashant Chaturvedi, learned Advocate for Respondent No.1 namely Pushpa Bhide mentioned the matter and sought clubbing of Writ Petition No.3660 of 2021 alongwith present Writ Petition on the ground that both Writ Petitions pertained to the same cause of action. At that time, without realising the fact that challenge maintained in Writ Petition No.3660 of 2021 pertained to the order of the School Tribunal, considering that Respondent No.1 in the present Writ Petition was the Judgment Debtor, I passed order dated 08.05.2024, *inter alia*, directing listing of both the Writ Petitions on board together thereafter.

4. Both the Writ Petitions were thereafter heard by me on 10.05.2024 and adjourned from time-to-time for hearing as they could not be heard finally. Today when both the Writ Petitions are listed for

hearing and after I started hearing the Writ Petitions, I took up hearing of Writ Petition No.3660 of 2021 first at the request of parties. Perusal of the impugned order therein shows that said order dated 04.03.2020 has been passed by the School Tribunal. My present roster with respect to hearing matters pertaining to the Code of Civil Procedure, 1908 (for short '**CPC**') emanating from the Civil Court will not permit me to hear the challenge to the order of School Tribunal dated 04.03.2020 which is impugned in Writ Petition No.3660 of 2021. The said Writ Petition pertains to roster of another Court.

5. One of the reason for clubbing of the Writ Petitions was because in Writ Petition No.6208 of 2024 which I am hearing and it pertains to my roster, the order of issuance of attachment warrant in execution proceedings i.e. Regular Darkhast against the School Tribunal's order dated 04.03.2020 was passed by the City Civil Court and therefore in that view of the matter, the said challenge having been rejected by the learned City Civil Court was challenged by the Petitioner - Institution in Writ Petition No.6208 of 2024 before me.

6. In view of the above, Registry is directed to immediately place Writ Petition No.3660 of 2021 before the appropriate Court as per the assignment of the Court. Equally Writ Petitioner in Writ Petition No.3660 of 2021 is permitted by this Court to mention the said Petition alongwith a server copy of this order before the

appropriate Court for seeking directions. Needless to state that notice may be given by Writ Petitioner to all concerned parties including the learned AGP appearing for the State and Education Department.

7. In so far as challenge to issuance of attachment warrant by the twin orders dated 04.12.2023 and 30.01.2024 is concerned, the decision of this Court dated 30.07.2024 in the case of **Sunanda Wakhare V/s. Jaiwant Bhaguji Gadekar and Ors.**¹, comes to the assistance of the Writ Petitioner in Writ Petition No.3660 of 2021 who has filed the execution proceedings.

8. In that view of the matter, the directions contained in the twin orders dated 04.12.2023 and 30.01.2024 against the Respondent Nos.1 and 2 – Institution who are Writ Petitioners in Writ Petition No.6208 of 2024 are quashed and set aside. It shall be open to the Decree Holder who has filed the execution Application namely Darkhast No.61 of 2023 before the learned Executing Court to place the aforementioned decision in the case of **Sunanda Wakhare** (*first supra*) for consideration of the Court and apply to the said Court for appropriate directions to the State Government / Education Department as decided by this Court in accordance with law.

9. Mr. Chaturvedi has taken instructions from his client and would submit that he would make an appropriate application to the

¹ Writ Petition No.2243 of 2024.

Executing Court in Darkhast No.61 of 2023 for passing appropriate directions regarding payment of atleast 60% amount of backwages which has been granted by the School Tribunal as per the decision of this Court in case of **Sunanda Wakhare** (*first supra*) as the same is an admitted liability and not challenged by any of the Respondents.

10. He would submit that the said Application shall be filed within a period of one week from today before the Executing Court. If such an Application is made before the Executing Court in Darkhast No.61 of 2023, learned Executing Court is directed by this Court to decide the said Application as expeditiously as possible considering the sufferance of the Decree Holder since long and decide the same in accordance with law within a period of four weeks thereafter after hearing all concerned parties.

11. Mr. Chaturvedi points out to the Court that State Government is not a party to the Execution proceedings. Considering the decision of this Court in the case of **Sunanda Wakhare** (*first supra*), it would now be necessary for the Decree Holder to implead the State Government and the Education Department as party to the Execution proceedings and more specifically so when in order dated 04.03.2020 pertaining to the Petitioner in Writ Petition No.3660 of 2021 there are specific directions given to the parties and the State Government in the operative part of the said order.

12. In that view of the matter, learned Executing Court seized with hearing of Darkhast No.61 of 2023 is directed by this Court to permit the Applicant – Decree Holder to implead the State Government and Deputy Director of Education, Mumbai region as proper and necessary party to the Execution proceedings i.e. R. D. No.61 of 2023 so that it will enable the Decree Holder to obtain orders from the Executing Court.

13. Amendment be permitted to be carried out it within one week from today by the learned Executing Court to the Applicant therein. Copy of the execution application shall be served on the newly added Respondents / parties I.e. Deputy Director and State Government and thereafter execution Application shall be determined in accordance with law.

14. In view of the above order and further in view of the filing and pendency of Writ Petition No.3660 of 2021 seeking to maintain challenge to the backwages which have been denied by the School Tribunal to the Petitioner and in view of the today's order nothing survives in Writ Petition No.6208 of 2024.

15. One of the reason which persuades me to pass this order is because of the imprimatur of the Court in the case of **Sunanda Wakhare** (*first supra*) as also reliance by the Education Institution represented by Mr. Deshmukh on the decision of the Supreme Court in

case of **Educational Society, Tumsar and Others V/s. State of Maharashtra and Ors.**² which has been adequately dealt with by me in the aforesaid case.

16. In that view of the order, Writ Petition No.6208 of 2024 stands disposed.

17. All contentions of learned Government Pleader to argue the distinction with respect to the facts in the case of Supreme Court in case of **Educational Society, Tumsar and Others** (*second supra*) qua the facts of this case may be done before the appropriate Court hearing Writ Petition No.3660 of 2021.

18. With the above directions, Registry is directed to place Writ Petition No.3660 of 2021 before the appropriate Court as per assignment.

19. In view of the above, Writ Petition No.6208 of 2024 is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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² 2016 (3) SCC 512.