

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10613 OF 2024

Momin Zulfikar Kasam *....Petitioner*
V/s.

Dhondiba Vitthal Patil and Anr. *....Respondents*

WITH

WRIT PETITION NO.10623 OF 2024

Momin Zulfikar Kasam *....Petitioner*
V/s.

Mustaf Abbas Kureshi and Anr. *....Respondents*

WITH

WRIT PETITION NO.10622 OF 2024

Momin Zulfikar Kasam *....Petitioner*
V/s.

Mohan Rajaram Jadhav and Anr. *....Respondents*

WITH

WRIT PETITION NO.10620 OF 2024

Momin Zulfikar Kasam *....Petitioner*
V/s.

Lourdes Pais and Anr. *....Respondents*

WITH

WRIT PETITION NO.10618 OF 2024

Momin Zulfikar Kasam *....Petitioner*
V/s.

K.A. Govindraj
(deleted since deceased)

1(a) Smt. Merry Govindraaj and Ors.*Respondents*

WITH

WRIT PETITION NO.10617 OF 2024

Momin Zulfikar Kasam*Petitioner*
V/s.

Smt. Indira Tolasingh Bhandari and
Anr.*Respondents*

WITH

WRIT PETITION NO.10615 OF 2024

Momin Zulfikar Kasam*Petitioner*
V/s.

Dinanath Narayan Shetye and Anr.*Respondents*

WITH

WRIT PETITION NO.10625 OF 2024

Momin Zulfikar Kasam*Petitioner*
V/s.

Narayan Govind Naik and Anr.*Respondents*

WITH

WRIT PETITION NO.10626 OF 2024

Momin Zulfikar Kasam*Petitioner*
V/s.

Ramdas Parsharam Patil and Anr.*Respondents*

WITH

WRIT PETITION NO.10628 OF 2024

Momin Zulfikar Kasam*Petitioner*
V/s.

Raymond Caitan Dcruz and Anr.*Respondents*

WITH
WRIT PETITION NO.10630 OF 2024

Momin Zulfikar Kasam *....Petitioner*
V/s.

Sudesh Mukund Patkar and Anr. *....Respondents*

WITH
WRIT PETITION NO.10633 OF 2024

Momin Zulfikar Kasam *....Petitioner*
V/s.

Ajit Dhondu Karbhari and Anr. *....Respondents*

WITH
WRIT PETITION NO.10631 OF 2024

Momin Zulfikar Kasam *....Petitioner*
V/s.

Anselm John Ferreira and Anr. *....Respondents*

Mr. Pradeep Thorat *i/b. Ms Aditi Naikare for the Petitioner in all Petitions.*

Mr. Abhinav Chandrachud *with Ms. Jasmin Purani & Mr. Aman Arora i/b Agarwal & Dhanuka Legal Advocates, for Respondent No.1 in WP No.10613/2024.*

Mr. Aman Kacheria *with Ms. Jasmin Purani & Mr. Aman Arora i/b Agarwal & Dhanuka Legal Advocates, for Respondent No.1 in WP No.10623/2024, WP No.10622/2024, WP No.10620/2024, WP No.10618/2024, WP No.10615/202, WP No.10625/2024, WP No.10626/2024, WP No.10630/2024 & WP No.10631/2024.*

Mr. Pranil K. Sonawane *with Mr. Raj Chourasia & Mr. Deepak H., for Respondent No. 1 In WP No.10617/2024 and 10628/2024.*

Ms Nikita Vardhan i/b. *M/s. Kanga and Co. for Respondent No.2 in all Petitions.*

CORAM : SANDEEP V. MARNE, J.

Date : 5 AUGUST 2024.

P.C. :

1) Ms. Vardhan is permitted to file Vakalatnama on behalf of the Respondent No.2 since name of the Company Aventis Pharma Ltd. appears to have been changed to M/s. Sanofi India Ltd.

2) In these Petitions, orders passed by the Appellate Bench of the Small Causes Court on 6 May 2024 and 4 July 2024 are under challenge.

3) It appears that, similar order was passed on 6 May 2024 by the Appellate Bench of the Small Causes Court in the case of Momin Zulfikar Kasam Vs. Ajay Balkrishna Durve, which was subject matter of challenge before this Court in Writ Petition No.9256 of 2024. By allowing the said Writ Petition, this Court has set aside the order dated 6 May 2024 passed by the Appellate Bench of Small Causes Court.

4) In that view of the matter, the issues involved in the present Petitions are squarely covered by the judgment of this Court dated 9 July 2024 in ***Momin Zulfikar Kasam vs. Ajay Balkrishna Durve***¹.

5) It appears that the only additional issue that appears to have been decided by the Appellate Bench in its order dated 4 July 2024 is about

¹Writ Petition No. 9256 of 2024.

requirement of issuance of notice to the transferee. It appears that the Appellate Bench has taken note of the first proviso to Rule 16 Order XXI of the Code of Civil Procedure, 1908 which reads thus :-

“ Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution”.

6) Mr. Thorat would submit that the first proviso to Rule 16 would apply essentially when there is an assignment of decree and would have no application in case where there is a conveyance within the meaning of Explanation to Rule 16.

7) Dr. Chandrachud would on the other hand submit that the first proviso to Rule 16 not only covers transfer of assignment of decree but also an interest in the property. Rule 16 essentially applies to transfer of decree by assignment in writing and in that sense, the first proviso would obviously apply to transfer of decree by assignment. As against this, the Explanation added by way of amendment to Rule 16 covers situation which does not encompass transfer of decree by assignment but involve transfer of rights in the property. In my view therefore, in case of transfer of rights in the property, first proviso to Rule 16 of order XXI would have no application. To this extent again, the order passed by the Appellate Bench on 4 July 2024 suffers from an obvious error.

8) Dr. Chandrachud would highlight two more aspects while appearing for Respondent No.1 in Writ Petition No.10613 of 2024. Firstly,

he would submit that the Indenture of Conveyance dated 13 April 2023 refers to a recital under which the name of Avantis Pharma Ltd. is shown to have been changed to Sanofi India Ltd, who is the Vendor in the said Indenture. He would submit that as of now there is no material available on record to ascertain as to whether there is only change in the name or there has been any merger or acquisition. He would therefore submit that presence of the transferee company in the execution proceedings is therefore necessary. In my view, the submission appears to be too speculative in absence of any prima facie material to show that the case does not involve simple change of name of company from Avantis Pharma Ltd. to Sanofi India Ltd. The submission therefore deserves to be rejected.

9) The second submission of Dr. Chandrachud is about possible non-exclusion of the flat occupied by the Respondent in the Indenture of conveyance dated 13 April 2023. However, perusal of the fourth schedule to the Indenture describing the unsold flats in buildings AB, CD, EF, and wing - H shows that Flat No.D-6 occupied by Respondent Mr. Dhondiba Vitthal Patil is clearly reflected in the Indenture. Thus, the flat occupied by Respondent Dhondiba Vitthal Patil is clearly assigned by the Indenture in question. Therefore, second submission of Dr. Chandrachud also does not merit any consideration.

10) Mr. Sonawane the learned counsel appearing for Respondent in Writ Petition Nos. 10617 and 10628 of 2024 would additionally submit that order dated 19 April 2024 has also been challenged in the Revision Petitions filed by his clients whereas this Court has held in Judgment dated 9 July 2024 that there was no challenge to the orders dated 19 April 2024 in the Petition decided by this Court. In my view, this Court has

decided twin issues of requirement of assignment of decree to enable purchaser to seek execution thereof and the principles of *res judicata* applicable in various stages of execution proceedings. In my view therefore, mere inclusion of challenge to the order dated 19 April 2024 in the revision filed before the Appellate Bench would not be a reason for this Court to take the different view than the one taken in the Judgment dated 9 July 2024.

11) Mr. Sonawane would also submit that a Review Petition has been filed seeking review of order dated 9 July 2024. This again cannot be a reason for this Court not to decide the present Petitions by following the Judgment dated 9 July 2024.

12) After considering the overall conspectus of the case, I am of the view that since the issues involved in the present Petitions are squarely covered by the Judgment in ***Momin Zulfikar Kasam vs. Ajay Balkrishna Durve*** (supra), nothing further remains to be adjudicated in these Petitions.

13) Following the reasons adopted in “judgment of ***Momin Zulfikar Kasam vs. Ajay Balkrishna Durve*** (supra), the orders dated 6 May 2024 and 4 July 2024 passed by the Appellate Bench are set aside. Writ Petitions are allowed in above terms.

14) After the order is pronounced, Dr. Chandrachud, Mr. Sonawane and Mr. Kacheria would pray for stay of the operation of the order for a period of 8 weeks. The request is opposed by Mr. Thorat. Considering the nature of findings recorded in the Judgment dated 9 July 2024, the request for stay is rejected.

[SANDEEP V. MARNE, J.]