

HHS/ATU

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14723 OF 2024

Manish Jhunjhunwala

.. Petitioner

Versus

M/s. Prabhat General Agency and Ors.

.. Respondents

-
• Mr. Rushabh V. Thacker, Advocate for Petitioner.

CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 24, 2024

P.C.:

- 1.** Praeipie Mentioned.
- 2.** Heard Mr. Thacker, learned Advocate for Petitioner.
- 3.** Perused the praecipe dated 24.10.2024 and the orders dated 08.04.2024 and 22.10.2024.
- 4.** Praeipie dated 24.10.2024 is filed before me today seeking circulation of Writ Petition No.14723 of 2024. It is stated in the praecipe that said Writ Petition was mentioned before the Regular Court presiding in Court Room No.20 on 22.10.2024 and after hearing the parties at length, the Court was pleased to place the matter before the Bench presided by me on the assurance by the Advocate for the Plaintiff that the matter would be mentioned before me on Thursday, 24.10.2024.

5. Order dated 22.10.2024 appended to the praecipe reads thus:-

“ Heard learned Advocate for the petitioner-plaintiff and learned Advocate for the respondents-newly added defendants.

2. The trial Court has directed the plaintiff to carry out the amendment as permitted by this Court on 8 April 2024 (Coram: Milind Jadhav, J). The newly added defendants took objection that the amendment carried out by the petitioners is not as permitted by this Court.

3. According to learned Advocate for the petitioners, the submission of newly added defendants is recorded by this Court (Coram: Milind Jadhav, J) on 3 January 2024 describing defendant No.2 as a Karta of Shri Lacchiram Chudiwala HUF whereas learned Advocate for the respondents contend that this was not recorded in the order dated 8 April 2024 and hence not permissible.

4. Considering the above submissions, it will be better if this matter is placed before Justice Milind Jadhav.

5. The hearing of the suit is expedited and now the newly added defendants want to cross-examine the plaintiff. Plaintiff wants stay of the hearing of the suit. They assure that they will mention the matter before Justice Milind Jadhav on Thursday with the understanding that trial Court to adjourn the hearing of the Suit which is kept tomorrow.”

6. Paragraph No.4 of the order directs that it will be better if the matter is placed before this Court. Paragraph No.5 of the same order states that Plaintiff will mention the matter before me on Thursday i.e. today on the understanding that Trial Court would adjourn the hearing of the matter listed before it on 23.10.2024 (yesterday). Accordingly, the matter is mentioned before me today by Mr. Thacker, learned Advocate for Petitioner seeking circulation.

7. At the outset, it is stated that as per the current roster and assignment, the Writ Petition does not pertain to my assignment. Jurisdiction cannot be conferred by one bench of the High Court on another by a judicial order. If the parties are aggrieved by any order passed by any Court, remedy lies in filing an appropriate proceeding before that Court. Parties cannot approach the Court merely by filing a praecipe on the basis of a judicial order passed by the Court as in the present case.

8. As per clause '13' of the Note to the sitting list dated 03.10.2024 which stood partially modified on and from 07.10.2024, for assignment of matters to the previous bench a procedure has been prescribed. In that view of the matter, the direction contained in paragraph No.4 of the order dated 22.10.2024, *prima facie*, appears to be impermissible in law.

9. As held by the Division Bench of this Court (Coram: G.S. Patel and Madhav J. Jamdar, JJ.) in the case of ***Vasudev Darra and Ors. Vs. Registrar General and Ors.***¹, no Judge or Judges can give directions to the Registry for listing any case before him or them which runs contrary to the directions given by the Chief Justice unless it is so permitted after following the prescribed procedure in accordance with law. This is so because, if I have to hear the present Petition as per the direction contained in paragraph No.4 of the order dated 22.10.2024

¹ 2021 SCC Online Bom 5514

then any order passed by me will amount to a nullity and it will amount to have been passed without jurisdiction since my roster / assignment has changed w.e.f. 07.10.2024.

10. I am also guided by the findings and principles laid down by the Division Bench of this Court (Coram: Nitin Jamdar and Sarang V. Kotwal, JJ.) in the case of *Chaitya Shah Vs. Union of India and Ors.* dated 27.04.2023 (unreported) passed in Criminal Writ Petition No.940 of 2023.

11. In that view of the matter, directions given by the learned Judge in paragraph Nos.4 and 5 of the order dated 22.10.2024 are impermissible in law directing that it will be better if the Writ Petition No.14723 of 2024 is placed before me.

12. If it the case of the party to seek review of any order passed by me, an appropriate Application / Petition should be filed upon which the Review Petition can be placed before me in accordance with law.

13. In view of the above, I do not deem it fit to list the Writ Petition before me and hear the same at the behest of the Petitioner.

14. Praecipe stands rejected.

15. I request the Registry to place a copy of this Court before the learned Judge (Coram: S.M. Modak, J.), who has passed the order

dated 22.10.2024 alongwith a copy of the twin decisions passed by the Division Benches of this Court which are stated in the present order herein above for information.

16. Registry and parties are directed to take necessary steps to place the Writ Petition before the Regular Bench as per the current roster, unless so directed by the Hon'ble the Chief Justice.

Ajay

[MILIND N. JADHAV, J.]

AJAY
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Digitally signed
by AJAY
TRAMBAK
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Date: 2024.10.24
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