



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.2826 OF 2024
IN
WRIT PETITION NO.2761 OF 2015

Santacruz Ratnakar CHS Ltd.	...Applicant
<u>IN THE MATTER BETWEEN</u>	
Santacruz Ratnakar CHS Ltd.	...Petitioner
<u>Versus</u>	
Kamlakar Dhaklya Dhadge And Ors.	... Respondents

...

Adv. Gautam Ankhad a/w Adv. Mrunali Lanjewar i/b MDP Associates for the Petitioner.

Adv. Pratik B. Rahade i/b K. S. Patil for Respondent Nos. 1 to 4.

Adv. Prachi Tatake, Addl. GP a/w Nazia Sheikh, AGP for Respondent Nos. 5& 6.

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CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.

DATE : 14th DECEMBER, 2024

Per Court :-

1. Vide order dated 3rd April, 2024 the Petition was dismissed for default. This Interim Application is filed on 29th August, 2024. There are certain intervening events. For the purpose of condonation of delay, either a prayer needs to be added in this Application or a separate Application needs to be filed.

2. We would permit the Applicant to amend this Application and add a prayer for condonation of delay. Addition be carried out forthwith.

3. In so far as contents of the Interim Application are concerned, it is brought to our notice that on 3rd April, 2024, this Court [Nitin Jamdar (as his Lordship then was) and M. M. Sathaye, JJ.] passed the following order :-

“We place our displeasure on record for the manner in which the writ petition filed in the year 2015 is being prosecuted. We had passed the orders on 18 January, 2024 and 13 March 2024 in that regard.

2. The law firm continues to be on record for the Petitioner, but when the matter called, the learned Counsel, who appears for the Petitioner, has no instructions to argue the matter. No alternate arrangement is made. Such position cannot be countenanced.

3. The writ petition is dismissed for non-prosecution.”

4. Vide one more Interim Application No. 2257 of 2024, the present Applicant had put forth a completely different story thereby, contradicting the order dated 3rd April, 2024. This Court [Nitin Jamdar (as his Lordship then was) and M. M. Sathaye, JJ.] passed an order on 13th August, 2024 as under :-

“The Petition though dismissed for non-prosecution because the Advocate had no instructions to argue, the application filed for recall of the order contains pleadings to the contrary. The learned counsel for the Applicant states that a proper application would be filed tendering a apology. Leave is granted to withdraw the application to file a fresh application.

2. Interim Application is accordingly disposed of.”

5. An apology has been tendered by the Petitioner in paragraph No. 2 in the present Interim Application, which reads thus :-

(2) At the outset, the Applicant sincerely and unconditionally apologizes for its conduct which has caused the Hon’ble Court to pass the order dated 3rd April 2024. The Applicant states and submits that the Hon’ble Court be pleased to give an opportunity to have the captioned Petition adjudicated on merits.

The Applicant has an excellent case on merits. With a view to set out some mitigating factors, the Applicant invites the attention of the Hon’ble Court to the following whilst deciding the present application.

6. The learned Advocate representing Respondent Nos. 1 to 4 has vehemently opposed this Interim Application. He contends that the conduct of the Applicant-Petitioner is writ large on the record. This Application, therefore, does not deserve any consideration.

7. It is Apparent from the record before us that whatever has transpired hereinbefore, which events have been recorded in the

foregoing paragraphs, the issue would turn upon the lawyers/law firm which made such statements, inviting the displeasure of the Court, as reflected in its orders dated 3rd April, 2024 and 13th August, 2024. Nevertheless, a litigant ought not to suffer if his lawyer has behaved inappropriately or has made inappropriate statements or factually incorrect statements before the Court. The Petitioner ought not to suffer for the same.

8. Considering the above, we are of the view that, the Petition filed in 2015 needs to be heard in order to enable the Petitioner to canvass it's case. As such, **this Interim Application is allowed**. The delay is condoned.

9. Writ Petition No. 2761 of 2015 is restored at the stage at which it was dismissed.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)