

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14245 OF 2024
WITH
INTERIM APPLICATION NO. 15600 OF 2024

Vidya Sahyog & Anr. ... Petitioners
Vs.
The State of Maharashtra & Ors. ... Respondents

Mr. Rohan Surve for Petitioners.

Mr. Venkatesh Dhond, Senior Advocate with Ms. S. A. Prabhune, AGP for State.

Mr. Anil Sakhare, Senior Advocate with Mr. Ashok Tajane, Mr. Rohan Purpury and Mr. Yogesh Thorat for Respondent No.6/Applicant in IA.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
DATED: 18 MARCH 2025.

P.C.

1. Reply affidavit filed on behalf of respondent no.6 is taken on record.
2. On 03 March 2025, we had adjourned the proceedings for a longer period i.e. today, to enable the State to file reply affidavit to this petition. We categorically observed that in fact, we are surprised that the State Government had not filed any reply to the petition. This was almost for a reason considering the nature of cause brought before the Court in the present proceedings.
3. Today the State Government is represented by Mr. Dhond, learned senior counsel. He has fairly stated that the order dated 03 March 2025 is

not complied and reply affidavit is not filed. He seeks further extension to file reply affidavit. We also find that there is no interim application filed setting out any reason as to why the orders were not complied. In this view of the matter, we are bound by the decision of this Court in Writ Petition No. 9319 of 2022 dated 29 August 2024 wherein the Court had made the categorical observations on non-compliance of the orders passed by the Court in regard to filing of reply affidavit. The said observations are required to be noted which read thus:-

“1. It is seen from the record that the learned AGP and learned Advocate for respondent Nos.4 and 5 on 11 November 2022 sought time to take instructions and file reply, if necessary. The proceedings were stood over to 15 December 2022. Thereafter, the proceedings were listed before the Court on 19 June 2023 when the following order was passed issuing directions to file affidavit on or before 17 July 2023:-

“1. The learned AGP appearing on behalf of Respondent Nos.1 to 3, 6 & 7 as well as the learned advocate appearing on behalf of Respondent Nos.4 & 5 seek time to file an affidavit-in-reply to the above writ petition.

2. Acceding to their request, it is directed that the concerned Respondents mentioned above shall file their affidavit-in-reply to the above writ petition on or before 17th July, 2023 and serve a copy of the same on the advocates for the Petitioners.

3. Place the above writ petition on board for admission on 24th July, 2023.”

(emphasis supplied)

2. It is seen from the record that even on 2 January 2024 none of the respondents filed reply affidavits and had sought further time to file reply affidavits. Accordingly, the hearing on this petition was adjourned to 20 February 2024.

3. Today when the proceedings are listed again, an adjournment is sought by the State as also CIDCO to file reply affidavits.

4. In the above circumstances, when for a period of one year an order passed by this Court directing the respondents to file reply

affidavit is not being complied, we have no alternative but to impose costs. Thus, as a matter of last chance, liberty is granted to file reply affidavits not later than 12 September 2024, subject to payment of cost of Rs.10,000/- each to the petitioners. Stand over to 12 September 2024.

5. We are constrained to pass the aforesaid order as the prior orders passed by the co-ordinate Benches of this Court, setting out specific timelines to file reply affidavits are totally neglected when they were required to be complied. At no point of time during such a long period of more than one year any application was filed on behalf of the respondents seeking an extension of time to file reply affidavits, when the specific orders were staring at the respondents. As if it is a routine “mantra”, the learned AGP as also the learned Counsel for respondent Nos.4 and 5 are instructed to again seek time to file reply, which depicts a very sorry state-of-affairs on the part of the concerned department. In fact, non compliance of the orders passed by this Court and affidavit in reply not being filed, is something which can also be dealt in a different manner while adjudicating the present proceeding.

6. Considering repeated instances of such robotic approach of endless adjournments being sought to file reply affidavits, henceforth we are inclined to take a strict view of the matter more particularly when the orders passed by the Court directing the State/respondents to file reply affidavit within specific timelines are not being complied, unless there is a valid justification and an appropriate application is made in that regard seeking extension of time. In the event there is no justification, we shall not permit the request either for an adjournment or to file reply affidavits except on payment of costs.

7. We also have some doubt whether orders passed by the Court are informed to the concerned department, as in many cases such information is not being put up before the Court. The respondents cannot have an approach that the orders passed by this Court issuing such specific directions are rendered meaningless and the proceedings are to be listed only to be adjourned.

8. This order be forwarded by the learned AGP to the learned Advocate General as also to the learned Government Pleader on the Appellate Side as well as Original Side, so that with the modern I.T. facilities being available, a circular can be issued prescribing an effective procedure in regard to communication of Court orders and a prompt action to file reply affidavits, can be devised, for the office of the learned Government Pleaders (AS & OS) and more particularly when there are Court orders. This would ensure timely affidavits to be filed in compliance of the Court’s orders.

9. We may also observe that it has been accepted to be quite easy and/or casual for the respondents to seek time to file affidavits,

when it ought not to be so, when specific orders are passed by the Court. The present case is one such example of a casual approach. This also for the reason that when the petitioners are pursuing proceedings before the Court, they are represented by the Advocates and are incurring costs / expenses on the litigation on every possible listing when an adjournment is sought. The cost we have awarded in the present matter can never compensate the petitioners for the actual expenses which are being incurred by the petitioner in pursuing this petition. Such thought is completely overlooked and absent in the mind of the respondents when repeated adjournments are sought to file reply affidavits so to drag the proceedings without any justification. In fact the State Government is incurring enormous expenditure in paying legal fees in hundreds of matters on such unwarranted adjournments being sought, solely for the fault of the concerned department not providing timely instructions to file reply affidavits. Thus, looked from every angle, the situation of endless adjournments on such count, works against the interest of both the parties. In such circumstances, we also need to ponder as to henceforth should we adopt a realistic approach to compensate the petitioner for a reasonable cost of an adjournment and more particularly, when Senior Counsel are briefed and a high cost of litigation is incurred by the litigant?

10. In our opinion, such aspects are certainly required to be borne in mind while granting adjournments, failing which instead of weeding out such mechanical unwarranted adjournments, we would in fact nurture such culture which has already plagued the departments. Thus, in appropriate cases and when circumstances warrant, certainly the Court would be required to adopt realistic approach on such issues and pass orders to award cost.”

4. The Court in the said proceedings imposed cost of Rs. 10,000/- to be paid by the State to each of the petitioners. In our opinion, this is a fit case where reply affidavit was required to be filed well in time and more particularly when the petition was served on the State Government on 23 August 2024 and now we are in the month of March 2025. Only as a matter of indulgence, we accept the request of Mr. Dhond for an adjournment to file reply affidavit, so that the parties can be heard on all contentions. Let the same be filed before the adjourned date of hearing,

however, which shall be subject to payment of cost of Rs. 10,000/- to be deposited with the High Court Employees Medical Welfare Fund at Mumbai. Payment of cost shall be a condition precedent.

5. As Mr. Sakhare, learned senior counsel for respondent no.6 has pointed out that there is some prejudice being caused to respondent no.6 in view of the directions issued by this Court in paragraph 3 of the order dated 03 March 2025, we adjourn the proceedings to **26 March 2025 (H.O.B.)**. Let the reply affidavit be served on all the parties well in advance.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)