

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 10502 OF 2024

IN

INTERIM APPLICATION NO. 8010 OF 2024

IN

CIVIL REVISION APPLICATION NO. 474 OF 2023

Naushad Ahmed Asir Ahmed Ansari .. Applicant

In The Matter Between

Hayat Ahmed Asir Ahmed Ansari .. Applicant

Versus

Naushad Ahmed Asir Ahmed Ansari .. Respondent

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- Mr. Sujeet Kurup for Applicant
- Mr. Mutahhar Khan a/w Ms. Rutuja Patil, Ms. Divishada Desai & Masira Lulania i/by Negandhi Shah & Himayatullah for Respondent in present IA

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 05, 2025

P. C.:

1. Heard Mr. Kurup, learned Advocate for Applicant and Mr. Khan, learned Advocate for Respondent.

2. Present Interim Application is filed by Applicant for seeking modification of the order dated 21.06.2024 to the extent of persuading the Court to delete prayer clause (c) of the Interim Application which was granted by this Court. The order dated 21.06.2024 categorically records that the Interim Application was filed for seeking to set aside the order dated 28.02.2024 passed by the

learned Registrar (Judicial-II) thereby dismissing the principal Application i.e. Civil Revision Application No. 474 of 2023 for non-compliance of the directions contained in the said order which pertain to removal of office objections under Chapter 5 Rule 3(ii) of the Bombay High Court, Appellate Side Rules, 1960 (for short "**Rules**") which prescribes removal of office objections within 14 days. Rule (5) of Chapter V further provides that time for removal of office objections can be extended. If the said Rule is strictly applied by the Registrar (Judicial-II), it is a given that almost all cases lodged shall end up being dismissed. Therefore in such cases Application for restoration can be made to the Regular Court hearing the said matter as per roster.

3. In the present case, it is seen that in order dated 28.02.2024, Registrar granted one opportunity to the Applicant therein to remove the office objections without fail within a period of three weeks and on failure to do so a condition was imposed in the order that without reference to the Court of Registrar, registration shall stand refused and no further extension would be granted. When the matter was heard by me on 21.06.2024, Mr. Kurup for Respondent i.e. original Plaintiff who is now the Applicant before me in the present Interim Application appeared and opposed the Application. It is stated in the order itself

that despite his opposition, I was inclined to allow the Application in the interest of justice. The Application was allowed accordingly.

4. A grievance is made today in the present Interim Application that prayer (c) in that Application ought not to have been allowed. *Prima facie*, it is seen that prayer clause (c) pertains to the interim relief dated 13.07.2017 which was passed by this Court (Coram : Mridula Bhatkar, J.) upon restoration of the Civil Revision Application which was dismissed at an earlier point of time and subsequently restored by the Court. Mr. Kurup has drawn my attention to the order dated 13.07.2017 appended at page No. 19 of the Application and would argue that in that order, ad-interim relief was not granted. On perusal of the order, it is seen that the Court had stated that the proceedings i.e. Writ Petition which was the precursor petition to the present Civil Revision Application was stood over to 11.08.2017 and it was stated that till then, the Trial Court would not proceed with the recording of evidence. Hence *prima facie* ad-interim relief was granted by the Court as can be seen from the said order. I disagree with the submissions made by Mr. Kurup when he says that ad-interim relief was not granted by the Court. Thereafter Mr. Kurup has drawn my attention to the order dated 21.08.2023 which is appended at page No. 33 of the Application. He would argue that in that order also, ad-interim relief was not granted. On both dates it is seen that Mr. Kurup

has appeared for the Respondent before the Court. By maintaining a stoic silence the party cannot get away. Advocate for the Applicant is an officer of the Court first and his role and duty is towards the Court. If there is / was any ad-interim order passed earlier and it is not so stated or contained in the subsequent order which are passed, no advantage can be derived by any party if that is so.

5. Today to argue that ad-interim relief was not granted by the Court at any point of time and it is only during the interregnum when farad orders were passed between 22.03.2018 and 31.10.2023 there is a noting that ad-interim relief, if any, is continued is incorrect in the facts of this case. The said farad orders state that ad-interim relief, if any, to continue would therefore be inappropriate for an Advocate at the Bar to argue before the Court. Present Interim Application is nothing but an abuse of the due process of law in order to ensure that the trial of the matter does not proceed. It is an abuse of the process of law to ensure that substantive right of the Defendant being agitated initially in the Writ Petition and subsequently in the present Civil Revision Application is curtailed. After reading the orders passed which are appended at page Nos. 19 to 33, I do not have the slightest doubt in mind that ad-interim order was granted by this Court. In fact it was also continued thereafter. If by any one particular order i.e. order dated 21.08.2023, said ad-interim relief was not continued, it is

the duty of the Advocate who owes a duty to the Court to ensure that advantage of passing of such an order is not taken disadvantage of by any party. Present Application being a sheer abuse of the process of law stands dismissed.

6. The apparent reason as to why the Applicant - original Plaintiff before me is vehement in pursuing such a cause of action is apparent from the submissions stated in paragraph No. 8 of the Application. I find no reason to interfere or modify the order dated 21.06.2024. Though I am inclined to levy costs, Mr. Kurup's submissions being considered I decline to do so.

7. In view of the above, present Interim Application stands rejected and disposed.

Amberkar

[MILIND N. JADHAV, J.]

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