

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12365 OF 2024

Vishwadarshan Chemical Industries Ltd. And Anr
VERSUS
Ghodawat Education Serv. L. L. P. And Ors

Mr. Sumedh Modak a/w Mr. Vijay Killedar, for the petitioners
Ms. Tejas Kapre, AGP for the State

CORAM : SACHIN S. DESHMUKH, J.
DATE : 30th MARCH, 2026.

P. C. :

1. The Petitioners raise an exception to the order rendered by the learned District Judge-4, Kolhapur in Miscellaneous Civil Appeal No. 319 of 2023 endorsing the order of the Jt. Civil Judge Senior Division, Kolhapur below Exhibit 5 in Regular Civil Suit No. 899/2023 for declaration that the sale deeds in question are not binding upon them so also the injunction against the defendants from altering the nature of the suit properties.

2. While presenting the suit, the petitioners contended that the suit properties are agricultural lands, those were purchased by the company through its Chairman. These lands are dry lands and not

under cultivation. It is further contended that the petitioners who are the original plaintiffs never executed any power of attorney, however, in the month of May/June 2022, a revelation took place about the fact that the name of defendant nos. 1 and 2 are recorded in the revenue record. Upon inquiry, it has been further revealed that the properties are sold in favour of defendant nos. 1 and 2 by defendant nos. 5 and 6 in connivance with defendant no. 8. It is further contended that Sub-Registrar Office had refused to effect the registration of these sale deeds on 22/07/1998 for want of presence of executor.

3. It is thereafter, defendant nos. 5, 7 and 8, acting in connivance have executed these forged sale deeds and in the process, forged signatures are also effected. At no point of time, defendant no. 7 was authorised to execute the sale deed in question which is sham and bogus. As such, the petitioners have been deceived, resultantly, a report is lodged with Hatkanangale Police Station bearing no. 315.

4. It is further stated that consequent to the alleged sale deeds, even the names are effected in the revenue record. In the said

process, no notice was ever served upon the petitioners. As such, it is further contended that the petitioners have never handed over the possession. In any case, the defendants are not in lawful possession of the suit property. It is further contended that the petitioners attempted to resolve the issue with the help of mediators in order to avoid the litigation. The plaint accompanied with the application below Exhibit 5, seeking temporary injunction from forbearing the defendants from altering the nature of the suit. The same was contested by the contesting respondents. The Trial Court after considering the claim between the litigating sides, declined to exercise the discretion in favour of the petitioners.

5. Raising exception to the same, petitioners approached the learned District Judge-4, Kolhapur by presenting Miscellaneous Civil Appeal No. 319 of 2023, however, the same has resulted into dismissal endorsing the order of the learned Trial Court.

6. Learned counsel for the petitioners submits that the Trial Court *vis-a-vis* First Appellate Court have ignored the fact that the petitioners are lawful owners of the suit land. It was incumbent upon the Courts below to take into account the refusal of

registration of the sale deeds under section 34 of the Registration Act, 1908, since the sale deeds executed by defendant no. 7 of which the registration was rejected by the Sub-Registrar on account of absence of executant. This aspect has been completely ignored by the Courts below. Apart from the aforesaid aspect, even the illegal registration of the confirmation deed outside the jurisdiction i.e. Bombay has also been completely overlooked by both the Courts below, resulting into failure to recognize the significance of the jurisdictional issue with the Sub-Registrar's office which renders registration of the confirmation deed illegal. Even the Trial Court has misdirected itself while comparing the signature itself under Section 73 of the Indian Evidence Act, 1872.

7. Thus, the petitioners, being lawful owners, have a strong prima facie case and the attempt on the part of the respondents to create third party rights in the suit property would cause irreparable loss. In any case, the balance of convenience lies in favour of the petitioners. As such, the triple test of prima facie case, balance of convenience and irreparable loss is satisfied by the petitioners. As such, it was incumbent upon the Courts below to exercise the judicial discretion in favour of the petitioners. Having failed to do

so, the petitioners are before this Court. Therefore, the orders under challenge and the Petition presented by the petitioners warrant consideration by this Court.

8. *Per contra*, learned counsel for respondents has vehemently opposed the petition submitting that the inordinate and unexplained delay on the part of the petitioners, along with their conduct, dis-entitles them to claim any relief, much less, discretionary relief. The petitioners were aware of these material facts, however, the present suit has been instituted with deliberate suppression of the material facts. The notices were issued were confined to defendant nos. 1, 2, 5 and 6.

9. It is further submitted that although on the strength of the documents in question, the names of the defendants are effected in the revenue record, the petitioners have maintained silence. Apart from aforesaid aspects, the petitioners have contended that there was knowledge of these transactions in the plaint in the month of May/June 2022, however, initiating criminal prosecution in the year 2018 has not been disclosed in detail and the suit is filed after gap of 5 years. Apart from the aforesaid aspect, the petitioners have set

up their own son and daughter raising an exception to the mutation entry those are effected in the revenue record. The said aspect is also withheld and not disclosed by the petitioners. Thus, unexplained delay, coupled with the conduct of the petitioners while not disclosing the events that have occurred in the process, disentitles them to claim discretionary reliefs. As such, learned counsel for the respondents supported the order under challenge and prayed for dismissal of the petition.

10. Upon considering the rival contentions between the litigating sides, following are the undisputed facts:

I. Sub-Registrar had refused the registration on account of non appearance of the executant under Section 34 of the Registration Act, 1908 on 22/07/1998.

II. The registration of the confirmation deed is effected on 29/07/1998.

III. The sale deed is executed by respondent no. 8 in favour of respondent nos. 5 and 6 *vis-a-vis* sale deed is executed by respondent no. 7 in favour of respondent

no. 5 on 14/08/1998.

IV. The petitioners have reported these aspects to the police authorities which culminated into registration of F.I.R. No. **315/2018** and initiation of proceedings.

11. Thus, it is apparent that the petitioners while presenting the suit have failed to disclose these events either in the present Petition or in the original Plaint in entirety. Although the petitioners were conscious of the fact those are deliberately withheld by the petitioners.

12. It is obligatory for every litigant to disclose all the events leading to present the proceedings, no matter whether it is favouring the party which has approached the Court as has been held by Hon'ble Apex Court in the case of *K. D. Sharma V. Steel Authority of India and Ors*¹ in paragraph nos. 34, 35 and 36 which read as under:

“34 The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein

¹ (2008) 12 SCC 481

are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R. v. Kensington Income Tax Commissioners, (1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136 in the following words:

“It has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- it says facts, not law. He must not misstate the law if he can help it; the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the Court enforces that obligation is that if it finds out that the facts have

not been fully and fairly stated to it the Court will set aside any action which it has taken on the faith of the

imperfect statement”.

(emphasis supplied)

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating “We will not listen to your application because of what you have done”. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it.”

13. Thus, the party is under obligation to disclose other facts leading to present the proceedings. A perusal of the plaint indicates that the attempt of the petitioners is to consciously withheld certain events. The withholding of these facts is rather conscious act and it amounts to fraud upon the Court *vis-a-vis* litigating side, and in any

case, is in derogation with the process laid down by the Hon'ble Apex Court in the case of *S.P. Chengalvaraya Naidu (Dead) by Lrs. V Jagannath (Dead) by Lrs. & Ors²* and *K. D. Sharma* (supra). In the case of *S.P. Chengalvaraya Naidu*, the Apex Court has held that judgment/decree obtained by playing fraud on the Court is nullity.

14. In view of the aforestated peculiar facts and circumstances, the attempt of the petitioners to portray that the petitioners came to know about these transactions in the month of May/June 2022 is contrary to the record and even further withholding of the material fact that petitioners' reference to the registration of F.I.R. that although number of the report is given, however, consciously and deliberately the year of registration of the said F.I.R. in relation to Gat Nos. 363 and 364 is withheld by the petitioners in presenting the suit in paragraph 8 of the plaint which dis-entitles the petitioners to claim the reliefs, much less, discretionary reliefs in the nature of injunction.

15. Equally, the statement in the plaint that the petitioners have attempted to resolve the issue with the help of the mediators, runs contrary to the pleading put forth by the petitioners in the suit that

² (1994) 1 SCC 1

their knowledge is of May/June 2022 whereas the issue is raised in relation to the documents, those are of the year 1998. Thus unexplained delay equally dis-entitles the petitioners for the discretionary reliefs.

16. Apart from the aforesaid aspects, both the Courts below have applied the principles governing grant of interim relief as has been held by the Hon'ble Apex Court in the case of *Dalpatkumar and anr Vs. Prahlad Singh and Ors*³ particularly in paragraph 5 which reads as under:

“Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference

³ (1992) 1 SCC 719

by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

17. Applying the aforesaid principle, to the peculiar facts and circumstances and predominantly, the fact that the petitioners have

presented the suit after inordinate and unexplained delay and predominantly with material suppression of the facts, resultantly, the Trial Court after noting the conduct of suppression of vital facts, has declined to exercise the discretion in favour of the petitioners. The Appellate Court while endorsing the view of the Trial Court, has dismissed the Appeal.

18. As has been held by the Hon'ble Apex Court in the case of *Wander Ltd and anr Vs. Antox India P Ltd*⁴, the Trial Court has declined to exercise the discretion in favour of the petitioners and proceeding being essentially against the refusal to exercise the discretion by the Trial Court, for the reasons stated herein above, does not warrant reconsideration.

19. Resultantly, the petition sans merits. Accordingly, the same is dismissed.

20. The litigant who approaches the Court, undoubtedly is under obligation to make candid disclosure of each and every event leading to present proceedings. The petitioners undoubtedly have made serious departure with the said obligation not only while

4 1990 SUPP(1) SCC 727

presenting the suit but also while approaching to this Court by way of present petition.

21. There is no statement rather positive statement of disclosing the fact that the petitioners had taken recourse for initiating criminal proceedings against the contesting respondents herein in order to make candid disclosure in relation to proceedings initiated at the instance of son and daughter of the petitioner-chairman of the society.

22. Thus, in my considered view, to deprecate and deter such growing tendencies, the cost will have to be mulcted against the petitioners and same is quantified at Rs. 25,000/- (Rs. Twenty Five Thousand only) to be paid to Chhatrapati Pramilaraje Hospital, Kolhapur within period of four weeks.

23. Needless to clarify that these observations are confined to the decision on the application below Exhibit 5 and it will be open for the concerned Court to decide the matter on its own merit and material available on record.

IRESH
MASHAL

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[SACHIN S. DESHMUKH, J.]