

(2011) 02 BOM CK 0113

In the Bombay High Court

Case No : Writ Petition No. 9411 of 2010

Vishwanath P. Mahadeshwar

APPELLANT

Vs

Suryawanshi Balrup Thakur and Others

RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1A

Citation : (2011) 02 BOM CK 0113

Hon'ble Judges : B.R. Gavai, J

Bench : Single Bench

Advocate : R.K. Mendadkar, for the Appellant; Kirit Hakani, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Gavai, J.—By way of the present Petition, the Petitioner challenges the order passed by the learned Additional Chief Judge, Small Causes Court, Mumbai in Election Petition No. 147 of 2007 thereby rejecting the application filed by the Petitioner for amendment to the written statement.

2. It is not in dispute that during pendency of the present Petition, the Election Petition has already been allowed vide order dated 7th February 2011. However the learned Counsel for the Petitioner submits that the very approach of the learned Additional Chief Judge in deciding the said Election Petition during pendency of the present Petition is illegal. The learned Counsel for the Petitioner, relying on the judgment delivered by me in the case of Kishor Bhikansingh Rajput v. Preeti Kishor Rajput 2007(3) Bom.C.R. 279, submitted that once this Court is seized of the matter, the lower courts should stay their hands away from the proceedings. It is submitted that in spite of this judgment being brought to the notice of the learned Judge, the learned Judge has proceeded to decide the said Election petition which is not permissible in law.

3. In so far as the present Petition is concerned, it is filed on 29/11/2010. It appears that in the said matter, circulation was granted for 1/12/2010. However,

my learned brother Judge Shri. D B Bhosale, before whom the circulation was granted, directed the said matter to be filed before the appropriate Bench. On 13/12/2010 though the matter was not on board, production thereof was permitted at the request of the Petitioner. It will be relevant to reproduce the order passed by this Court on 13/12/2010 passed by my learned brother Judge Shri A S Oka which reads thus:

Not on board. Taken on board.

2) Learned Counsel for the Petitioner prays for ad interim relief as the Election Petition filed by the first Respondent is coming up tomorrow before the Court of Small Causes for pronouncement of judgment.

3) The challenge in this petition is to the order passed on application below exhibit 66. The application at exhibit 66 is made seeking permission to grant amendment to the written statement. It is not in dispute that the application at exhibit 66 was made after the final arguments in writing were submitted. Moreover, tomorrow the matter is fixed for pronouncement of judgment before the Court of Small Causes.

4) Hence, no case for grant of ad interim relief is made out. The prayer for grant of ad interim relief is, therefore, rejected.

4. It can clearly be seen that this Court has specifically refused the prayer for ad interim relief on 13th December 2010. The Election Petition has been decided on 7th February 2011. As such when the said Election Petition was decided the position was very clear, that this Court had refused the ad interim relief as prayed for by the Petitioner. As such there was no impediment in the way of the learned Additional Chief Judge to proceed further with the proceedings.

5. However, since the learned Counsel for the Petitioner has pressed into service my own judgment (cited supra) I find it appropriate to consider the submissions made in that behalf as it has been noticed that the said judgment is widely being misused by the litigants.

6. The facts in the said case were that the Petitioner husband ,who had filed matrimonial petition, had filed an application for amendment. The same was allowed by the learned Judge of the Family Court vide order dated 3rd March 2006. The consequential amendment was also carried out by the Respondent wife to her written statement. In view of the amended pleadings, an application for framing additional issues was filed by the Petitioner husband which was rejected vide order dated 15th September 2006. While dismissing the said application the learned Judge of the Family Court also disallowed the application for amendment which was already granted earlier. Within a short period, i.e. when the matter was fixed on 25th September 2006, the Petitioner had filed an application for adjournment on the ground that the Petitioner had already filed a writ petition challenging the order dated 15th September 2006 before this Court. However, the learned trial Judge rejected the application on the very same day.

Not only that the marriage petition filed by the Petitioner was also dismissed on the very same day. In this factual background I observed in Paras 7 and 8 thus:

7. Perusal of the record would reveal that the procedure adopted by the learned Family Court is totally unknown to law. Once amendment was allowed, it is difficult to understand under what provision the learned Family Court has disallowed the said amendment by a subsequent order while considering the application of the present Petitioner for framing additional issue. The approach adopted is totally perverse. From the perusal of the pleadings, it can also be seen that the additional issue which was sought to be framed was necessary in view of the amended pleadings.

8. Normally, when this Court is seized of the matter, it is expected of the subordinate courts to stay their hands away. It is difficult to understand as to what was an alarming urgency to proceed further and dismiss the petition when the learned Judge of the Family Court was very well aware that the order dated 15th September 2006 was challenged before this Court by the present Petitioner. No doubt, that the learned Family Court is right in observing that there was no stay by this Court. But as a matter of propriety and when the learned Judge was very much aware about pendency of the petition before this Court, the learned Judge ought to have stayed his hands away and waited till further orders to be passed by this Court. In that view of the matter, I am inclined to allow the petition.

7. Noticing that the approach adopted by the learned Family Court in disallowing the amendment which was already granted, when there was no occasion to pass such order, I expressed that normally, when this Court is seized 5 WP 9411/10 of the matter, it is expected of the subordinate courts to stay their hands away from the proceedings. While passing the said judgment I had taken into consideration the haste shown by the learned Judge of the Family Court in dismissing the marriage Petition itself, on the very same day when the learned Judge was aware that the order dated 15th September 2006 was challenged before this Court. It is to be noted that I had specifically observed that there was no stay by this Court but as a matter of propriety and when the learned Judge was very much aware of the pendency of the petition before this Court, the learned Judge ought to have stayed his hands away and waited till further orders passed by this Court.

8. It can therefore be seen that in the peculiar facts and circumstances and taking into consideration the conduct of the learned Judge in proceeding with the matter in haste and dismissing the marriage petition itself, though informed about the pendency of the proceedings before this Court, I was required to make the aforesaid observations.

9. However, it has come to notice that in several matters, the Petitions are filed before this Court challenging the interlocutory orders passed in the suits or other proceedings and after the Petitions are filed, by pointing out stamp number and even without circulating the matter before this Court, adjournments are sought

before the lower courts by pointing out to them my aforesaid judgment in Kishor Rajput's case, it is urged that since the matter is pending before this High Court, the trial Court should not proceed further with the matter. I am at pains to say that the aforesaid judgment in Kishor Rajput's case is being used as a tool to protract the proceedings by the litigants not interested to proceed with the matters before the lower courts. No doubt that if the order of the subordinate court is challenged before this Court and the subordinate court is informed about the pendency of the matter before this Court, it would be expected of the trial Court to stay its hands away for a period of a week or two, so as to enable the parties to get circulation before this Court and obtain appropriate orders. However, merely by filing the proceedings before this Court, the proceedings before the lower courts cannot be permitted to be protracted for months together at the interest of the litigants who neither circulate the matters before this Court nor get the interim order staying the proceedings.

10. In so far as the present Petition is concerned, even the said judgment would not be applicable to the Petitioner inasmuch as my learned brother Justice Shri A S Oka vide order dated 13th December 2010 had specifically refused the ad interim relief.

11. In any case, the Petitioner would be at liberty to challenge the order impugned in the present Petition in the proceedings that would be required to be taken by him, in view of the provisions of Order 43 Rule 1A of the CPC. The Petition is therefore dismissed except, what has been observed herein above.