

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL CONTEMPT PETITION (L.) NO.9 OF 2020
IN
COMMERCIAL EXECUTION APPLICATION NO.310 OF 2019

Manaj Tollway Private Limited ..Petitioner
V/s.
Rajendra Rahane Superintending
Engineer & Ors. ..Respondents

Mr. P.K. Dhakephalkar, Senior Advocate with Mr. Chirag Balsara, Mr. Shrinivas Bobde, Mr. Kartikeya Desai, Mr. Asadali Mazgaonwala and Ms. Sayli Shinde i/b Kartikeya & Asso. for Petitioner.

Mr. Anil Anturkar, Senior Advocate with Mr. Prathamesh Bhargude, Ms. Sugandha Deshmukh, Mr. Shubham Misar, Ms. Sheetal Mhatre and Mr. Ajinkya Udane i/b Mr. Ranjit Shinde for Respondent No. 1.

Mr. Aseen Naphade i/b Mr. Saakshal Relekar, Advocate for Respondent No.2.

Mr. Navroz Seervai, Senior Advocate with Ms. Neha Bhosale, Mr. Rohit Jadhav and Ms. Disha Parekh i/b NDB Law for Respondent no.3.

Mr. Kevic Setalvad, Senior Advocate with Mr. I.M. Acharya i/b Mr. Anish Khandekar, Advocates for Respondent No.4.

Ms. Jyoti Chavan, AGP for Respondent No.5.

CORAM : G.S.KULKARNI, J.
DATE : 24th FEBRUARY, 2020.

P.C.:

In pursuance of the last order passed by this Court, reply affidavits have been filed by respondent No.3 Mr. Manoj Saunik, Additional Chief Secretary, Public Works Department, respondent No.4 Mr. C.P. Joshi, Secretary, Public Works Department, and Mr. Ajit Sagne, who has deposed as under:-

“ I, Ajit Arvind Sagne, Government of Maharashtra, the

Respondent No. 5 above named, having my office at Secretary (Works), Public Works Department, Mantralaya, Madam Cama Road, Nariman Point, Mumbai-400032”

Ms.Chavan, learned AGP states that the said description is totally defective and that Mr.Ajit Sagne is the Secretary, Works. It is unfortunate that Mr.Ajit Sagne is not even bothered to read his own affidavit when he described himself as “Government of Maharashtra”, the inadvertence cannot extend to such negligence.

2. Be that as it may, the concern of the Court is in regard to these respondents filing affidavits making a totally incorrect and false statement in regard to the order dated 25 November 2019 passed by this Court adjourning the proceedings of the above interim application No. 1 of 2019. The Court at the request of learned Counsel for the parties passed the following order on 25 November 2019:-

“ By consent Stand Over to 02/12/2019”

3. In the facts of the present case, it is not only quite surprising, but shocking that the deponents of these affidavits have almost similarly worded the affidavit when they described the hearing held by this Court on 25 November 2019, when simplicitor execution proceedings were adjourned as

noted above for illustrate. The objectionable paragraph namely paragraph 5 of the affidavit of Mr.Manoj (Respondent No.3), Additional Chief Secretary, Public Works Department, is required to be noted which reads thus:-

“5. At the hearing held on 25th November 2019, the Hon’ble Bombay High Court directed that the Consent Terms be filed in this Hon’ble Court by 2nd December, 2019. It was observed that it was in public interest to settle the aforesaid claim at Rs. 358.79 Crores which translated to a saving to the public exchequer of Rs. 22,80,918/- as well as the future interest could be limited to interest at RBI rates on the unpaid amount. The same was communicated to the Petitioner vide letter dated 25th November, 2019”.

4. Verbatim averments are made in the above affidavit as noted above, filed by Mr.Ajit Sagne (Respondent No.5) in paragraph 14(v), also respondent No.4 Mr.C.P. Joshi, Secretary, Public Works Department has also incorporated an identical averment in his affidavit in paragraph 14(viii).

5. As noted above, all these averments in the affidavits of these parties are totally contrary to record and there is an impression when such averments are made and placed on record, these parties are actually indulging in creating a false record of the Court and which has to be taken to its logical conclusion more so considering that these are all public servants in the service of Government of Maharashtra. As to who has instructed them to make these averments which are not supported by any record of the Court is a matter which is required to be explained by them.

6. It however appears that in fact on 25 November 2019 as incorrectly represented by these respondents in their respective affidavits as noted above, there was something else which was happening at the level of Government of Maharashtra and which has been reflected by only one person namely Mr.Dhananjay Deshpande (respondent No.2) in his affidavit as stated by him in paragraph 4 which reads as under:-

“4. I say that the Secretary (PWD), Govt. of Maharashtra had directed vide order dated 25th November 2019 of the settlement reached between the PWD, Govt. of Maharashtra and the Petitioner. The Secretary (PWD) vide order dated 29th November 2019 authorized me to sign and file the mutually agreed Consent Terms in the Hon’ble High Court Bombay. I say that I am one of the signatories to the said Consent Terms. I have signed and executed the said Consent Terms on behalf of State of Maharashtra. The said Consent Terms were prepared and approved by the State Government and only upon the directions issued by the office of Secretary-PWD, Govt. of Maharashtra, Mantralaya to me that I had signed and executed the said Consent Terms. I have not unilaterally and /or without authorisation and approval of my superiors signed and executed the said Consent Terms and given undertakings to this Hon’ble Court.”

7. Mr.Rajendra Rahane (Respondent No.1) in his affidavit which is stated to be also on behalf of respondent No.5 in regard to what has happened on 25 November 2019 has stated as under:-

“26. After 22nd November 2019 there are 3 orders which are passed by the Honourable Court.

First order, is the order passed on 25th November 2019. That order was filed immediately after 4 days when the Honourable governor had passed the order, on 21st November 2019.

That order, was passed by the Honourable Court (Coram : Honourable Shri. Justice G. S. Kulkarni). Interestingly, on 25th November 2019 nobody brought to the notice of the Honourable Court also that the Honourable Governor has passed any order”

8. All this would clearly indicate that an incorrect record is sought to be created by the deponents of the said affidavits. Mr.Seervai, learned Senior Counsel for respondent No.3, Mr.Setalvad, learned Senior Counsel for Respondent No.4, Ms.Jyoti Chavan, learned AGP for respondent No.5 would state that their respective clients would file affidavits withdrawing the objectionable paragraphs and correct the record of the Court. They state that their clients would also tender an unconditional apology for making such averments. In my opinion, it is in the interest of justice that these respondents are permitted to file any affidavit they desire to place on record. As and when these affidavits are placed on record, the Court would consider as to whether such apology ought to be accepted or not and as to what appropriate orders can be passed on this issue.

9. It is with deep anguish and pain the averments as made in the respective affidavits are noted by the Court. If these averments of the respective respondents were to go unnoticed, it would have not only amounted to maintaining and permitting false record to be created, but also in this situation it would amounting to putting a premium on the dishonesty

of these respondents. Prima-facie it appears that these respondents are guilty of deposing to such false averments/statements which may amount to perjury. It would be also very difficult in these circumstances at this stage to show any laxity to these respondents. However, let these respondents explain appropriately as to how these averments have come and explain their unconditional apology as instantly expressed by Mr.Seervai, Mr.Setalvad and Ms.Chavan appearing for these respondents.

10. It is only Mr.Dhananjay Deshpande (respondent No.2) who was come with the correct case that it was not by the Court, but before the Government of Maharashtra on 25 November 2019 a direction was issued to bring about the settlement. It is surprising that none of the other respondents who are responsible servants of Government of Maharashtra were bothered to disclose that such were the orders passed by the Government of Maharashtra on 25 November 2019 and they sought it to attribute to the Court in making the kind of averments as noted above, when the Court had simplicitor adjourned the matter at the request of the parties.

11. Let such affidavits by these respondents/deponents be placed on record by tomorrow and circulated as suggested by Mr.Seervai, learned Senior Counsel for respondent No.3 and Mr.Setalvad, learned Senior Counsel for

respondent No.4.

12. By consent, list these proceedings for further hearing on 9 March 2020 on the supplementary board.

(G.S. KULKARNI, J.)