

CASE NO.:
Appeal (civil) 5735 of 2005

PETITIONER:
Ila Vipin Pandya

RESPONDENT:
Smita Ambalal Patel & Anr

DATE OF JUDGMENT: 01/05/2008

BENCH:
S.B. Sinha & V.S. Sirpurkar

JUDGMENT:
J U D G M E N T
"REPORTABLE"

CIVIL APPEAL NO.5735 OF 2005

V.S. SIRPURKAR, J.

1. The order passed by the Division Bench in an appeal against the order passed by the learned Single Judge of that Court is in question before us in this appeal. Respondent No.1 (Smita Ambalal Patel) had taken out the Chamber Summons in Testamentary Suit No.17 of 1996. By that summons she sought for the certified copies of Miscellaneous Application No.1 of 2004 in the Testamentary Suit as also the transcript of tape-recorded conversation between the appellant herein (Smt.Ila Pandya) and the respondent No.2 (Ms.Fereshte Sethna). The appellant had filed a Testamentary Petition No.132 of 1996 before the Bombay High Court for issuance of Letters of Administration in respect of the estate of her late husband, namely, Shri Vipin Dalsukram Pandya. In this suit the present respondent no.1 (Smita Ambalal Patel) had filed a caveat. Eventually the Testamentary Petition came to be converted into Testamentary Suit. Ila Pandya was being represented by respondent no.2 Ms.Fereshte Sethna in that suit. However, it seems that the appellant sought for discharge of her counsel in the case. This was objected to by the respondent no.2 who opposed the prayer of discharge. The appellant, therefore, had preferred a Chamber Order before the Prothonotary & Senior Master, High Court of Bombay and eventually the respondent no.2 was discharged by the order passed by the Additional Prothonotary & Senior Master dated 23.2.2004. In these proceedings respondent no.2 filed Miscellaneous Application No.1 of 2004 alleging therein that the appellant Ila Pandya had committed perjury and that an action should be taken against her. This was probably done as some allegations were made by the appellant against her erstwhile counsel, respondent no.2. The respondent no.2 in this application had also tendered two audio cassettes in support of her Miscellaneous Application No.1 of 2004.

2. The request made by the present respondent Smita Ambalal Patel in the Chamber Summons was resisted both by the appellant as well as the second respondent.

3. It seems that on 25th March, 2004 the High Court passed an order directing that the copies of the papers and proceedings in Miscellaneous Application No.1 of 2004 should be furnished only to the appellant and the respondent no.2. The respondent no.1 raised an objection to this by filing an application for speaking to the Minutes dated 5th May, 2004 which application was rejected by the High Court.

4. Even a praecipe was moved by Prothonotary & Senior Master before Justice S.K. Shah on 7.6.2004 due to numerous applications preferred by the respondent no.1 for inspection of documents pertaining to Miscellaneous Application No.1 of 2004 but the learned Single Judge declined to pass orders on this praecipe. It is, however, an admitted matter that even before that the respondent no.1 had already carried out

the inspection of the Miscellaneous Application No.1 of 2004.

5. It was on this background that the Chamber Summon was taken out by the respondent no.1 seeking the certified copy of Miscellaneous Application No.1 of 2004 in Testamentary Suit No.17 of 2006 and also for a direction to furnish to the respondent no.1 the transcript of the two audio cassettes in respect of tape recorded conversation held on Saturday, February 7, 2004 between Ila Pandya, the appellant herein and Ms.Fereshte Sethna, the respondent no.2 herein.

6. In her application, the respondent no.1 submitted that she had required the aforementioned documents for the purposes of producing in court particularly in this Court where the Special Leave Petition filed against the order passed by the High Court in Testamentary Suit No.17 of 1996 was pending. Needless to mention that by this time the Testamentary Suit No.17 of 1996 was already disposed of and the Special Leave Petition filed by the respondent no.1 was pending in this Court. We may state at this juncture that in the said Special Leave Petition leave was granted and the Civil Appeal arising out of the said SLP being Civil Appeal No.2455 of 2005 was disposed of by this Court dismissing the same by its judgment dated 17.5.2007.

7. The learned Single Judge before whom the Chamber Summons was moved rejected the same taking a view that Miscellaneous Application No.1 of 2004 was between the Advocate Ms.Fereshte Shethna and her client Smt.Ila Pandya and the respondent no.1 himself was not even party to the same and as such she was totally unconcerned with the Miscellaneous Application No.1 of 2004. The learned Single Judge also found that even earlier similar request made by the respondent no.1 herein was rejected and as such it was not necessary to accept her request for the supply of copies.

8. An appeal was filed before the Division Bench by the respondent no.1. The appeal was, however, partly allowed, in that the Division Bench allowed her to have a copy of the Miscellaneous Application No.1 of 2004 while it declined her request in respect of the transcript of the tape-recorded conversation in the audio cassettes. The Division Bench took the view that the said Miscellaneous Application was a part of record of the court in the Testamentary Suit where the respondent no.1 was a party. The Court, therefore, observed that when a party to the suit takes inspection and applies for a certified copy of the record, it is a duty cast under Section 76 of the Evidence Act on the court officer to make available the certified copies. According to the Division Bench this was entirely a matter between the court and the applicant. The Division Bench did note that the earlier application for certified copy was rejected but further took the view that the learned Single Judge had not rejected the second application on that ground alone but had also considered the merits of the case. According to the Division Bench the respondent no.2 (appellant before the Division Bench) had demonstrated her interest in the proceedings since her caveat was accepted and the court on that basis had converted the proceedings in a regular suit. It was also noted that even she had instituted the proceedings for administration of the estate of deceased Vipin Pandya. The court, therefore, took the view that the litigation was with regard to entitlement of the respondent no.1 on one side and the appellant on the other.

9. It is the abovesaid judgment which has been challenged by way of present appeal. Shri R.F. Nariman, Senior Advocate urges before us that the Division Bench was in error in ordering the copy of the Miscellaneous Application No.1 of 2004 to be supplied to respondent no.1 particularly when the respondent no.1 had surreptitiously obtained the inspection of the application even without notice to the present appellant or respondent no.2. Learned counsel further submits that in view of the fact that Title Suit No.17 of 1996 has already been, admittedly, disposed of under such circumstance that there will be no question of the copy of the Miscellaneous Application made in that suit being supplied to the respondent no.1. It is also pointed out by the learned counsel that the very idea of obtaining copy of the Miscellaneous Application was only to harass the applicant which was clear from her application for the certified copy. It is also pointed out that there was no question of supplying the copy now

more particularly because even the appeal against the judgment in Title Suit No.17 of 1996 is dismissed by this Court by a detailed judgment. It is pointed out by the learned counsel further that the unfair advantage would be conferred on the respondent no.1 and she would misuse the copy for harassing the appellant herein.

10. As against this the respondent no.1 who appeared in person vehemently urged that she was being harassed and that she had every right to obtain the copies of the Miscellaneous Application No.1 of 2004. During her marathon arguments she went on to the extent of attributing motives to the Advocates of the other side. She also gave the whole history of the litigation which had reached upto this Court earlier. In her written submissions she mainly complains against the judgment of this Court passed in Civil Appeal No.2455 of 2005. The whole arguments of the respondent were directed against the said judgment.

11. On this backdrop it is to be seen as to whether the judgment passed by the Division Bench can be sustained.

12. We must point out the relevant Rules of The Bombay High Court (Original Side) Rules, 1980. Chapter XIX deals with searches and certified copies. Rule 267 is for search and certified copies of the documents to a party to a suit or matter. The Rule runs as under:

"267. Search and certified copies of documents to a party to suit or matter - The Prothonotary and Senior Master shall, on the application of any party to a suit or matter, allow search or grant certified copies of all papers and proceedings in suit or matter, on payment of the prescribed fees and charges. When the party applies for a certified copy of a document on record, the Prothonotary and Senior Master may, in his discretion grant such copy."

Rule 268 deals with search and certified copies of the documents to a person not a party to suit or matter. The Rule reads as under:

"Search and certified copies of documents to a person not a party to suit or matter - The Prothonotary and Senior Master may, on the application of a person not a party to a suit or matter, on sufficient cause being shown, allow search or grant certified copies of such papers and proceedings in the suit or matter as the Prothonotary and Senior Master may think fit, on payment of the prescribed fee and charges. When such person applies for a certified copy of a part of document on record, the Prothonotary and Senior Master may, in his discretion, grant such copy."

Reading the above two Rules together, it appears that a clear distinction is made between the parties to the suit or matter and persons who are not parties to the suit or matter. Again the Rules clearly differentiate between a suit and the matter. While there is a clear cut right in favour of the party to the suit to get the search and certified copies, there is a discretion in Prothonotary and Senior Master whether to grant or not such search and/or certified copy to a person who is not a party to the suit or matter.

13. The Division Bench has held and in our opinion rightly, that the respondent no.1 though caveator in the beginning had become a party to the suit and was as such interested in the matter. It cannot be disputed that the Miscellaneous Application No.1 of 2004 was filed by the respondent no.2 Fereshte Sethna against the appellant herein praying therein for the action to be instituted against the appellant for perjury. The evidence by the appellant was given in the suit itself and, therefore, the respondent no.1 who was a contesting party against the appellant, was certainly interested person since the allegations of perjury were made against her adversary, the appellant herein. When the respondent no.1 sought for the certified copies, it was not necessary to decide the merits or the demerits of the Miscellaneous Application No.1 of 2004. If she had shown as to how she was interested in the Miscellaneous Application and if such interest was tangible, then even if she was not a party in the strict sense to the Miscellaneous Application No.1 of 2004, the Prothonotary and Senior Master could have, in his discretion, granted the certified copies of

the Miscellaneous Application No.1 of 2004. Though a view was taken by the learned Single Judge that she was not at all interested and she could not be interested, the Division Bench has shown as to how she would be interested in the Miscellaneous Application No.1 of 2004. Therefore, even if it is held that she was not a party to the matter, i.e., Miscellaneous Application No.1 of 2004, since she was a party to the suit out of which the Miscellaneous Application No.1 of 2004 emanated and as such the same could be treated as record of that suit, the Division Bench, in our opinion, was right in taking the view that she was entitled to the certified copies.

14. Shri Nariman, learned Senior Counsel, however, suggested that the only idea of having those copies was to harass and/or to misuse those copies against the appellant and it was only for that reason that the appellant was opposing the grant of certified copies of the Miscellaneous Application No.1 of 2004 to the respondent no.1. We do not think that there is any possibility of misuse. It has not been shown as to in what manner the respondent no.1 would be able to misuse the said documents. Shri Nariman, however, expressed his apprehension that the respondent no.1 would insist in joining the proceedings which were to follow the Miscellaneous Application No.1 of 2004. He, therefore, expressed that if the respondent is granted the certified copies, she would jump into the fray in Miscellaneous Application No.1 of 2004. The Division Bench has taken care of that matter. In paragraph 9 of its order, the Division Bench has expressed and in our opinion, very rightly that by mere grant of certified copies, it cannot be construed that respondent no.1 has a right to participate in the perjury application. The Division Bench has already directed that the said application should be heard along with the main suit. The Division Bench has also very rightly expressed that ultimately it would be for the learned Judge to decide the issue as to whether respondent no.1 can join the proceedings. That question had been left open. Again the Division Bench has clarified that the issue regarding the evidentiary value of papers and documents in the perjury proceedings was kept to be agitated by both sides. At this juncture, however, the main suit itself stands decided and the parties before us did not point out anything about Miscellaneous Application No.1 of 2004 nor was it pointed out as to whether it was still pending or not. But even if it is presumed that it is still pending, we make it clear that mere grant of certified copies in favour of the respondent no.1 itself would not entitle her to take part in the proceedings and confirm the action of the Division Bench of keeping that question open. As far as the misuse is concerned, we only have to observe that in case of its misuse, the court below would be fully free to deal with such complaint if made to it.

15. Since the respondent no.1 has not challenged the findings and the order regarding the audio cassettes, it is not necessary for us to consider that aspect.

16. Lastly we must note that in her marathon arguments, the respondent no.1 spent every ounce of her energy in pointing out to us that as to how the judgment of this Court in Civil Appeal No.2455 of 2005 was wrong and how she was wronged against. In support of her contentions she has relied upon the following decisions of this Court:

- i) Maganlal Chhaganlal (P) Ltd. V. Municipal Corporation of Greater Bombay & Others [(1974) 2 SCC 402];
- ii) Msr. Maneka Gandhi v. Union of India & Anr. [(1978) 1 SCC 248];
- iii) Bishnu Deo Shaw v. State of West Bengal [(1979) 3 SCC 714];
- iv) D.P. Chahda v. Triyugi Narain Mishra & Others [AIR 2001 SC 457];
- v) Harish Chandra Tiwari v. Baiju [AIR 2002 SC 548];
- vi) Shri Umed v. Raj Singh & Ors [(1975) 1 SCC 76];
- vii) Dhananjay Sharma v. State of Haryana [AIR 1995 SC 1795];
- viii) Ashwani Kumar Sharma v. Yaduvansh Singh & Ors. [AIR 1998 SC 337].

17. We have carefully seen all these cases. The cases at Serial Nos. (iv), (v) and (vii) pertain to Advocates misconduct. That is not the subject

of the litigation. We cannot accept any contention raised by the respondent against the judgment of this Court in Civil Appeal No. 2455 of 2005 which judgment is by a Coordinate Bench. We must at this juncture point out again even at the cost of repetition that the said judgment authored by Bedi, J. cannot be and will not be reviewed by us particularly in the present proceedings. At any rate, none of the judgments mentioned above are apposite to the present controversy which we have dealt with in the earlier paragraphs of this judgment. We, therefore, reject the contention by the respondent that we should look into the judgment in Civil Appeal No. 2455 of 2005 and review the same.

18. In the above backdrop we do not see any merits in the appeal and dismiss the same with costs quantified at Rs.10,000/-.