



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION (ST) NO. 26665 OF 2025

IN

WRIT PETITION NO. 6140 OF 2016

Kalpesh Rajendra Jain

Applicant / Orig.
.. Petitioner No.2

IN THE MATTER BETWEEN

~~Gaurishankar Govardhandas Todi~~
Since deceased, Through Heirs and LR.
Pramod Gaurishankar Todi and Ors.

.. Petitioners

Versus

~~Prabhavat Ramniklal Shah~~
Since deceased through Legal Heirs
Pratibha Shailesh Shah and Ors.

.. Respondents

WITH

WRIT PETITION NO. 6140 OF 2016

~~Gaurishankar Govardhandas Todi~~
Since deceased, Through Heirs and LR.
Pramod Gaurishankar Todi and Ors.

.. Petitioners

Versus

~~Prabhavati Ramniklal Shah~~
Since deceased through Legal Heirs
Pratibha Shailesh Shah and Ors.

.. Respondents

WITH

WRIT PETITION NO. 6141 OF 2016

~~Gaurishankar Govardhandas Todi~~
Since deceased, Through Heirs and LR.
Pramod Gaurishankar Todi and Ors.

.. Petitioners

Versus

~~Prabhavati Ramniklal Shah~~
Since deceased through Legal Heirs
Pratibha Shailesh Shah and Ors.

.. Respondents

WITH

WRIT PETITION NO. 6169 OF 2016

~~Gaurishankar Govardhandas Todi~~
Since deceased, Through Heirs and LR.

.. Petitioners

Pramod Gaurishankar Todi and Ors.

Versus

~~Prabhavati Ramniklal Shah~~

Since deceased through Legal Heirs

Pratibha Shailesh Shah and Ors.

.. Respondents

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- Mr. Vijay Kurle a/w. Mr. Jayendra Manchekar, Advocates for Applicant – Petitioner No.2.
 - Mr. Pravin Samdani, Senior Advocate a/w. Mr. Aditya Shiralkar, Mani Thevar, Advocates i/by M/s. Ganesh @ Co. for Respondent Nos.1(a) to 1(c).
 - Mr. Nimesh Bhatt, Advocate for Respondent No.2.

.....

CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 13, 2025.

P.C.:

1. Heard Mr. Kurle, learned Advocate for Applicant in Interim Application; Mr. Samdani, learned Senior Advocate for Respondent Nos.1(a) to 1(c) and Mr. Bhatt, learned Advocate for Respondent No.2.

2. Interim Application is filed by Applicant – Original Petitioner No.2 for recusal from hearing the above captioned Writ Petitions by this Court. All three Writ Petitions are filed in the year 2016 and they were admitted on 10.04.2024 by this Court (Coram: Amit Borkar, J.). Writ Petitions arise out of proceedings initiated under Sections 70B, 43 and 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short '**the said Act**').

3. According to Applicant since the Writ Petitions are admitted they ought to be heard only in the ordinary course of business.

Applicant is aggrieved because in April and May 2025 the Writ Petitions were listed before my predecessor Court (Coram: Sandeep V. Marne, J.) when the assignment was with that Court on 07.03.2025 and 02.05.2025. On 09.05.2025 that Court passed the following order and posted the matters for hearing to 20.06.2025.

“1) The Petitions were specifically fixed today for final hearing in view of urgency made out by the contesting Respondents. However, when the Petitions are called out for final hearing, it is brought to the notice of the Court that the Advocate on record, who used to represent Petitioners has returned the brief and arrangements are being made for engagement of a new advocate. It was made clear to the advocate for the Petitioners on 2 May 2025 that the Petitions would be taken up for final hearing on 9 May 2025 without entertaining a request for adjournment. In that view of the matter, change of advocate at this juncture is something, which this Court would ordinarily not approve. However, by way of indulgence and last chance, final hearing of the Petitions is deferred till 20 June 2025.

2) Interim relief granted earlier shall continue only till the next date of hearing.”

4. Petitions were adjourned to 20.06.2025 for final hearing. On 20.06.2025, Petitions did not reach hearing, therefore Advocate for Respondent Nos.1(a) to 1(c) moved this Court by praecipe dated 03.07.2025 stating that one contesting Respondent is 87 years old and pointed out order dated 09.05.2025 and therefore sought listing of Petitions before this Bench. Accordingly adhering to the request made and in view of the order dated 09.05.2025, the Petitions were listed on 07.07.2025.

5. When Petitions reached hearing on 07.07.2025, learned Advocate for Petitioners refused to argue and persuaded the Court to adjourn the matters to another date on the ground that Respondents' Advocate moved the praecipe dated 03.07.2025 behind its back and the Court listed the matters on 07.07.2025 without their knowledge and consent. Due to this reason and looking into the previous order and on finding that Advocate for Petitioners was unwilling to answer any of the questions asked by the Court, which find mention in the order, the Petitions were adjourned to 21.07.2025 to enable the Advocate for Petitioners to get ready in the matters and argue on the adjourned date. On 21.07.2025, Advocate for Petitioners did not appear. However Petitioner No.2 appeared in-person alongwith his father and informed the Court their Advocate has refused to appear on their behalf and informed the Court that on 17.07.2025, Petitioner No.2 has filed a complaint before the Chief Justice of this Court and Chief Justice of India to initiate criminal prosecution against this Court and the previous Court (Coram: Sandeep V. Marne) on various grounds which are serious; viz, bribery and corruption. Hence Petitioner No.2 persuaded the Court to not hear the matters and adjourn them. After hearing Petitioner No.2, on 21.07.2025, following order was passed and the matters were adjourned to 04.08.2025 for hearing:-

“1. Heard Petitioner No.2 in-person; Mr. Samdani, learned Senior Advocate for Respondent s.1(a) to 1(c) and Mr. Bhatt, learned Advocate for Respondent No.2.

2. One Mr. Rajendra Hamirmal Jain and his son Mr. Kalpesh Rajendra Jain have appeared before me when Writ Petitions are called out for hearing Kalpesh Rajendra Jain is Petitioner No.2. They both would submit that even though they are aware that Writ Petitions are listed for final hearing, they would submit that their Advocate has refused to appear in this Court for them. They would submit that they have prepared written complaint on behalf of Petitioners dated 17.07.2025 giving reasons as to why this Court should not hear the Petitions.

3. Prima facie, when the said submissions are read, the allegations made against the Court are extremely serious. In fact when the allegations are read further allegations are made to initiate criminal prosecution against not only this Court but also the previous Court which has passed orders for hearing and listing of the present Petitions in April and May – 2025.

4. Copy of the said complaint is submitted to the Hon’ble the Chief Justice as informed by Mr. Kalpesh Rajendra Jain. I direct the complaint copy which is given to me today be placed before the Registrar General of this Court for taking appropriate action against the said persons namely Mr. Rajendra Hamirmal Jain and his son Mr. Kalpesh Rajendra Jain in accordance with law.

5. Be that as it may, a request is made by both persons to adjourn the matters to enable them to engage another lawyer. Both of them would inform the Court that they shall engage a new lawyer within a period of two weeks from today. In the meanwhile, the action that would have to be taken against them shall not wait and Registrar General is directed to take appropriate action in accordance with law on the basis of the allegations contained in the letter dated 17.07.2025 or make an appropriate report to this Court.

6. Mr. Samdani, learned Senior Advocate appearing for the contesting Respondents has vehemently opposed to the adjournment to be granted to Petitioners. He would submit that conduct of those appearing on behalf of Petitioners is documented by this Court in the previous orders passed by this Court and therefore time and again repeated requests are made and they do not want the matters to be heard finally and enjoy the interim order passed by the Court earlier.

7. Today when the Advocate for Petitioners is not present and a request is made to the Court by Petitioner No.2 and his father, I am inclined to give one final opportunity to Petitioners to engage a new Advocate so that the Petitioners’ side can be placed before the Court. However, the Petitioners are informed that no further adjournment shall be granted in the Writ Petitions considering the previous orders passed by this Court as the Petitions will be heard on their own merits.

8. A plea is made by the aforesaid two persons to continue to

the ad-interim relief granted by this Court till then. Before continuing ad-interim relief, I would like to know who the two gentlemen before me today representing and espousing the cause of Petitioners are. Hence, I have asked the question to both of them. Both the gentlemen would inform the Court that they are successors-in-title. Mr. Samdani would immediately assist the Court and inform that Mr. Kalpesh Rajendra Jain is Petitioner No.2 who is the purchaser of the plot from the original Todi family members.

9. Be that as it may, that will be considered when the Petitions are heard finally by this Court strictly on merits. For the present the ad-interim / interim relief granted earlier shall be continued only for a period of two weeks from today.

10. Mr. Kalpesh Rajendra Jain has misbehaved with the Court by informing the Court that Petitions were mentioned behind his back by Respondents for listing. However, I find from the record that it is not so and Petitions were itself adjourned to 20.06.2025 on by order dated 09.05.2025 (by the previous Court).

11. Petitions were listed before this Court on 07.07.2025 and mentioned by Petitioners on 09.07.2025 and appropriate orders were passed.

12. Be that as it may, as a last and final opportunity the aforesaid order is passed and no further excuse for further adjournments on behalf of Petitioners shall be entertained by this Court considering that Petitions are to be heard as per the current roster of this Court.

*13. Stand over to **04th August, 2025**. To be listed under the caption **'First on Board'**."*

6. The matters reached hearing on Monday i.e. on 04.08.2025.

Since Mr. Kurle appeared on VC and there were certain connectivity issues, Court requested Mr. Kurle to come to the Court physically to argue the matters either on that day or the following day. At his request the matters were listed for hearing on 06.08.2025.

7. When the matters are called out for hearing on 06.08.2025, Mr. Kurle has placed a copy of Interim Application filed online in this Court by Petitioner No.2 on 30.07.2025 before me. He, in his usual

fairness on instructions submitted that Interim Application be heard and appropriate order be passed therein for the satisfaction of the Applicant. The Interim Application seeks recusal of this Court and calls upon the Court to pass the order “Not Before Me”. Interim Application also seeks further direction to place the matters before another Court. Granting the relief is incidentally not in my domain. I have perused the Interim Application and heard Mr. Kurle regarding the prayer of recusal and posted the Interim Application for passing of order today.

8. I must note that, Mr. Kurle has been brief in making his submissions on the 5 grounds on which recusal is sought. Mr. Samdani, learned Senior Advocate for Respondents was asked by the Court if he desired to file any reply, but he declined and informed the Court to hear the Interim Application and decide the same.

9. At the outset, it needs to be stated that the present group of three Writ Petitions are listed on the roster of this Court as per the roster assigned to this Court since June, 2025 onwards by the Hon’ble the Chief Justice. Record shows that the Writ Petitions were listed on 20.06.2025 in view of the order dated 09.05.2025 passed by the previous Court. Hence listing of Petitions before this Court has not been on account of this Court directing listing of the said matters out of turn. Applicant seeks recusal of this Court from hearing the Petitions on 5 grounds stated on page Nos.6, 7 and 8 of the Application. The

grounds are stated in brief without any details or specifics, save and except one complaint dated 17.07.2025 filed by Applicant which is the basis for seeking recusal. I will deal with that complaint also.

10. The first ground according to Petitioners is violation of principles of natural justice. According to Petitioners as they are enjoying the protection of an interim injunction, hearing of the three Writ Petitions out of turn without notice to Petitioners should not be allowed which denies them the right to a fair hearing to oppose the Application for fixing of date of Respondents. According to Petitioners listing and hearing without notice undermines procedural fairness essential for a just adjudication.

10.1. This ground on the face of record is *prima facie* incorrect as the Petitions were not listed on 20.06.2025 at the behest of Respondents' Application. They were listed because of the previous order dated 09.05.2025 passed by the previous Court. Secondly, when Application for listing of matters is made, it is the discretion of the Court to pass appropriate directions considering the exigencies mentioned by the litigants and accordingly list the matter. In the present case Writ Petitions were listed on 07.07.2025 as they did not reach hearing on 20.06.2025 as this Court was moved by praecipe dated 03.07.2025.

10.2. Further it needs to be reiterated that after Petitions were listed for hearing on 07.07.2025 this Court has never denied the fundamental right of hearing to the Petitioners. Infact Petitioners' Advocate did not wish to argue the matters and repeatedly stated again and again that as they are enjoying interim order against the Respondents and before listing the matters for hearing, they should have been heard so that they could have opposed / submitted their say on the early listing application.

10.3. Petitioners cannot decide the course of action of the Court and should not interfere with the discretion and prerogative of this Court. Petitioners or their Advocate are never denied the opportunity of hearing by this Court. Even today Petitioners are unwilling to argue their Petitions and are requesting for adjournment and recusal of the Court from hearing these matters and have told the Court to pass order on their Interim Application. From the above, it is seen that Petitioners have never been denied the opportunity of hearing but it is on their account that the matters have been adjourned. Hence, this ground does not survive and stand rejected.

11. The second ground according to Petitioners is pendency of the complaint filed against this Court and the previous Court due to which it creates apprehension of bias in the mind of Petitioners. This complaint dated 17.07.2025 is filed by Petitioner No.2. The premise of

the said complaint is that criminal action should be initiated against both Courts for bribery and corruption. This is a very serious charge without any specifics and details given.

11.1. The allegations in the complaint are *prima facie* scurrilous and the exact words used verbatim in the complaint dated 17.07.2025 are as follows:-

- (i) *“Request for Immediate Suspension, Departmental Action and Criminal Prosecution of Hon Judges – Shri JUSTICE SANDEEP V. MARNE& Shri JUSTICE MILIND N JADHAV, Wilful and Deliberate conduct and accepting bribe thereby allowing an Admitted matter (Rule Issue by an order dated 10/4/2024) to listed and heard while the Writ Petition No: 6169 of 2016, 6140 of 2016 & 6141 of 2016 despite no urgency and by pressurizing the appearing advocate and making fun and jokes in court room on serious issues of threats to my life from Pakistan Calls.”;*
- (ii) *“Surprisingly the 2 judges of the Hon Bombay High Court in their selective wisdom, driven by corruption embarked on a journey to play fraud to benefit the respondents as will be explained further.”;*
- (iii) *“My father Called me and I am writing this letter for urgent action against Justice Marne and Justice Milind Jadhav, Adv Sandesh Patil, Dilip Gheware.aur .Anand Agarwal... aur Rtd Judge Mohit Shah And if something happens to me or my father then the above named persons are responsible for it”;*
- (iv) *“Iss property ka court ka kam aur Judge Marne ko bhi control mai hai”. “Ap please 5 crores le lo nahintoh Anand Agarwal 5 crore Judge ko de kar set karlega aur tumhare khilaf order kar lega.” and*
- (v) *“... aur Rtd Judge Mohit Shah ne Judge Jadhav Sir ko*

manage kiy hai aur who hamare sath hai. And sirf 3 crore mai saudhahua hai.”;

11.2. The aforesaid allegations made in the complaint dated 17.07.2025 are extremely serious on the face of record. They are *prima facie* unsubstantiated and are made only to browbeat the Court into submission and nothing else and pass the order “Not Before Me”. Such allegations can never be allowed to be perpetrated against sitting Judges and the Judges will not cow down with such baseless allegations.

11.3. No details of the allegations are stated in the complaint. Copy of complaint was placed before me on the previous date. I have passed order dated 21.07.2025 thereon. Serious and unsubstantiated insinuations and allegations are made against two sitting Judges of this Court holding the roster for hearing of the Civil Writ Petitions. To answer this ground for recusal, it is seen from the complaint that Applicant has stated in the complaint that he received three threat phone calls on 08.02.2025, 16.04.2025 and 19.04.2025 from foreign numbers / shores regarding the subject case and therefore he filed the complaint. The complaint is filed on 17.07.2025. On the face of record itself this ground fails since this Court was never the roster Court from February, 2025 to May, 2025 when the alleged threat phone calls were received by Petitioners during the period between February to April 2025. Therefore to allege reasonable apprehension of bias by filing

such a blatantly false complaint against this Court cannot be accepted nor it is admissible on Petitioners' own case. The reason of reasonable apprehension of bias therefore is unsubstantiated and merely stated in the Application. It is completely vague and insufficient. Hence this ground is unsustainable and is dismissed on Petitioners' own facts pleaded in the complaint.

12. The third ground according to Petitioners is that because this Court has directed enquiry against the Applicant in the order dated 21.07.2025, Petitions should not be heard by this Court. The order dated 21.07.2025 pertains to the alleged complaint placed on record. Reference in the complaint is made against two Courts for commission of bribery and corruption and to link it with Petitioners having received threat calls from Karachi, Pakistan in February and April, 2025. This Court was never ever seized with hearing of the three Petitions in February and April 2025. By change of roster assigned by the Hon'ble the Chief Justice the Petitions were listed before this Court from June, 2025 onwards. This Court therefore fails to understand how such an allegation of bribery and corruption is alleged against this Court. In the complaint it is seen that every document appended thereto, *inter alia*, pertains to the period prior to June 2025. Therefore if that be the situation, there was no option available to this Court than directing taking action against the said complaint in accordance with law. The order dated 21.07.2025 clearly records that Petitions were listed in

June 2025 due to order passed by the previous Court. Further in paragraph No.5 of the order dated 21.07.2025 it is clearly recorded that Petitioner – Applicant made a request to adjourn the matters to enable them to engage a new Advocate and grant them two weeks time for the same.

12.1. It is pleaded by the Applicant that he has not received any order on his complaint and hence he seeks an adjournment in the three Petitions. I have made it clear that so far as hearing of present Writ Petitions is concerned, parties have to be ready for arguing the same as this Court is not precluded from hearing the Petitions on their own merits. Therefore conduct of Applicant as stated in the order dated 21.07.2025 and direction given for enquiry do not have any nexus with hearing of the present Petitions. If contention of Petitioners / Applicant is countenanced, then every litigant shall plead recusal according to his choice and whims. There has to be an element of fact *prima facie* seen on record to allege such bias and reasonable doubt which is clearly absent in the present case. Hence this ground is completely vague and insufficient and hence stands rejected.

13. The fourth ground according to Petitioners is breach of judicial discipline and binding precedent. It is argued by Applicant that by hearing the Petitions when they are specifically listed for directions this Court has acted in clear disregard of procedure. Save and except

stating this statement, no other details are given. On 07.07.2025, this Court in paragraph No.5 of its order has recorded as under:-

“5. I have impressed upon Mr. Kadam to justify the basis of Petitioner’s tenancy in the subject premises. Prima facie he is not in a position to show to the Court whether Petitioners / their predecessors are / were purchasers or they are / were occupants and cultivators of the land on tillers day or whether they made any application for deemed tenancy under Section 32G or have paid the sale price fixed by the ALT or 32M Certificate issued in their favour or whether they are shown as holders in the Revenue Record. That apart, prima facie the issue of delay is also writ large on the face of record. Mr. Kadam has repeatedly stated that Petitioners are occupants of the subject land. Hence in what capacity will have to be shown by him to the Court.”

13.1. Time was sought by Advocate for Petitioners and the matters were then adjourned to 14.07.2025. The Petitions are not decided and Petitioners’ Advocate was never restrained from arguing the Petitions, rather since he was unable to answer any questions and kept on repeating that Petitioners are occupants of the subject land, at his request, Petitions were adjourned by two weeks. Therefore there is no element of breach of judicial discipline as can be seen from the above as alleged by Applicant in ground No.4. Once again contents of ground No.4 are vague and insufficient and are merely stated without any specifics whatsoever and hence stand rejected.

14. The fifth ground according to Petitioners is the Constitutional guarantee of Fair Trial / Hearing. The only thing stated by Petitioners is that since complaint is filed against two Judges of this Court and this Court has directed enquiry on the said complaint, the

Petitioners cannot expect a fair hearing in the Petitions. Save and except this, nothing else is stated. The only sequitur which can be derived from this ground is that the Petitioners do not want the Petitions to be heard by this Court under any circumstances and they only want to enjoy the interim order and to achieve this objective Petitioners have used the age old method of filing a complaint and criticizing the Judges, in this case two Judges of this Court, casting uncalled for and serious aspersions on Judges with the sole intention that the Judge so attacked will give up the matter and recuse himself. This ground on the face of record is therefore unsustainable and rejected.

15. Mr. Kurle has referred to the following decisions of the Courts in support of the grounds for recusal:-

- (i) *P.K. Ghosh, I.A.S and Another Vs. J.G. Rajput*¹;
- (ii) *Ranjit Thakur Vs. Union of India and Ors.*²;
- (iii) *State of Punjab Vs. Davinder Pal Singh Bhullar and Ors.*³; and
- (iv) *Sukhdev Singh Sodhi Vs. The Chief Justice and Judges of the Pepsu*⁴.

16. In the above context and the facts and circumstances of the present case, it is seen that the grounds for recusal are *prima facie* innocuous. Allegation is that the Court should recuse itself from

1 (1995) 6 SCC 744

2 (1987) 4 SCC 611

3 (2011) 14 SCC 770

4 (1953) 2 SCC 571

hearing the Petitions because they have been admitted and Petitions should be heard only in the normal ordinary course as and when they reach hearing according to their turn. This ground cannot be countenanced at all.

17. Submission is advanced that fixation of hearing of Writ Petitions without consent of Petitioners should never have been allowed. This submission is rejected because adequate time and hearing dates are given to Petitioners to argue the Petitions and they have refused to argue before this Court. Petitioners cannot dictate as to how the Court has to conduct its business. The exigency of Respondents has not been considered by this Court, rather it has been considered by the previous Court and it is also documented in the order dated 09.05.2025 passed by the previous Court. It is on the basis of same exigency that Application was made by Respondents to this Court due to which Petitions were listed for hearing. On the date of hearing also the Court has given adequate opportunity and latitude to Advocates for Petitioners. *Prima facie* it is very clear that Petitioners do not have the answers to the questions put by the Court and therefore they are apprehending that the Court may pass an adverse order. Merely on the basis of such apprehension if such recusal is allowed and that too on serious allegations made against the Judges of this Court, it will lead to disastrous consequences. Therefore in my considered view, the prayer for recusal is not well founded at all.

18. The third ground for recusal which appears to be the main ground pleaded by Petitioners is that because of allegations of bribery and corruption (criminal) action should be initiated against both the Courts and because of such a complaint having been filed by Petitioners, the Petitions should not be heard by this Court. It is once again reiterated that the said ground is on the face of record preposterous because even according to the Petitioners' own case and the contents of the complaint, Applicant in his complaint has stated that he received threat calls in the month of February and April 2025 when admittedly the present Court was never in the picture and he had overheard some people named in the complaint making those allegations. Hence to make such an unsubstantiated allegation and insinuation against two Judges of this Court of bribery and corruption and to link it with the Petitioners having received threat calls from Karachi, Pakistan as stated in the complaint is clearly unjustified. If I were to accede to the prayer for my recusal on the above grounds, I would be initiating a wrong practice and laying down a wrong precedent. A Judge may recuse on his own from a case entrusted to him by the Chief Justice and that would be a matter of his own choosing. But recusal at the asking of a litigating party, unless justified (*emphasis supplied*) must never to be acceded to. This would give the impression of the Judge being scared out of the case, just by the sheer force of the objection (which is clearly unfounded).

19. The Supreme Court has in the case of ***Advocates-On-Record Association Vs. Union of India***⁵, wherein the request of recusal was the matter for decision of the Apex Court has turned down the request with the following observations which need to be quoted:-

“In my considered view, the prayer for my recusal is not well founded. If I were to accede to the prayer for my recusal, I would be initiating a wrong practice, and laying down a wrong precedent. A Judge may recuse at this own, from a case entrusted to him by the Chief Justice. That would be a matter of his own choosing. But recusal at the asking of a litigating party, unless justified, must never to be acceded to. For that would give the impression, of the Judge had been scared out of the case, just by the force of the objection. A Judge before he assumes his office, takes an oath to discharge his duties without fear and or favour. He would breach his oath of office, if he accepts a prayer for recusal, unless justified. It is my duty to discharge my responsibility with absolute earnestness and sincerity. It is my duty to abide by my oath of office, to uphold the Constitution and the laws. My decision to continue to be a part of the Bench, flows from the oath which I took, at the time of my elevation to this Court.”

20. This Court in the case of ***Maple Tie Up Private Limited Vs. Hema Niwas Co-operative Housing Society Limited and Ors.***⁶ in paragraph Nos.7 and 8 as held as under:-

“7. A glance at the praecipe which is signed by Advocate Samir Vaidya shows that it contains no apprehension on the part of respondent No. 4 much less real. The law on recusal by the Court, has now been settled by various decisions of the Apex Court, the prominent amongst which are (i) R.K. Anand v. Delhi High Court reported in (2009) 8 SCC 106, (ii) Leila David v. State of Maharashtra reported in (2009) 10 SCC 350 and (iii) Subrata Roy Sahara v. Union of India reported in (2014) 8 SCC 470.

8. A similar situation arose also before a bench of Single Judge of this Court in Brian Castellino v. RTec Systems (I) Pvt. Ltd. reported in 2015 (2) Bombay Cases Reporter page 247. After reference to the view of the Apex Court on the subject in the abovereferred decisions the learned Single Judge observes

5 2016 (II) SCALE 1

6 2015 SCC OnLine Bom 7242

thus, with which observations I am in respectful agreement.

“In present times, a huge number of disputes are brought before the Courts for adjudication. The monetary stakes involved in the matters are also very substantial. In other cases, personal status of parties is involved, and these matters are invariably emotionally charges. The demands of the litigants over their Advocates have seemingly increased. Many dishonest/desperate litigants along with some lawyers, who are not as honest as they are expected to be, leave no stone unturned to avoid a Judge that they perceive to be inconvenient or unfavourable or to obfuscate issues or to delay the proceedings and frustrate the course of justice. To achieve this end, they attempt to criticize judges, cast uncalled for aspersions on Judges with the intention that the Judge so attacked will give up the matter. A Judge who is showered with criticisms and insinuations, though baseless, maybe inclined to recuse himself so as to stay out of harm's way of the baseless suspicion or allegation or to avoid being unpopular or to just avoid taking over the burden of a matter which is intentionally made heavier by litigants and/or their Advocates. However, as held by the Hon'ble Supreme Court in Subrata Roy's case (supra), a Judge who prefers the recusal route despite knowing that the criticisms/insinuations made against him are baseless, would not be true to his oath of dispensing justice without fear or favour. In my view, a Judge would be failing in his duty if he endeavours to become popular amongst the members of the bar or members of the public by avoiding difficult situations or following the route of appeasement. A Judge accepts judgeship to dispense justice without fear or favour and not to attain popularity of any kind. Again, he will not be true to his oath if he feels that it is convenient to recuse himself from a matter rather than facing a lawyer or a litigant who gives him sleepless nights by criticizing him or casting aspersions on him which are totally incorrect and untrue. In this regard, the observations made in the case of Triodos Bank NV v. Dobbs (supra) are apposite:

“It is always tempting for a judge against whom criticisms are made to say that he would prefer not to hear further proceedings in which the critic is involved. It is tempting to take that course because the judge will know that the critic is likely to go away with a sense of grievance if the decision goes against him. Rightly or wrongly a litigant who does not have confidence in the Judge who hears his case will feel that if he loses, he has in some way been discriminated against. But it is important for a judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason is that - If judges were to recuse themselves whenever a litigant -

whether it be a represented litigant or a litigant in person-criticized them (which sometimes happens not infrequently) we would soon reach the position in which litigants were able to select judges to hear their cases, simply by criticizing all the judges that they did not want to hear their case. It would be easy for a litigant to produce a situation in which a judge felt obliged to recuse himself simply because he had been criticized - whether that criticism was justified or not.”

21. Thus in the backdrop of the above decisions if the facts of the present case are evaluated on the face of record, here is a Petitioner - Applicant before me who intends to avoid the Judge hearing the matter as he perceives the Judge to be inconvenient or unfavourable to him. Hence every effort in the book is made to delay and frustrate the course of justice and in doing so the Petitioners have criticized two Judges of the Court, cast uncalled for serious aspersions of bribery and corruption on the Judges with the intention that the Judge so now attacked will give up the matter and Petitioners will continue enjoying the interim relief.

22. What is held by the Supreme Court in the case of ***Subrata Roy Sahara Vs. Union of India***⁷ holds true in the facts of the present case. The Supreme Court holds that a Judge who prefers the recusal route despite knowing that the criticisms / insinuations made against him are baseless, would not be true to his oath of dispensing justice without fear and favour. The Supreme Court has held that a Judge will fail in his duty if he endeavours to become popular amongst the

⁷ (2014) 8 SCC 470

members of the bar or members of the public by avoiding difficult situations or following the route of appeasement. The Supreme Court notes that a Judge accepts judgeship to dispense justice without fear or favour and not to attain popularity of any kind and he will not be true to his oath, if he feels that it is convenient to recuse himself from a matter rather than facing a lawyer or a litigant who gives him sleepless nights by criticizing him or casting wild unsubstantiated aspersions on him which are totally incorrect and untrue.

23. For the reasons which are given by me while dealing with the grounds in the Application, the aforesaid words of the Supreme Court hold true in the facts of the present case. Another issue which I need to highlight in the present situation is the fact that there are litigants who may seek recusal of the Court until they get a bench to their liking. This beholds in the present case because what has transpired before the previous Court and now this Court is popularly known as “forum shopping” by the Petitioner No.2 – Applicant.

24. Reference is also made in this regard to paragraph Nos.42 and 43 of the decision of the Supreme Court in the case of *Indore Development Authority (Recusal Matter-5) Vs. Manohar Lal and Ors.*⁸ which in my opinion sums up the situation when recusal is sought. Litigants cannot be allowed to tarnish the system of administration of Justice by vilification of Judges in such unsubstantiated manner.

⁸ (2020) 6 SCC 304 : 2019 SCC OnLine SC 1392

Paragraph Nos.42 and 43 read thus:-

“42. *In Bal Kishan Giri v. State of U.P. [Bal Kishan Giri v. State of U.P., (2014) 7 SCC 280 : (2014) 3 SCC (Cri) 29] , this Court has considered derogatory remarks and efforts to destroy the system. The relevant portions are extracted hereunder : (SCC p. 287, paras 12-14) “*

12. This Court in M.B. Sanghi v. High Court of Punjab & Haryana [M.B. Sanghi v. High Court of Punjab & Haryana, (1991) 3 SCC 600 : 1991 SCC (Cri) 897] , while examining a similar case observed : (SCC p. 602, para 2)

‘2. ... The foundation of [judicial] system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the presiding judicial officers with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system. An independent judiciary is of vital importance to any free society.’

13. In Asharam M. Jain v. A.T. Gupta [Asharam M. Jain v. A.T. Gupta, (1983) 4 SCC 125 : 1983 SCC (Cri) 771] , while dealing with the issue, this Court observed as under : (SCC p. 127, para 3)

‘3. ... The strains and mortification of litigation cannot be allowed to lead litigants to tarnish, terrorise and destroy the system of administration of justice by vilification of Judges. It is not that Judges need be protected; Judges may well take care of themselves. It is the right and interest of the public in the due administration of justice that has to be protected.’

14. In Jennison v. Baker [Jennison v. Baker, (1972) 2 QB 52 : (1972) 2 WLR 429 : (1972) 1 All ER 997 (CA)] , All ER at p. 1006 d, it was observed : (QB p. 66 H)

‘... “The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope.” ’

43. *The decision in All India Institute of Medical Sciences v. Kaushal K. Verma [All India Institute of Medical Sciences v. Kaushal K. Verma, 2015 SCC OnLine Del 9226 : (2015) 220 DLT 446] , rendered by one of us, Ravindra Bhat, J., has also been referred, thus : (SCC OnLine Del para 25)*

“25. Before ending this unusually prolix order, which can run into the danger of self-vindication, the Court

observes that requests for recusal are to be based on reasonable apprehensions; they cannot be speculative or fanciful suppositions. An observation that needs to be emphasised is that recusals generally, and especially those fuelled by unjustified demands can be burdensome on the Judges who are eventually called upon to decide the cause. Whenever made, the concerned court or Judge so charged is bound to take it seriously, as it undermines what is the bedrock of justice delivery-impartiality. To borrow the words of Beverly McLachlin (Chief Justice of Canada) (Judging in a Democratic State):

‘... Judges are not living Oracles. They are human beings, trained in the law, who struggle to understand the situations before them and to resolve them in accordance with the law and their consciences. And Judges must learn to live with being wrong. As human beings, Judges learn early in their career to deal with criticism. Every new Judge dons the judicial robes resolved never to make a mistake. And every new Judge fails. Decisions must sometimes be made without the opportunity for full reflection. The law may not be entirely clear. The truth may be elusive. In the result, even the best Judges inevitably are found to have erred. The errors are publicly identified by appellate Judges and laid plain for all to see. The fact that appellate Judges themselves have been known to err may provide only limited consolation.’

If one may add, the greater the experience of the Judge, the more acutely she or he is aware of her or his fallibility and the pitfalls of acting on impulse or prejudice. The journey, which begins with certainty, later leads to a path of many grey areas. Given that language itself is an imperfect medium, words are but vessels giving shape to ideas and that no human being is perfect, no Judge can claim to be perfect in communicating ideas. The emphasis on a phrase here or an expression there, bereft of anything more, would not ipso facto disclose a predilection, or predisposition to decide in a particular manner.”

There is a concurring opinion thus : (SCC OnLine Del para 1)

“1. I have seen the draft of the order, prepared by my Brother S. Ravindra Bhat, J., on the request of recusal by the Division Bench headed by him. I fully concur with the conclusions reached by him and the reasoning leading thereto. I would only add that the request for recusal by the Bench ignores the fact

that it comprises of two Judges each of whom have an independent mind to apply. The presence of another Judge with equal say strengthens the rigor of the judicial scrutiny and cannot be undermined.”

25. From the above, I can only say that recusal is not to be forced by any litigant to choose a Bench. It is for the Judge to decide to recuse. The embarrassment of hearing the arguments for recusal should not be a compelling reason to recuse. The law laid down in various decisions which are referred to and reiterated herein above has compelled me not to recuse from the case and to perform my duty irrespective of the consequences, as nothing should come in the way of dispensation of justice or discharge of duty as a Judge and judicial decision-making. There is absolutely no room for prejudice or bias and justice has to be pure, untainted, uninfluenced by any factor and even decision for recusal cannot be influenced by any outside forces.

26. In my opinion, I would be committing a grave blunder by recusing in the circumstances on the grounds which are prayed for and if I do so, I will be setting a bad precedent. It is only for the interest of the judiciary (which is supreme) and the system that has compelled me to not recuse myself.

27. Each case will be decided based on the merit of that particular case. A litigant cannot dictate to the Court that the case should be avoided by a Judge. The roster is prepared by the Hon’ble

the Chief Justice. The Judge, who is hearing the case, can decide to avoid the case if necessary. But a litigant cannot dictate to the Court to avoid his case by a Judge who is allotted the jurisdiction by the Hon'ble the Chief Justice as per the roster. If such a practice is started, the litigants will pick and choose the Judge who has to hear their case. The same cannot be allowed. A Judge is bound to hear the cases allotted as per the roster notified by the Hon'ble the Chief Justice. Admittedly, these present Petitions are to be heard by this Court as per the present roster.

28. I am confident that I am upholding the oath I have taken, and I am discharging my duty in accordance with the Constitution of India. I am exercising my judicial powers in accordance with the law and the Constitution of India. A person threatening the Court, stating that he has filed a complaint against the Judge and therefore the case should be avoided by that Judge, cannot be accepted at all.

29. In view of my above observations and findings, I am of the considered opinion that the Interim Application and the complaint filed is nothing but a sheer abuse of the due process of law based on serious but completely unsubstantiated allegations against two Judges of this Court and the Interim Application is therefore required to be dismissed with exemplary costs. Interim Application is dismissed with costs. Petitioner No.2 – Applicant is directed to pay costs of

Rs.50,000/- to the High Court Legal Services Authority, Bombay High Court within a period of 2 weeks from today. If the costs are not paid, the Collector, MSD is directed to recover the same as arrears of land revenue from the Petitioner No.2 – Applicant and pay over the same to the High Court Legal Services Authority, Bombay High Court.

30. With the above directions, Interim Application is dismissed.

[MILIND N. JADHAV, J.]

Ajay

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AJAY TRAMBAK
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Date: 2025.08.13
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