

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

**WRIT PETITION NO. 2034 OF 1998.
WITH
CIVIL APPLICATION NO. 2584 OF 2015.**

Reserve Bank of India
The Statutory Corporation
Established Under the Reserve Bank
Of India Act 1934 Having Its
Central Office at Shaheed Bhagat Singh
Marg Fort Mumbai 400 001. .. Applicant

In the matter of

Reserve Bank of India
The Statutory Corporation
Established Under the Reserve Bank
Of India Act 1934 Having Its
Central Office at Shaheed Bhagat Singh
Marg Fort Mumbai 400 001. .. Petitioner

Vs.

Om Prakash Agarwal
of Bombay Indian Inhabitant
Age Adult Occ Retired from Bank Service
Residing at 12, New Silver Home
15, New Kantawadi Road
Bandra (W) Mumbai 400 050. .. Respondent

Mr.Girish Utangale a/w Vinay Bhogle i/b M/s.Utangale & Co., for
the Applicant.
None for the Respondent.

**CORAM: N.M.Jamdar, J.
Tuesday 22 September, 2015**

Oral Order :

The application is filed praying that the Writ petition which was dismissed for default on 26 March 2015 be restored to file and heard on merits.

2. The Writ petition is filed challenging the order passed by the Small Causes Court Mumbai, dated 19 September 1997 in Full Court Application No.28 of 1996 confirming the order passed by the Small Causes Court, Mumbai directing the Petitioner to pay an amount of ₹ 5,795.80.

3. Rule was issued in the petition on 3 September 1999 and the Petitioner was directed to deposit the amount as ordered by the Small Causes Court Mumbai.

4. When the petition came up for hearing on 13 July 1998 since none had appeared for the Petitioner it came to be dismissed for default. Thereafter a Civil Application was taken out for restoration and the application was restored by recording submission of the Petitioner that the amount of ₹ 5551.42 can be withdrawn by the Respondent. Thereafter the matter is adjourned from time to time. The Respondent, though served has not appeared in these proceedings, On 19 March 2015 as none had appeared for the Petitioner therefore, the matter was adjourned to 26 March 2015 wherein it was dismissed for default observing that even though petition is on board for dismissal none is present.

Thereafter the present Application is filed.

5. When the Application came up on board, by consent, both the Application and the Writ petition were considered. The petition is pending since year 1998. Liberty is already given to the Respondent to withdraw the amount. Even if the application for restoration is to be granted subject to further costs the costs will exceed the amount involved in the Writ petition. i.e. ₹ 5551. Writ jurisdiction is not to be exercised for amounts of trivial nature. It is more so considering the huge pendency. The learned counsel for the Petitioner also accepted the position that even for recovery of the amount to be withdrawn by the Respondent, the Petitioner will have to spend more amount than that is at stake. He however made a request, on instructions, that issue of law be kept open. In the circumstances, I do not find that writ jurisdiction of this Court needs to be exercised in this particular case.

6. However I am inclined to accept the request of the learned counsel for the Petitioner that the question of law decided by the impugned order be kept open, since he has submitted that it may have implication in respect of other employees. None of the employees including the Respondent has not come forward to get the position of law settled. Considering these facts it is clarified that the question of law that is decided by the Small Causes Court be kept open, to be considered in case a similar claim based on the position of law propounded by the Small Causes Court, is made against the Petitioner.

7. Accordingly, the Civil Application No.2584 of 2015 is allowed. The Writ petition is restored to file. The Writ petition is disposed of with the clarification as above.

(N.M.Jamdar, J.)

“Certified to be true and correct copy of original signed Order.”