

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1044 OF 2013**

Yang Ming Line (India) Pvt.Ltd. v/s The Board of Trustees of the Port of Mumbai and others	... Petitioner ... Respondents
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Mr A.M. Vernekar for Petitioner.
Mr Vishal Talsania i/b M/s Motiwalla and Co. for Respondent Nos.1 to 7.
Mr Jitendra B. Mishra with Mr Vijay H. Kantharia for Respondent Nos.8 to 12.

**CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.**

DATE : 15TH SEPTEMBER 2015

P.C.:-

1. By this Writ Petition under Article 226 of the Constitution of India, the Petitioner has prayed for a writ, order or direction directing the Respondents to forthwith destuff, release and return to the Petitioner the eight containers, described in Annexure 'B' to the Petition, by taking all necessary steps in connection therewith and without claiming any charges from the Petitioner.

2. This order is passed in continuation of our earlier orders where-under from time to time we have recorded statements made on behalf of the contesting Respondents, particularly Respondent Nos.8 to 12 that they would make an arrangement and create a mechanism so that the parties like Petitioner are not required to approach this Court. The Petitioner claims to be the owners of the containers. In these containers, there were certain goods / consignments and which on arrival at the Mumbai Port, came to be detained. The Petitioner is not concerned in any manner with these consignments or goods stuffed therein. They have a right to contend that after necessary formalities and procedures are complied with and the goods are destuffed, their containers be returned to them for carrying on their business. On such a small issue the Court was required to intervene and in several cases.

3. By our initial order passed on 3rd August 2015, we recorded the statement of Mr Kantharia that the Customs will make an endeavour through its Joint Commissioner to resolve the issue to

the satisfaction of all concerned and without disturbing their contractual rights and contentions. It is in these circumstances that time was given to the Core Committee and the Commissionerate to take the requisite steps.

4. Thereafter, an affidavit was filed and the matter was taken up on 19th August 2015. After perusing the affidavit of the Deputy Commissioner of Customs (Disposal), we noted that the steps are being taken. However, there was a remaining issue of about two containers.

5. As far as two containers are concerned, we are informed by Mr Mishra that the Customs have given their clearance / no objection to the movement for destuffing the containers. Once these clearances have been obtained and granted, then Mr Vernekar requested that the Port Trust and other Respondents to the Writ Petition should cooperate with the Authorities and make space available for destuffing of the containers and thereafter their handing over to the Petitioner.

6. Since the Customs has granted their clearance and no objection, the learned counsel for the Port Trust states on instructions that space is available and the Port Trust would assist the Petitioner in making all the arrangements so that the cargo can be destuffed and thereafter containers can be handed over to the Petitioner. He has made this statement on instructions and we accept it as an undertaking given to this Court.

7. Since such statement is made in the presence of the concerned Officer who is fully authorised, we have no doubt that the Port Trust will also take necessary steps.

8. This Writ Petition is therefore disposed of but by clarifying that matters pertaining to recovery of money, whether as compensation or otherwise, if any, are being kept open for the parties to be raise them before appropriate forum and in appropriate proceedings. We do not think that the writ jurisdiction can be utilised for resolving contractual disputes. Our clarification would mean that all parties are at liberty to institute all proceedings

including a civil suit in the competent Court.

9. There is one more aspect which has been brought to our notice by the Registry. In paragraph 4 of our order dated 19th August 2015, we invited the Registry's attention to a disturbing state of affairs. We need not advert to that simply because before us the report of the Registrar (O.S.) has been placed which assures us that requisite steps would be taken so that in future parties do not walk in Court premises, particularly the Office of the Registrar and without identifying themselves, hand over affidavits and claim to be signed by them in the presence of the officials. Neither the signatures are identified nor the parties and all this would go to indicate that such practice would not only expose officials in the Registry unnecessarily but encourage avoidable litigation and proceedings. Now, in the report of 14th September 2015 the corrective steps have been indicated. We also accept the suggestion from the Registry made by the Additional Registrar / additional Prothonotary and Sr. Master of the Original Side that the Affirming Officer will fill in the requisite details in a stamped receipt that

would ensure that he has not only identified the deponent by reference to the identification produced but has also ensured that the signatures are placed in his presence. If the deponent is a power of attorney holder, then, the power of attorney and the date also have been verified. If the deponent is acting as guardian or next friend of a minor or the other person permitted in law to approach the Court, then, the requisite proof in the form of direction or order of the Court as insisted upon is produced. Equally in case of deponents claiming as heirs and executors, appropriate declarations and statements on oath would be obtained with reference to specified legal documents.

10. In the light of this, we are satisfied that the Registry has moved in the right direction and has taken the precautionary steps.

11. The Writ Petition is therefore disposed of in the above terms and by accepting the report.

(B.P. COLABAWALLA, J.)

(S.C.DHARMADHIKARI J.)**

**** CERTIFICATE**

Certified to be a true and correct copy of the original signed Judgment/Order.