

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.310 OF 2015
IN
WRIT PETITION NO.1749 OF 2013

Capt.Jyoti Srivastava

Applicant

In the matter of :

United Ocean Ship Management Pvt.Ltd.

Petitioner

versus

The Director General of Shipping & others

Respondents

Captain Jyoti Srivastava, Applicant in person, present.

Mr.Prashant Pratap, Senior Advocate, with Hari Wadhwane i/by
Mr.Ashwini Sinha for Petitioner.

Mr.Vijay Kantharia with Mr.Dhanesh R. Shah for Respondent
nos.1,2 and 4 Union Government.

CORAM : S.C.DHARMADHIKARI AND
REVATI MOHITE-DERE, JJ.

DATE : 11 December 2015

PC :

By this Notice of Motion, the Applicant (original
Respondent no.3) has prayed for the following reliefs :

"(a) That the above petition be taken on board and
preemptory date of hearing be fixed by this Hon'ble court,
as per the order passed by this Court dated 29 August 2013
granting liberty to the parties to apply to this Hon'ble Court;

(b) That this Hon'ble Court be pleased to hold and declare that the order dated 7 March 2014 passed by the Respondent no.1 and the medical opinion of Dr.Ashwin B. Mehta dated 10 July 2014 are in accordance with the order dated 29 August 2013 of this Hon'ble Court and the same is conclusive, final and binding on the Petitioner and other parties to this petition;

(c) That this Hon'ble Court be pleased to hold and declare that the Respondent no.3 is entitled to permanent disability compensation of US Dollers 148,500 payable by the Petitioner to the Respondent no.3 as per clause 2(2) and 2(3) of Appendix-IV of the Collective Bargaining Agreement between the parties along with 18% interest per annum on the said amount w.e.f. 12 October 2009;

(d) That this Hon'ble Court be pleased to direct the Hon'ble Prothonotary and Senior Master of this Court to invoke, liquidate and encash the bank guarantee given by the Petitioner in the above matter and to pay Rs.90,00,000/- plus the accumulated amount of interest thereon on the date of payment to the Respondent no.3 and the said payment be treated as part payment and be adjusted against the total dues payable as per clause (c) above and other dues payable as per the order in this petition;

(e) That this Hon'ble Court be pleased to pass order directing the Petitioner to reimburse the amount of Rs.66,020/- (Rupees Sixty six thousand and twenty only) with interest of 18% p.a. from 20 June 2014 till the date of actual payment, to the Respondent no.3 which amount was paid towards the expenses for obtaining medical opinion of Dr.Mehta by the Respondent no.3 in terms of the order of the DGS dated 7 March 2014;

(f) The full compliance of (c), (d) and (e) and all the payments directed under the petition should be paid by the Petitioner to the Respondent no.3 within 14 days of the order of this Hon'ble Court."

2. In the affidavit-in-support, it is stated that in the writ petition, an order was passed by this Court pursuant to

which the compensation based on permanent disability of the Applicant (original Respondent no.3) stands granted to him, however, no steps are being taken to enforce and execute that portion of the order.

3. On the other hand, the then employer (original Petitioner) contends that a show cause notice which was issued, has not been taken to its logical end inasmuch as the Doctors have yet to certify the extent of disability and the employer is disputing the claim of the erstwhile employee (Applicant herein) that he is permanently disabled and therefore, entitled to compensation in the sum claimed in this Motion.

4. We do not wish to enter into this controversy. We find that this Court on 29 August 2013 passed a detailed order and disposed off the writ petition. While it is true that the said order directed the authority to adjudicate and pass an order on the show cause notice which would give finality to the same. We have found from the affidavits which have been placed before us by the Respondent no.3 in support of its version and by the original Petitioner in reply, that beyond some piecemeal directions constituting a medical board or referring the matter to the opinion of a doctor, the Director General has yet not adjudged or decided upon the issue and the compensation to which the Applicant herein is at all entitled.

5. That is why on the earlier occasion a notice was issued through registry to Respondent nos.1, 2 and 4 and pursuant to which Mr.Kantharia has appeared on their behalf.

6. On instructions, Mr.Kantharia states that a final order on the show cause notice would be passed after hearing the Applicant (original Respondent no.3) and the original Petitioner on or before 20 January 2016. We accept the statement made on instructions as an undertaking given to this Court.

7. We direct the Director General of Shipping to pass an order in terms of the aforesaid after hearing both sides and considering all materials placed on record. The Notice of Motion stands disposed of with no order as to costs.

(S.C.DHARMADHIKARI, J.)

(REVATI MOHITE-DERE, J.)