

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2898/2012
IN
WRIT PETITION NO.2103/2008

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. K. S. Bapat a/w. Jayesh Desai i/b. M/s. Desai & Desai Associates for the applicant

Mr. Rajmani Varma a/w. Ms. Namrata Barot i/b. Navdeep Vora & Associates for the respondent No.2.

CORAM : K. K. TATED, J.

DATE : DECEMBER 19, 2016

P.C.:

1. Heard. This application is made by the respondent Nos.1 to 8, 10 and 11 Trust for relieving them from the statement made before this court and recorded in the order dated 31.03.2008.

2. On 31.03.2008, the applicants made a statement that they will relocate the hospital in an alternate premises in Mumbai in any event by 30.06.2009 and they will provide employment to the existing workmen with continuity of service. The learned counsel for the applicant submits that thereafter they made an application before the Charity Commissioner under section 36(1)(a) of the Maharashtra Public Trusts Act, 1950 seeking permission for alienation of the property in favour

of the Padma Charitable Trust for the consideration of Rs.25 crores. That was allowed by the Charity Commissioner. He submits that the Charity Commissioner specifically directed the petitioner to deposit 10% of the amount of the said consideration towards the liability of the labours. He submits that initially, they had employed 108 employees. During this period, maximum workers settled the matter with the applicant and applicant paid their dues. He submits that as on date, only 15 employees remained to be settled. He submits that out of 15 workers, 3 expired. He submits that as on today, they have to settle the dues of 12 workers and also the legal heirs of those 3 deceased workers.

3. The learned counsel for the applicant submits that they tried to relocate their hospital, but same is impossible for them because of financial crisis. He submits that in view of the subsequent development, now it is not possible for them to relocate the hospital and to give employment to all the earlier workers. He submits that the petitioner and their trustees are ready and willing to make a statement before this court that amount of Rs.28,50,129/- which is already deposited in a fixed deposit account of the Bank of Baroda, Santacruz (W), Mumbai Branch will not be

used for any other purpose except for payment of workers' dues. To that effect, the learned counsel for the applicant filed an undertaking of the applicant Trust through Managing Trustee Dr.Ashok Mehta dated 19.12.2016. Paragraph 11 of the said undertaking – cum – affidavit reads thus:

“11. I say that after settling the dues of 96 employees out of 108 employees an amount of Rs.28,50,129/- is still lying with the said Trust who has invested in various fixed deposits of Bank of Baroda, Santacruz (W) Branch, Mumbai – 400 054. I say that the said amount will be kept invested in the Bank only for the purpose of settlement of workers dues at least for a period of 5 years and will be utilized only for the said purpose of settlement of workers dues. I say that the Trust / hospital agrees & undertakes to this Hon'ble Court to utilize the remaining amount of Rs.28,50,129/- which is already earmarked as per Ld. Charity Commissioners order.”

4. The learned counsel for the applicant further submits that even they will not use the interest on the said fixed deposit for any other purpose except to settle the workers' dues at least for five years from today. Undertaking given by them is accepted.

5. Considering the reasons disclosed by the applicant in the Civil Application for permitting to withdraw the statement made by them before this court and recorded in the order dated 31.03.2008

and subsequent event and undertaking given by the Managing Trustee dated 19.12.2016, I am satisfied that the applicant had made out a case for allowing this Civil Application.

6. Hence, following order is passed:

a) The Civil Application is allowed in terms of prayer clause (a) which reads thus:

“That this Hon'ble Court be pleased to permit the petitioners to withdraw its aforesaid statement recorded in the order dated 31.03.2008 to the effect that it would set up an alternate hospital in Mumbai, and employ all the workers in employment of its erstwhile hospital by 30.06.2009.”

b) The applicant to keep the amount of Rs.28,50,129/- and interest thereon with them in fixed deposit account of any Nationalized Bank at least for five years from today for settling the dues of the remaining workers.

c) After five years, they can use the said amount for aims and object of the Trust according to law.

d) Civil application stands disposed off accordingly.

JUDGE