

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 37 OF 2016**

Incab Industries Limited

..Petitioner

Vs.

Dr. Eddie Phirose Barucha & Ors.

..Respondents

Mr. Cyrus Ardeshir a/w Mr. Sushrut Desai i/b Mr. Yashodhan Gavankar for the Petitioner

Mr. Vishal Kanade a/w Ms Shivani Khanna i/b FZB & Associates for the Respondent Nos.1, 3 to 6

**CORAM : R. M. SAVANT, J.
DATE : 5th JANUARY, 2016**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 21-9-2015 passed by the Appellate Bench of the Small Causes Court, by which order the Appellate Bench of the Small Causes Court has vacated the stay which was operating pending consideration of Marji Application No.713 of 2011 filed by the Petitioner. The said stay has been vacated in view of the fact that there was non compliance by the Petitioner in the matter of annexing the certified copy of the Appellate decree to the said Marji Application.

2 The Petitioner is a sick company and presently is under the control of the BIFR as a consequence of which a committee for management of the Petitioner has been appointed by the BIFR. The Suit filed by the Respondents herein who are the trustees of the trust in question who are the landlords of

the property came to be dismissed by the Trial Court. Against the said decree, the Respondents had filed an Appeal being No.653 of 2006 which Appeal came to be allowed by the Appellate Bench of the Small Causes Court and resultantly the decree of dismissal was set aside and the Suit in turn came to be decreed. However, in the Appeal the Petitioner did not remain present as the factum of the receipt of the notice of the Appeal was not brought to the notice of the management. It is the case of the Petitioner that the employee of the Petitioner who had accepted the notice was thereafter proceeded with departmentally and dismissed from service.

3 Be that as it may, the Petitioner has filed an application for setting aside the exparte decree passed by the Appellate Bench of the Small Causes Court by filing the said Marji Application No.713 of 2011. Since the decree passed in the Appeal was sought to be executed, the Petitioner filed an application for stay in the said Marji Application. The Appellate Bench of the Small Causes Court granted interim stay to the execution proceedings by order dated 8-11-2011 and which stay has continued till the same was vacated by the impugned order dated 21-9-2015. As indicated above the said stay has been vacated on the ground that the Petitioner has not filed the certified copy of the Appellate decree though directed to do so by order dated 21-8-2015. However, it is now an undisputed position that the Petitioner has in fact filed the certified copy on 30-9-2015. However, since the Appellate Bench of the Small Causes

Court which was hearing the said Marji Application was not available, the same could not be taken on record though filed in the registry of the Small Causes Court.

4 The Learned Counsel Mr. Kanade appearing for the Respondents fairly accepts the said position. In my view, since the interim stay was operating from the year 2011 till it was vacated by the impugned order dated 21-9-2015 and since the Petitioner has complied with the condition of filing the certified copy as also considering the fact that the said Marji Application is to come up for hearing on 14-1-2016, the interest of justice would be served if the impugned order dated 21-9-2015 in so far as it vacates the interim stay which was operating pending the Marji Application, is set aside and the following directions are issued:

(i) The impugned order i.e. the order dated 21-9-2015 passed by the Appellate Bench of the Small Causes Court is quashed and set aside and the interim stay which was granted vide order dated 8-11-2011 would continue to operate pending the hearing and final disposal of the said Marji Application No.713 of 2011.

(ii) Since the Marji Application is to come up for hearing on 14-1-2016, the Appellate Bench of the Small Causes Court which is hearing the said Marji

Application is directed to hear and decide the same latest by 28-2-2016.

(iii) Needless to state that the contentions of the parties are kept open for being urged before the Appellate Bench and the reinstatement of stay by the instant order should not be construed as expression of any opinion on the merits of the matter.

(iv) It is expected that the parties would co-operate in the disposal of the Marji Application within the time stipulated by this Court and would not ask for unnecessary adjournments.

5 With the aforesaid directions, the Writ Petition is disposed of.

6 The parties to act upon an ordinary copy of this order duly authenticated by the Court Shirestedar.

[R.M.SAVANT, J]