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

NOTICE OF MOTION NO. 191 OF 2015

IN

WRIT PETITION NO. 972 OF 2008

Maharashtra General Kamgar Union
and Anr.

... Applicant
(Orig. Respondent No.1)

In the matter between :

M/s. Haldyn Glass Limited.

... Petitioner.

V/s.

Maharashtra General Kamgar Union & Anr ... Respondents No.1

WITH

NOTICE OF MOTION NO. 418 OF 2015

IN

REVIEW PETITION NO. 37 OF 2014

IN

WRIT PETITION NO. 972 OF 2008

M/s. Haldyn Glass Limited
Now known as M/s. Haldyn
Corporation Ltd.

... Applicant
(Orig. Petitioner/Review Petitioner)

In the matter between :

M/s. Haldyn Glass Limited
Now known as M/s. Haldyn
Corporation Ltd.

... Applicant
(Orig. Petitioner/Review Petitioner)

V/s.

Maharashtra General Kamgar Union & Anr ... Respondents.
(Orig. Respondents)

Mr. V.P. Vaidya for the Applicant/Original Petitioner in NMW
418/15.

Ms. Karuna Yadav i/b. N.M. Ganguli for the
Respondents/Applicants in NMW 191/15.

CORAM : N.M. JAMDAR, J.

DATE : 11 JANUARY, 2016.

P.C. :-

The Notice of Motion No. 191 of 2015 is taken out by the Maharashtra General Kamgar Union seeking withdrawal of the amount of Rs.2,00,000/- deposited in this Court in respect of the heirs of the workmen Shri Sidhayee Jagnu @ Sidhanath Jagnu Yadav.

2. The Notice of Motion No. 418 of 2015 is taken out by Haldyn Glass Ltd. the employer for refund of the balance amount which has not been collected by the workmen and which has stood forfeited in view of the order of the Apex Court. By the Judgment and order dated 20 February 2014 the Petition filed by the employer Haldyn Glass Ltd. was disposed of by modifying the

impugned Award by directing the employer to pay the compensation of Rs.2,00,000/- each of the workmen specified in the chart at paragraph 4 of the Judgment. Certain other directions were also given in respect of the deposit. A Review Petition was filed by the employer which was disposed of on 16 April 2014. The employer thereafter filed a Special Leave Petition and in the Special Leave Petition the Apex Court modified Clause (b) of paragraph 7 of the order dated 20 February 2014 to the effect that the workmen will appear and on proper identification collect the money within one year from the date of the order i.e. 19 September 2014, failing which they will forfeit the claim. The Notice of Motion is taken out by the employer on 10 September 2015 seeking withdrawal of the amount deposited. Prior to this Notice of Motion, the Notice of Motion by the Union in respect of Shri Yadav has been filed in March 2015.

3. Both the Notices of Motion have been appeared on board time to time as the Union was taking time to take instructions to approach the Apex Court. On 5 October 2015 it was adjourned to 19 October 2015. From 19 October 2015 it was adjourned to 23 November 2015. On 23 November 2015 following order was passed :-

“ Notice of Motion No. 418 of 2015 not on Board. Taken on board along with the hearing of Notice of Motion No. 191 of 2015, by consent.

2. *By this Notice of Motion the Original Petitioner seeks withdrawal of the amount deposited in this Court. Withdrawal is sought on the basis of the order dated 19 September 2014 passed by the Apex Court stating therein that if the money is not deposited by the Respondent workmen then they shall forfeit their claim. The learned Counsel for the Respondent – Union states that the Respondent – Union was not represented before Apex Court and was not aware of the direction and states that steps would be taken to move the Apex Court for appropriate orders. The hearing of this Notice of Motion is deferred till 21 December 2015.*
3. *As far as the cost of Rs.1,00,000/- directed to be paid by this Court, it is not set aside by the Apex Court. The Original Petitioner shall pay the costs of Rs.1,00,000/- to the Respondent – Union within a period of one week from today.”*
4. Thereafter, on 21 December 2015 following order came to be passed :-

“By this Notice of Motion the applicant/original petitioner seeks direction for refund of the balance amount which has not been collected by the workmen. An order is passed by the Apex Court on 19.09.2014 permitting the workmen to withdraw the amount within one year, failing which they will forfeit their claim. The matter has since appeared from time to time and the Counsel appearing for the union has sought time on the ground that the union will move the Apex Court. This position is recorded in various orders time to time from October and order is also passed on 23.11.2015. Till date the union has not sought any extension. Learned Counsel for the original petitioner states that the

petitioner is ready to give undertaking in case so directed, the petitioner will redeposit the amount. To enable the petitioner to file resolution of the petitioner – company as well as the affidavit of Managing Director giving such an undertaking S.O. to 23.12.2015.”

5. The employer has filed an affidavit as directed, of Narendra Dejuo Shetty, the Director of the employer. He has undertaken that any direction is passed by the Apex Court to bring back the amount which stood forfeited, such directions will be complied with. A Resolution of the employer Haldyn Glass Ltd. has also been placed on record. The learned Counsel for the employer submitted that the period of one year since long has expired and the amount has been forfeited by the workmen as there is no extension of this period. It is from September onwards that time has been granted to the Union to get the period extended in view of the clear mandate of the Apex Court that after period of one year the amount, if not collected, will stand forfeited. It is not possible to keep deferring the request of the employer to withdraw the amount. Adequate opportunities have already been given to the Union.

6. In the circumstances, the Notice of Motion No. 418 of 2015 filed by the employer Haldyn Glass Ltd. will have to be allowed. It is made clear that this withdrawal is upon acceptance of the undertaking of the Director, who has filed the affidavit and also the Resolution and subject to the orders that will be passed in

respect of the Union's claim. If the amount is directed to be returned and is not returned, then the said breach will be considered contempt of Court and proper action would be taken.

7. Accordingly, Notice of Motion No. 418 of 2015 is allowed in terms of prayer clause (a), subject to what is stated above. As regard the Notice of Motion No. 191 of 2015, stand over to next CMIS date i.e. 8 February 2016.

(N.M. JAMDAR, J.)