

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 2076 OF 2017
IN
L.P.A. NO. 44 OF 1999

HIMANT S/O SHANKAR KHAIRNAR & OTHERS
VERSUS
MAHARASHTRA STATE ROAD TRANSPORT CORPORATION VAHATUK
BHAVAN AND ANOTHER

Advocates present.

CORAM: R.R.KAKANI
REGISTRAR (JUDL)

DATED: 30/11/2017

1. This is an application for getting execution of the orders passed in Contempt Petition Nos. 312/2005 and 286/2007 arising from L.P.A. Nos. 44/99, 89/2000 and 90/2000 passed by this Hon'ble High Court.

2. It is the grievance of applicants that though the respondents agreed and settled their grievances after passing of orders in U.L.P. No. 174/94, 94/96 and 152/96, but still they have not acted upon as per the agreed terms. As per the applicants, they are entitled for monetary benefits as granted by the Hon'ble High Court in above L.P.As. Therefore, this is an application for execution of orders as stated above.

3. Accordingly, notices were issued to the respondents. It is the grievance of the respondents that present execution petition is not maintainable. According to them, Contempt Petition Nos. 312/05 and

286/07 are already disposed of, therefore, nothing survives for consideration. Further, it is alleged that all the benefits arising from the orders in L.P.A. Have been extended to the applicants and therefore, application preferred by the applicants needs to be filed.

4. Heard both sides. At the time of arguments, it was the main grievance of respondents that present application is not maintainable before this Court. On the contrary, the learned Advocate for the applicants vehemently submitted that present application is maintainable under Rule 23 of Chapter XVII of Bombay High Court Appellate Side Rules, 1960. So, in order to decide controversy, I have gone through the provisions of Rule 23 of Chapter XVII, which read thus :-

“23. Execution of order or decree on Original Side :- Any order or decree in a Civil Application under Article 226 of the Constitution passed on the Appellate Side and the non-satisfaction of which has been reported to the State Government under the preceding rule may be transmitted to the Original Side of this Court for execution and, if so transmitted, shall be executed in accordance with the procedure prescribed for execution of decrees and orders passed in the exercise of the Ordinary Original Civil Jurisdiction of this Court.

[Explanation : An order or decree in a Civil Application under Article 226 of the Constitution of India, decided at the Benches at Nagpur, Aurangabad and Panaji will be transmitted to the Court of competent civil jurisdiction for execution.]”

5. It is needless to say that for invoking the provisions of Rule 23, there must be order against the State under Article 226 of the Constitution. Had there been any order against the State, then for the execution of that order, application was necessary to be made before the

Registrar. Further, said order is executable by the Court of competent civil jurisdiction. Directly filing of execution application of the order passed by the High Court, except filing of application before the High Court having original jurisdiction, wherein the order is passed against State under Article 226, no direct filing of execution application before the Registrar is contemplated to High Court Appellate Side Rules, 1960. Even it is assumed that there is an order passed by this High Court in LPA Nos. 44/99, 89/2000 and 90/2000 but said orders are executable by the court of competent civil jurisdiction and not directly by the High Court. It is specific to note that present application is not for transmitting the execution proceeding to the competent court having civil jurisdiction. It seems that the applicants have misconstrued the provisions of Rule 23. It may be the fact that the orders arising from LPA Nos. 44/99, 89/2000 and 90/2000 are executable but the execution of said orders is not maintainable directly before this Court. The applicants may knock the doors of civil court.

6. With these, I come to the conclusion that present application is not maintainable and therefore, it stands filed.

REGISTRAR (JUDL)