

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRTI PETITION STAMP NO.4289 OF 2017

Shalimar Paints Ltd. : Petitioner
versus
State of Maharashtra and anr. : Respondents.

Mr. Akshay Shah i/by Mr. Waquar Ahmed for the Petitioner.
Mr. S H Kankal, AGP, for the Respondent No.1.
Mr. Joseph Fernandes for the Respondent No.2.

CORAM : R. M. SAVANT, J.
DATE : 15th February 2017

P.C.

1 The writ jurisdiction of this court is invoked against the two orders i.e. the order dated 31/01/2017 and the order dated 09/02/2017 passed by the Estate Officer. By the order dated 31/01/2017 the Estate Officer has closed the cross examination of the applicant's witness (i.e. the witness of the Respondent No.2 herein) who is a government valuer. By the order dated 09/02/2017 the evidence of the Petitioner herein who is the Respondent in the said proceedings was closed as the affidavit in examination in chief was not filed by the Petitioner herein within the time stipulated by the Estate Officer by the order dated 31/01/2017.

2 In so far as opportunity to cross examine the witness of the Respondent No.2 herein i.e. the government valuer Shri Dharmadhikari is concerned, this Court in the order dated 13/01/2017 passed in Writ Petition

Stamp No.35643 of 2016 had recorded the statement made on behalf of the Petitioner which is in paragraph No.4 which for the sake of ready reference is reproduced herein under (excerpt) :-

“The Estate Officer is directed to permit the Petitioner to cross examine the said witness on 25/01/2017 or on any other day as per his convenience. The learned counsel appearing on behalf of the Petitioner states that the cross examination would be completed within maximum period of two days which may be consecutive days or as per the convenience of the Estate Officer. The learned counsel further states that the Petitioner would also lead evidence and conclude the same expeditiously having regard to the fact that the matter is time bound. Statement accepted.”

Hence the statement made on behalf of the Petitioner that cross examination would be completed within maximum period of two days of 25/01/2017 was recorded and accepted by this Court.

3 The Petitioner herein challenged the said order dated 13/01/2017 passed in the said Writ Petition Stamp No.35643 of 2016 before the Apex Court. According to the learned counsel appearing on behalf of the Petitioner Shri Akshay Shah, the Petitioner has also raised the issue of jurisdiction of the Estate Officer to continue with the proceedings in the light of the judgment of the Apex Court in Suhas H Pophale v/s. Oriental Insurance Company Limited and its Estate Officer's case reported in (2014) 4 SCC 657.

4 The SLP filed by the Petitioner came up before the Apex Court on

31/01/2017 when the Apex Court passed the following order :-

“Taken on board.

Issue notice on special leave petition as well as on prayer for interim relief.

No coercive steps for the recovery of the damages from the petitioner be taken by the Estate Officer, until further orders.”

Hence the Apex Court has not stayed the proceedings before the Estate Officer but has only directed that no coercive steps for the recovery of the damages from the Petitioner be taken by the Estate Officer, meaning thereby that if an order assessing damages is passed by the Estate Officer, then no steps for recovery of the said damages be taken against the Petitioner. The learned counsel appearing for the Petitioner fairly accepts the said position.

5 The Petitioner in terms of the order dated 13/01/2017 passed by this Court in the said Writ Petition Stamp No.35643 of 2016 and as per the statement made on behalf of the Petitioner was required to cross examine the government valuer and complete the cross examination in a maximum period of two days from 25/01/2017. That has admittedly not been done. There was no impediment for the Petitioner either before the Apex Court passed the order or after the Apex Court passed the order to complete the cross examination. But that has not been done by the Petitioner in spite of the statement made

before this Court. It is required to be borne in mind that the proceedings before the Estate Officer are time bound and are directed to be complete by 20/02/2017. It does not behove the Petitioner not to complete the cross examination of the government valuer especially after making a statement before this Court and after the said statement being accepted by this Court. Hence in so far as the cross examination of the government valuer is concerned, the right of the Petitioner would now stand forfeited. The impugned order dated 31/01/2017 is therefore not interfered with.

6 In so far as the order dated 09/02/2017 is concerned, as indicated above, by the said order the Petitioner's evidence has been closed since the time for completing the proceeding is to come to an end on 20/02/2017. As and by way of final opportunity to the Petitioner, the impugned order dated 09/02/2017 is set aside and the following directions are issued :-

A] The Petitioner to file the affidavit of examination in chief latest by 17/02/2017. The cross examination of the Petitioner witness would be completed by 22/02/2017.

B] In view of above, the time to dispose of the proceedings is extended up to 28/02/2017.

- C] Needless to state that the directions as contained in the interim order dated 31/01/2017 passed by the Apex Court in the matter of no coercive steps being taken to recovery the damages would continue to operate subject to the further orders that would be passed by the Apex Court in the SLP filed by the Petitioner.
- D] If the Petitioner does not file the affidavit of examination in chief by 17/02/2017 the right to lead evidence would stand forfeited and then the impugned order dated 09/02/2017 would stand revived.
- E] Though by the instant order the affidavit of examination in chief is to be filed on 17/02/2017, the parties would remain present before the Estate Officer on 17/02/2017 as well as on 20/02/2017 on which day the matter is originally fixed by the Estate Officer.
- F] With the aforesaid directions, the above Writ Petition is disposed of.

[R.M.SAVANT, J]