

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

**CIVIL APPLICATION NO.762 OF 2017
IN
WRIT PETITION NO.1822 OF 2017**

M/s.Carona Limited .. Applicant

vs.

Anand Manjunath Rao .. Respondent

Mr.Dinesh Kumar Seth i/b Mr.Mehul A. Rathod for the applicant

Mr.Sachin Kankal, A.G.P. for the respondent State

Ms.Karuna Yadav with Mr.N.M.Ganguli for the respondent no.2

**CORAM : K. K. TATED, J.
DATE : APRIL 27, 2017**

P.C.:

1 Heard the learned counsel for the parties.

2 This application is preferred by petitioner for clarification of the order dated 8.3.2017 passed by this court in Writ Petition No.1822 of 2017 by which this court directed applicant to deposit sum of Rs.10,00,000/- in the Registry within six weeks from the date of that order and also directed to continue attachment levied by the Tahsildar on petitioner's property till the hearing and final disposal of the Writ Petition.

3 The learned counsel for the applicant submits that in the present

proceedings, respondent Anand Manjunath Rao filed his Affidavit-in-Reply dated 30.3.2017 stating that he has to recover sum of Rs.37,34,071/- along with interest. Paragraph 10 of the said Affidavit reads thus:

“10. I say that having regard to the said provisions of law calculating the interest at 15% as prime lending rates of the bank interest rate upto 31.03.2017 works out to Rs.37,34,071/- as set out here below:

Particulars	Amount in Rs.
Principal Amount of recovery certificate dated 31.01.2012	12,84,555
Interest from 01.08.2003 to 12.01.2012 @ 6% P.A.	6,48,700
Interest from 13.01.2012 to 31.03.2017 @ 15% P.A.	10,11,588
Total	29,44,843
Principal Amount of recovery certificate dated 23.07.2014	3,03,549
Interest from 01.08.2002 to 22.07.2014 @ 10% P.A.	3,64,259
Interest from 23.07.2014 to 31.03.2017 @ 15% P.A.	1,21,420
Total	7,89,228
<u>Grand Total</u>	<u>37,34,071</u>

I say that accordingly my claim under the two certificate upto 31.03.2017 works out to Rs.37,34,071/- with further interest on respective principal amounts at 15% interest from 01.04.2017 till the actual payment.”

4 The learned counsel for the applicant submits that they deposited sum of Rs.10,00,000/- in the Registry of this court. He further submits that as per attachment order, Tahsildar recovered sum of Rs.2,70,000/- from their bank accounts. In support of this the learned counsel for the

applicant relies on the letter dated 17.1.2017 issued by HDFC Bank, at page 59 of Civil Application, letter dated 3.2.2017 issued by Union Bank of India, at page 61 of Civil Application, letter dated 2.2.2017 issued by Central Bank of India, at page 67 and attachment order dated 25.1.2017 showing list of movable assets attached by the Tahsildar of Rs.71,700/-.

5 It is the case of the applicant that at present balance in their bank account in NIL. He submits that entire amount is recovered by the Tahsildar in recovery certificate. The learned counsel for the applicant submits that, applicant's Licensee M/s.Sumangal Holdings deposited Rs.6.5 Crores in the Court of Small Causes at Bombay in Applicants' L.E. & C. Suit No.240 of 2008 and same is also attached. He submits that even their property of Khatau House i.e. 2nd floor is also attached by the Tahsildar for recovery of respondent no.1's claim. He submits that respondent's own affidavit dated 30.3.2017 shows that they have to recover only Rs.37,34,071/-. But Applicants are disputing same in the present Writ Petition. He submits that they have no objection if attachment in respect of Rs.6.5 crores which is lying in the Small Causes Court and their property i.e. 2nd floor in Khatto House at Mahim is continued till the hearing and final disposal of present Writ Petition.

6 The learned Counsel for the applicant submits that this Hon'ble Court be pleased to lift the attachment in respect of three bank account as stated hereinabove and movable stocks as per panchnama dated 25.1.2017. He submits that if attachment as per Tahsildar's order dated 25.1.2017 in respect of movable goods is not lifted, irreparable loss will be caused to them. He submits that in any case, respondent no.1's

claim is secured by attaching their sum of Rs.6.5 crores which is lying in the Small Causes Court and their property on 2nd floor of Khatau House at Mahim. On the basis of these submissions, the learned counsel for the applicant submits that this Hon'ble Court be pleased to make Civil Application absolute in terms of prayer clause (a).

7 On the other hand, the learned counsel for the respondent no.1 vehemently opposed the present Civil Application. She submits that attachment is done by the Tahsildar pursuant to the order dated 12.1.2017 passed by Division Bench in Writ Petition No.931 of 2013. Therefore, in any case, if applicant requires any order for lifting the attachment, they have to move before the Division Bench in Writ Petition No.931 of 2013 only. She further submits that actually respondent no.1 have to recover more than Rs.37,34,071/-. She submits that in their affidavit dated 30.3.2017 respondent no.1 has given calculation only till 1.4.2017. Therefore, there is no question of lifting attachment as levied by the Tahsildar in respect of bank account as well as movable goods. She submits that if Civil Application is allowed, it will be very difficult for them to recover their amount. Hence, there is no substance and same is required to be dismissed.

8 I have heard both the sides at length.

9 It is to be noted that the validity of the order passed by Labour Court dated 26.12.2003 in complaint (ULP) No.115 of 1987 and order dated 20.11.2008 passed by Industrial Court is pending before this court in Writ Petition No.1822 of 2017. In any case, during the pendency of the present Writ Petition, claim of the respondent no.1 worker is required to be safeguarded. In the present proceeding,

Tahsildar already recovered sum of Rs.2,70,000/-. Apart from that, applicant deposited sum of Rs.10,00,000/- in the Registry of this court as per order dated 8.3.2017. Not only that, a sum of Rs.6,50,00,000/- lying in the Small Causes Court is also attached by the authority. Apart from that, applicant's immovable property having at 2nd floor in Khatau House is also attached. Not only that applicant made a statement before this court that they will not create any third party right, title and interest in respect of immovable property i.e. 2nd floor in Khatau House at Mahim. He submits that sum of Rs.6,50,00,000/- as well as immovable property is also attached by P. F. Authority. He submits that they have no objection to continue the said attachment till the hearing and final disposal of the present Writ Petition.

10 Considering these facts and as out of Rs.37,34,071/- a sum of Rs.12,70,000/- is already recovered by the Tahsildar. I am of the opinion that applicant has made out a case for allowing this Civil Application in terms of prayer clause (a). Objection raised by the advocate for the respondent that applicant have to move before the Division Bench in Writ Petition No.931 of 2013 is not sustainable because in the present Civil Application, applicant is seeking clarification of order dated 8.3.2017 passed by this court in Writ Petition No.1822 of 2017. In Writ Petition No.931 of 2013, respondent no.1 made following prayers:

“(a) That this Hon'ble Court may be pleased to exercise its jurisdiction under Article 226 of the Constitution of India and issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order calling for the record and proceedings leading to the issuance of Recovery Certificate dated 13.01.2012 and after examining the same, direct the Respondents No.1 to 3 to expeditiously

recover the amounts of the certificate with interest at the statutory rate on time bound basis.

(b) That pending the hearing and final disposal of the petition the Respondent Nos.1 to 3 are directed by an order and mandatory injunction of this Hon'ble Court to recover the amounts of the Recovery Certificate dated 13.1.2012 (Exh.A to the petition) with interest at the statutory rate expeditiously on time bound basis.

(c) For ad-interim order s in terms of prayer b) above;

(d) for costs of an incidental to the petition and of the Petitioner.

(e) For such further and other reliefs, orders and directions as the nature and circumstances of the case may require or justify or as this Hon'ble Court may deem just and proper.”

11 Considering these facts, Civil Application is allowed in terms of prayer clause (a) which reads thus:

“(a) that pending the hearing and final disposal of the present Writ Petition No.1822/2017, this Hon'ble Court be pleased to issue a Clarification / Modification of the said Order dated 08.03.2017 passed in the present WP/1822/2017 (annexed herein as Exhibit “B”) and specifically of the work “PROPERTY” specified therein in its internal paragraph 7(c) at internal Page 3 of the said Order so as to:

- i. exclude the “Movable Properties” of the Applicant being the Applicant's Bank Accounts being HDFC Bank Account No.00602290000093 (at Maneckji Wadia Building Branch, Fort, Mumbai – 400 023), Central Bank of India Account No.3245645983 (at Ballard Estate Branch, Fort, Mumbai – 400 001) and Union Bank of India Account No.3164010036160 (at Clare Road, Byculla (West), Mumbai – 400 027) and the Applicant's

Stocks attached by the learned Counsel for the .Tahsildar as more particularly stated in the Panchnama and Prohibitory Order dated 25.01.2017 (along-with a list of movable assets of the Applicant lying and being at the Applicant's Office / Godown at A/523, Sussex Industrial Estate, Byculla (West), Mumbai – 400 027, attached by the Ld.Collector);

ii. and continue the Ld.Tahsildar's claim (in WP/931/2013) lodged with the PF Department for the balance proceeds (of approximately Rs.6 crores) from the proposed sale of the said Immovable Property of the Petitioner being the property of Khatau House at Mahim;

iii. And continue the Charge of the Ld.Tahsildar (in WP/931/2013) on the amount of Rs.6.50 crores deposited in the Hon'ble Small Causes Court by the Applicant's Licensee in the Applicant's L.E. & C. Suit No.240 of 2008 as stated above.”

12 Civil application stands disposed of accordingly.

Parties to act on authenticated copy of this order.

(K.K.TATED, J.)