

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

**NOTICE OF MOTION NO. 327 OF 2016
IN
WRIT PETITION NO. 176 OF 2011**

M/s. Bombay Housing & Area
Development Board ... Applicant.

In the matter between

M/s. Bombay Housing & Area
Development Board ... Petitioner

V/s.
Mrs. Vijaya V. Rane ... Respondent

Mr. V. P. Vaidya for the Applicant/ori. Petitioner.
Mr. Mahesh Mishra i/b Vandita Trivedi for the Respondent.

**CORAM : K. K. TATED, J.
DATED : 27/02/2017**

P.C.:

. Heard learned Counsel for the parties.

2 Liberty granted to carryout amendment in prayer clause (a) of
Notice of Motion. Reaffirmation is dispensed with.

3 By this Notice of Motion, the Applicant Petitioner seeks stay of
operation and implementation of order dated 21.04.2010 passed by the
Industrial Court, Mumbai in Complaint (ULP) No. 486 of 2004 holding
that the Respondent original Complainant is entitled benefits as per
Government Rules i.e. earned leave, medical allowances, conveyance
allowances, traveling allowances, CLA, HRA at par with the permanent

workmen w.e.f. 04.11.1996 from the date of reinstatement of the respondent complainant in services with the petitioner.

4 The learned Counsel for the Applicant Petitioner submits that said order was challenged by the Petitioner by filing Writ Petition under Articles 226 and 227 of the Constitution of India bearing Writ Petition No. 176 of 2011 before this Court. He submits that in the said Writ Petition this Court (Coram : Anoop Mohta, J) granted rule on 25.03.2011 and directed Respondent not to take any coercive steps based on the impugned order. He submits that in spite of these facts, the Respondent proceeded with Misc. Criminal Complaint (ULP) No. 63 of 2010 filed by them under Section 30 read with Section 48 and Rule 80 of M.R.T.U. & P.U.L.P Act, 1971 and Rules for non compliance of order dated 21.04.2010 passed by the Industrial Court at Mumbai in Complaint (ULP) No. 486 of 2004.

5 The learned Counsel for the petitioner submits that Respondent also preferred Recovery Application (ULP) No. 10 of 2011 under Section 50 of M.R.T.U. & P.U.L.P Act., 1971 read with Rule 97(9) of the Labour Court (Practice and Procedure Rules, 1974). He submits that this Court passed order on 25.03.2011 after hearing both the sides and inspite of order passed by this Court, the respondent taking action against the Petitioner in Misc. Criminal Complaint No. 63 of 2010 as well as in Recovery Application (ULP) No. 10 of 2011. Hence, pending the hearing and final disposal of the Writ Petition, operation and implementation of impugned order dated 21.04.2010 passed by the Industrial Court in Complaint (ULP) No. 486 of 2004 be stayed. He

submits that if stay is not granted irreparable loss will be caused to the petitioner. He submits that applicant has good chance of success in the present matter.

6 On the other hand, the learned Counsel for the Respondent vehemently opposed the present Notice of Motion. He submits that they are not proceeding with the Misc. Criminal Complaint (ULP) No. 63 of 2010 pending before the Labour Court at Mumbai. The statement is accepted.

7 The learned Counsel for the Respondent submits that they filed application under Section 50 of M.R.T.U. & P.U.L.P. Act, 1971 for recovery of her dues to the extent of Rs.4,48,389/- He submits that at the time of admitting Writ Petition No. 176 of 2011, this Court restrained the Respondent only not to take any coercive steps against the Petitioner based on the impugned order. He submits that respondent filed application for recovery of her dues only. That cannot be termed as a coercive steps. Hence, there is no substance in the Notice of Motion and same is required to be dismissed with costs.

8 I heard both the sides at length. It is to be noted that after hearing both the sides, this Court admitted Writ Petition No. 176 of 2011 on 25.03.2011 and directed Respondents not to take any coercive steps based on the impugned order. Bare reading of the application filed by the Respondent under Section 50 of M.R.T.U. & P.U.L.P. Act, 1971 shows that they have to recover sum of Rs.4,48,389/- from the Petitioner as per judgment dated 21.04.2010 passed by the Industrial

Court. This itself shows that though there was order passed by this Court on 25.03.2011, the Respondent filed Recovery Application on 31.10.2011, which is contrary to the order passed by this Court.

9 Considering these facts, I am of the opinion that applicant has made out case for allowing the Notice of Motion in terms of prayer clause (a) and (b).

10 Hence, following order is passed:

a) Notice of Motion is made absolute in terms of prayer clauses (a) and (b), which reads thus:

“a) That this Hon'ble Court be pleased to stay the effect operation and execution of order dated 21.04.2010.

b) That this Hon'ble Court be pleased to stay further proceeding in Misc. Complaint (ULP) No. 63 of 2010 and Recovery Application (ULP) No. 10 of 2011.”

b) Liberty granted to the Respondent to prefer appropriate application for fixing early date of hearing of Writ Petition No. 176 of 2011, and that application shall be decided on its own merits.

c) No order as to costs.

(K.K.TATED, J.)