

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO. 401 OF 2015****IN****WRIT PETITION NO. 1038 OF 2014**

The Board of Trustees of the Port of Mumbai ... Applicant

In the matter of :

M/s. Seaspam Shipping Ltd. ... Petitioners

Versus

The Board of Trustees of Mumbai Port and anr.. Respondents

Mr.Sachin Kanse I/by PRS Legal for the petitioners.

Mr. Ajay Fernandez a/w Ms. Sneha Pandey i/by Motiwalla & Co. for respondent nos.1 and 2.

**CORAM : SHANTANU KEMKAR &
G.S. KULKARNI, JJ.
NOVEMBER 13,2017**

P.C.:

On 7th April, 2014 while disposing of the WP(L) No. 910 of 2014, this court had observed thus :

“The grievance of the Petitioner is that his ship has been seized by the Port Trust Authorities for non payment of dues. According to the Respondents, the amount due and payable as of 20thFebruary, 2014 is Rs. 29,58,864/-. The amount claimed to be outstanding is Rs.7,94,891/- which is also disputed by the Petitioner. In our view, it will not be possible for us to decide these disputed questions of facts. However, if the Petitioner deposits 50% of the amount claimed by the Respondent - Port Trust by their letter

18.8.2007 by pay order, and gives bank guarantee for the balance 50% of the amount within 4 weeks, the Respondents shall release the Petitioner's ship. The amount deposited by the Petitioner in this Court will be subject to any decision that may be taken by the competent authority, which adjudicates claim of the Respondents and the Petitioner. If appropriate proceeding is taken out by the Petitioner i.e. filing suit in the City Civil Court, then the amount deposited by the Petitioner in this Court will be transferred to the City Civil Court. If an application is made by the Bombay Port Trust for withdrawing the said amount, which the Petitioner has deposited, City Civil Court may pass an appropriate order on the said application on merits and in accordance with law. If the said amount is deposited by the Petitioner as directed, it may be kept in a fixed deposit account of a nationalised Bank, initially for a period of one year."

2. According to the learned Counsel for the applicant in the Notice of Motion, the Board of Trustees of Port of Mumbai, writ petitioner has not filed the suit in the City Civil Court and in the circumstances, in view of the said order dated 7.4.2014, the amount deposited by the writ petitioner has to be returned to the applicant/respondent no. 1.
3. Learned counsel for the writ petitioner accepted the statement that till date the suit has not been filed in terms of the liberty granted by this court on 7.4.2014.
4. We have been informed that the Bank Guarantee for 50% of the amount has already been invoked and the amount has been forwarded to the Prothonotary and Senior Master. In the circumstances, we direct that the entire amount which is lying with the Prothonotary and Senior Master as deposited by the petitioner

and the amount received as per invocation of Bank Guarantee be paid to the applicant/respondent no. 1.

5. With the aforesaid directions Notice of Motion stands disposed of.

(G.S.KULKARNI, J.)

(SHANTANU S. KEMKAR, J.)