

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

NOTICE OF MOTION No. 476 OF 2016
IN
WRIT PETITION NO. 1523 OF 2013

Capt. Dilip Vimalanand Kopikar. ..Petitioner.

Versus

The Brinhanmumbai Municipal Corporation
and Another. ..Respondents.

Mr. Kesar Kharawalla i/b V. S. Bhadkamkar for the Petitioner.
Mr. Anil C. Singh, Senior Advocate with Mrs. K. H. Mastakar for
BMC.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Date : **January 6, 2017.**

P. C. :

1. Heard the learned Counsel appearing for the respective parties. This notice of motion is taken out by the Petitioner for modification of clause-3 of the order dated 6th September 2016 passed in above writ petition.

2. By the said order, we disposed of the said writ petition by passing the following operative order :

- [1] The Petitioner shall deposit with the Registry of this Court amount of interest @ 9% p.a. on the delayed deposit of Rs.59 lakh for the period between 20th January 2015 to 17th March 2016. The said amount shall be deposited within three weeks from today. The Petitioner shall give notice of deposit to the Corporation.

- [2] The Respondent-Corporation is at liberty to withdraw the amount of Rs.59 lakh initially deposited by the Petitioner with interest accrued thereon as well as the amount of interest to be deposited by the Petitioner under clause [1] above.
- [3] The Respondent-Corporation on withdrawing the above amount shall, as expeditiously as possible and at any rate within the period of six weeks from the date of withdrawal of the amount from this Court, grant occupation certificate / Commencement certificate to the Petitioner in respect of subject building in accordance with the sanctioned plan and on compliance of other required formalities.

3. During the pendency of the writ petition, the Petitioner had deposited with the registry of this Court an amount of Rs.59 lakh and in terms of the above order, the Petitioner was directed to deposit additional interest @9% p.a. on the delayed payment for the period between 20th January 2015 to 17th March 2016. The learned Counsel for the Petitioner submits that in compliance with clause (1) of the order, the petitioner on 19th September 2016 deposited an amount of Rs.6,15,960/-before the Registry of this Court, after giving requisite notice to the Corporation. The learned Counsel for the petitioner has further submitted that despite the liberty given, the respondent Corporation has not withdrawn the amount specified in clause (2) of the order, and consequently not granted Occupation Certificate/Commencement Certificate in respect of the subject building despite compliance of all the required formalities.

4. Mr. Singh, the learned Senior Counsel appearing for the Respondent-Corporation has submitted that the Corporation has not withdrawn the said amount as it proposes to file SLP in the Apex Court to challenge the above order.

5. Undisputedly, the petitioner has deposited the amount of Rs.6,15,960/- as stipulated in clause (1) of the order. The Respondent-Corporation was at liberty to withdraw the amount of Rs.59 lakhs alongwith interest accrued thereon, as well as the amount deposited in compliance with clause (1) of the order. Upon withdrawal of the said amount, the Respondent-Corporation was directed to grant Occupation Certificate/Commencement Certificate to the petitioner in respect of the building in accordance with the sanctioned plan and on compliance of other required formalities. The fact remains that as on date, the Respondent-Corporation has not challenged the said order before the Apex Court, despite which the Respondent-Corporation has neither withdrawn the amount nor issued the Occupation Certificate. It is apparent that the Respondent-Corporation, a statutory body, has sought to defeat the said order by refusing to withdraw the said amount. The unjustifiable conduct of the Respondent No.3 necessitates modification of clause (3) of the order dated 6th September, 2016.

6. Hence, clause (3) of the order dated 6th September,

2016 stands modified as under:-

- 3.i) The Respondent-Corporation is at liberty to withdraw the amount of Rs.59 lakhs and the amount of Rs.6,51,960/- along with the interest accrued thereon;
- 3.ii) The Respondent-Corporation is directed to grant Occupation Certificate/Commencement Certificate to the petitioner in respect of the subject building in accordance with the sanctioned plan, on compliance of the other required formalities;

. The Notice of Motion stands disposed of.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]