

psv

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

CIVIL APPLICATION NO.1316 OF 2017

IN

WRIT PETITION NO.6823 OF 2008

The Board of Trustees of the Port of
the Port of Bombay

...Applicants/org.
Respondents

In the matter between
Smt.Hayatoon Nissa Begum & Ors.

...Petitioners

V/s.

The Board of Trustees of the Port of
the Port of Bombay

...Respondents

Mr.Ajay Khaire and Mr.Mandar B. i/b. The Law Point for Applicants/org.
Respondents.

Mr.A.K. Goel with Mr.Surin Usgaonkar for org. Petitioners.

CORAM : G.S. KULKARNI, J.

DATE : 13th FEBRUARY, 2018

P.C.:

By this civil application, the applicants/Board of trustees of the Port of Bombay/original respondents in writ petition have prayed that the interim protection granted by this Court by an order dated 18th October 2008 be vacated and the hearing of the petition be expedited.

2. By an order dated 18th October 2008 passed by this Court, the writ petition was admitted and interim relief was granted in terms of prayer clause (b) to the petitioners, subject to respondents depositing

the arrears at the rate of Rs.40,000/- per month from the date of the said order and regularly pay monthly compensation by 10th of every month.

3. This civil application was heard on the earlier occasion on 31st July 2017. Considering the submissions as made on behalf of the parties, this Court had passed the following order:-

“Mr.Goel, learned counsel for the respondents states that he has received the calculation of the arrears of rent from the applicant Bombay Port Trust. He intends to take instructions as to whether the amount which has been stated is the correct amount as per the orders passed by this Court. Accordingly, stand over for two weeks. The parties are put to notice that on the adjourned date of hearing, the Civil Applications will be taken up for hearing with no further adjournments. Stand over to 14 August 2017.”

4. Accordingly a statement of the amounts of arrears as directed to be deposited by this Court by the interim order dated 18th October 2008 was exchanged between the parties. The parties were again heard on 29th September 2017 when the Court passed the following order:-

“1. Heard the learned Counsel for the parties. Prima facie it appears that the petitioners - respondents in the Civil Application are not correct in their contention that they are not in arrears of the amounts as directed to be deposited in pursuance of the order dated 18 October 2008 which reads thus:-

*“Rule, returnable on 15.01.2009.
Mr.U.J.Makhija, Advocate waives service for the respondents.
Ad-interim relief in terms of prayer (b) subject to*

depositing, (the arrears), Rs.40,000/- per month from today and regular monthly compensation by 10th of every month.”

2. The submission on behalf of the applicant-the Board of Trustees of the Port of Bombay is that the respondents-petitioners have not deposited any amount since 2008. It is submitted that the amount of Rs.55,24,252.52 is due and payable by the respondents-petitioners to the applicants. Learned Counsel for the respondents -petitioners would submit that the order dated 18 October 2008 (*supra*) would require the respondents to deposit arrears of Rs.40,000/- and to pay regular monthly compensation by 10th of every month. From this submission as made on behalf of the respondents/petitioners, it appears that the understanding of the order dated 18 October 2008 as made by the respondents, *prima facie*, is not correct. It is almost nine years that the order dated 18 October 2003 is passed. It is thus difficult to accept that the respondents/petitioners have not understood the order passed by this Court. Now when this civil application has been filed for vacating of the said order, such defence is sought to be raised.

3. In my opinion, this defence as set up on behalf of the respondents-petitioners to oppose this application does not appear to be bonafide and in any case the same is without any substance. In the circumstances and more particularly considering the unacceptable stand of the respondents/petitioners, in my opinion, the ad-interim order dated 18 October,2008 would be required to be vacated on account of gross non-compliance of the order passed by this Court by the respondents/petitioners.

4. However, as a last opportunity, so as to enable the respondents/petitioners to take a considered decision, as to whether the respondents-petitioners would deposit the amount as per the calculation as furnished and placed on record on behalf of the applicant- the Board of Trustees of the Port of Bombay, this application is adjourned for a period of four weeks from today. If on the adjourned date of hearing, the respondents-petitioners are not coming forth to deposit the amounts as directed by this Court, the Court would be constrained to vacate the interim orders dated 18 October 2008.

4. Accordingly, stand over to 3 November 2017.”

5. As clearly seen from the above orders and from the submissions as made on behalf of the applicants that the respondents/ org. petitioners have not deposited any amount in compliance of the orders dated 18th October 2008 passed by this Court, consequently an amount of Rs.55,24,252.52 have become due and payable by the respondents to the applicants as per the said orders passed by this Court. In the order dated 29th September 2017 as noted above, the Court had categorically recorded that the understanding of the org. petitioners of the order dated 18th October 2008 as passed by this Court appeared to be not correct and that for almost 9 years of the passing of the order dated 18th October 2008, the amounts as directed were not deposited. Thus, the Court had clearly observed that it was difficult to accept that the org. petitioners have not understood the said order passed by this Court for almost about 9 years. It was also noted that the defence as set out on behalf of the org.petitioners to oppose the application also appeared to be not bonafide and that if such state of affairs persists, then the ad-interim order dated 18th October 2008 would be required to be vacated, on account of non-compliance of the order dated 18th October 2008 passed by this Court. However, as a last opportunity and to enable the org. petitioners to take a considered decision as to whether the org. petitioners would deposit the amount as per the calculations as furnished and placed on record on behalf of the applicant, the hearing of

the application was adjourned with a clear understanding that if by the adjourned date of hearing the org. petitioners are to deposit the amounts as directed by this Court, the Court would be constrained to vacate the interim order dated 18th October 2008.

6. What is significant is that after the Court passed the said order, dated 29th September 2017, the org. petitioners moved a praecipe dated 7th November 2017 seeking clarification of the order dated 18th October 2008 passed by the Court (A.V. Mohta, J. as His Lordship then was). By an order dated 15th November 2017 passed by the Court (A.V. Mohta, J.) the application for clarification as made on behalf of the respondents/org. Petitioners, was rejected by observing that there is no error apparent on the face of the orders and therefore, no order is required to be passed on the clarification praecipes. The praecipes were accordingly disposed of. It is on this background, today this civil application is listed.

7. Learned Counsel for the applicants contends that the order dated 18th October 2008 by which conditional interim protection was granted to the org. petitioners was clear. There was no ambiguity whatsoever in the said order and that an amount of Rs.40,000/- per month was required to be deposited by the org. petitioners as monthly compensation as a condition of stay granted by the Court to the execution of the decree. It is submitted that by now it is clear that there

was no intention on the part of the respondents/org. petitioners to deposit the said amount as directed by the Court. It is further submitted that on different grounds the respondents/org. petitioners had avoided to make payment of the said amount and by passage of time, the amount has substantially increased and lastly an amount of Rs.55,24,252.52 is due and payable by the org. petitioners. It is submitted that the sole intention of the original petitioners is to use huge public property without making any payment and that too when it was directed by this court about 9 years back . This is not only causing a loss to the public exchequer but amounts to illegal uses of the public property, apart from gross non compliance of the orders of the court. It is, therefore, submitted that the civil application is required to be allowed.

8. On the other hand, Mr.Goel, learned Counsel for the respondents/org. petitioners, would submit that the amount which is called upon to be deposited by the org. petitioners is not the correct amount. He has drawn my attention to the fact that though the order dated 18 th October 2008 passed by this court refers to an amount of Rs.40,000/- per month to be paid by the original petitioner but it ought to be Rs.1,950/- per month as asserted by the original petitioners in the letter dated 5th November 2008 addressed to the applicants and that the respondents/org. petitioners are agreeable to deposit the amount at the said rate. However, the said amount of Rs.40,000/- to be paid to the

applicant is not acceptable to the original petitioner. It is thus submitted that there was always an intention to make deposit of monthly compensation at the rate of Rs.1,950/-.

9. Having heard learned Counsel for the parties and having perused the orders dated 31st July 2017 and 29th September 2017 and the further order passed on the clarification application of the org. petitioners dated 15th November 2017 (A.V. Mohta, J. as His Lordship then was), it is quite clear that the respondents/org. petitioners are in complete breach of the order dated 18th October 2008 as noted in the earlier orders. There is no ambiguity whatsoever in the orders passed by this Court whereby the respondents/org. petitioners were directed to deposit Rs.40,000/- per month as monthly compensation more particularly when an application of the respondents/original petitioners to that effect is rejected by the court which passed the order. The submission as made on behalf of the respondents/org. petitioners that Rs.40,000/- as referred to in the order dated 18th October 2008 would be the arrears and not the amount of monthly compensation cannot be accepted. It also cannot be accepted that for the reason that if such submission is accepted, clear direction in the order dated 18th October 2008 that “amount of Rs.40,000/- per month” is rendered meaningless. It also cannot be that the intention of the Court was that the public property and considering the nature of the suit premises, would be permitted to be utilized by the org. petitioners at a meager amount of

Rs.1,950/- per month. In any event, clarification as sought by the respondents/org. petitioners that the amount of Rs.40,000/- is not the correct amount of monthly compensation which is required to be paid by the respondents/org. petitioners also stood rejected by this Court by an order dated 15th November 2017.

10. The contention as urged on behalf of the respondents/org. petitioners in the alternative, is that the hearing of the petition be expedited. This contention also cannot be instantly accepted as there are very old matters which are pending. There are Supreme Court expedited matters and matters of senior citizens. What is significant is that by making this alternative submission, the real intention of the org. petitioners can be seen which was not to honour the order dated 18th October 2008 passed by this Court. This is a clear impression which is reflected in the contention as throughout urged on behalf of the respondents/org. petitioners.

11. In the circumstances, the only consequence which the process of law would require in the fact situation is that, there would be no alternative but to vacate the order dated 18th October 2008.

12. It is required to be noted that for almost about 9 years the respondents/org. petitioners have been successful in not depositing the amounts as directed by this Court and nonetheless are enjoying the suit

property. The interim orders passed by this Court definitely have some consequence and meaning. The order was required to be complied in letter and spirit by the respondents/org. petitioners however, by the entire conduct of the respondents/original petitioners the orders passed by this Court are being rendered meaningless.

13. In the circumstances, civil application No.1316 of 2017 is required to be allowed. It is, accordingly, allowed to the extent that the interim stay granted by the order dated 18th October 2008 to the execution of the decree of the Small Causes Court stands vacated. No costs.

[G.S. KULKARNI, J.]