

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6306 OF 2015

M/s.Havmor Ice-Cream Ltd. and another. ... Petitioners.

V/s.

Municipal Corporation of Nashik and others. ... Respondents.

Mr.Surel S. Shah with Mr.Nachiket V. Khaladkar for the petitioners.

Mr.Vaibhav P. Patankar for respondent No.1.

Mr.Manish M. Pabale, AGP for respondent Nos.2 and 3.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 23rd April 2018.

P.C.:

Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent No.1 and the learned AGP is representing the second respondent.

2. Today, the learned counsel appearing for the respondent No.1 has tendered across the bar an affidavit of Shri Rohidas Atmaram Dorkulkar, Deputy Commissioner (Estate) of the first respondent. He states that the affidavit is filed on behalf of respondent No.1- Municipal Corporation. The affidavit records that the respondent No.1- Municipal Corporation will withdraw demand notice dated 26th December 2013 issued to the distributor of the petitioners as well as demand notices dated 12th July 2014 and 27th February 2015 issued to the petitioner and will

issue fresh show cause notices. A time within which these show cause notices will be issued has been mentioned in paragraph-6 of the affidavit. In paragraph-9, the outer limit for passing orders on the show causes notices has also been set out. In the petition, the petitioner has prayed for refund of Rs.2,42,000/-. In paragraph-10 of the affidavit, it is stated that the amount deposited by the petitioner with the respondent No.1-Corporation will be adjusted and/or refunded as the case may be as per the final orders passed on the fresh show cause notices which will be issued to the petitioners.

3. The learned counsel appearing for the petitioners had some reservation about what is stated in paragraph-10 of the affidavit tendered today. He states that there is no reference to payment of interest on the said amount as prayed for in the petition. He states that there is no outer limit mentioned in paragraph-10.

4. The impugned notices have been agreed to be withdrawn as stated in paragraph-5 of the affidavit. The affidavit provides for time limit within which fresh show cause notices will be issued and the time limit within which final orders will be passed on the show cause notices. From the statements made in the affidavit, it is, thus, obvious that the decision regarding refund/adjustment of the amount deposited by the petitioners will also be taken while deciding fresh show cause notices. While giving reply to the fresh show cause notices which will be issued by the respondent No.1- Corporation, the petitioner can always claim refund of the amount together with interest. While deciding show cause notices,

the respondent No.1 will have to take decision even on the aspect of refund with interest.

5. Therefore, in our view, the petition deserves to be disposed of by accepting the statements made in the affidavit of respondent No.1 tendered today.

6. Hence, we dispose of the petition by passing following order:

(i) In view of statements made in the affidavit-in-reply filed by the respondent No.1, prayers (b), (c), and (e) do not survive. As far as prayer clauses (d) and (f) are concerned, it is not necessary to consider the same on merits. If there is any occasion for the petitioners to file fresh petition, it will always be open for the petitioners to make the said prayers;

(ii) While giving reply to the fresh show cause notices which may be issued by the respondent No.1- Corporation, the petitioners can always pray for refund of amount with interest thereon. Needless to state that while deciding the fresh show cause notices, the respondent No.1 will also adjudicate upon the said prayer for refund with interest and reasons will be recorded for deciding the said prayer;

(iii) We direct the respondent No.1 to ensure that show causes notices are issued and are decided within the time frame set out in the affidavit tendered today;

(iv) In the event, the orders on show cause notices be

adverse to the petitioners, it will be always open for the petitioners to challenge the same in accordance with law;

(v) In the event, the respondent No.1 passes an order directing removal of the board subject matter of this petition, the action of removal shall not be taken for a period of two weeks from the date on which the order passed on the show cause notices is communicated to the petitioner;

(vi) We make it clear that we have not made any adjudication on the merits of the fresh show cause notices proposed to be issued to the petitioners and the merits of the claim for refund with interest thereon. The said issues are kept open;

(vii) Petition is disposed of on the above terms.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)