

Jsn

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

**NOTICE OF MOTION NO. 286 OF 2018
IN
WRIT PETITION (L) NO. 1129 OF 2018**

Thermocol Fabricator and Decoration ... Applicants/
Association and Ors. Petitioners
Versus
The State of Maharashtra & Ors. ... Respondents

Mr. Milind Sathe, Senior Counsel with Mr. Sachin Kudalkar and
Mr. Milind Parab for Petitioners / Applicants.
Ms. Geeta Shastri, AGP, with Ms. Deepali Patankar, Asstt. to G.P.
for the Respondent – State.
Mr. Atul Singh, with Mr. Anand Singh, for the Respondent No.3
UOI.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATE: 13TH JULY, 2018.

PC:-

1. The submissions of the learned Senior counsel appearing for the Applicants were heard yesterday. This Notice of Motion is taken out by the Petitioners in Writ Petition (L) No. 1129 of 2018. The challenge in the Writ Petition is to the notification dated 23rd March, 2018 issued by the Government of Maharashtra. The notification has been issued for imposing a ban / restrictions on use and manufacture of certain items of plastic and Thermocol.
2. On 23rd March, 2018, the State Government issued the impugned notification which is styled as the Maharashtra Plastic

and Thermocol Products (Manufacture, Usage, Sale, Transport, Handling and Storage) Notification, 2018. The said notification was issued in exercise of powers under Section 4 of the Maharashtra Non-Biodegradable Garbage (Control) Act, 2006 (for short "the said Act of 2006"). The impugned notification underwent a modification on 11th April, 2018. There was a challenge to the impugned notification in Writ Petition (L) No.1129 of 2018 and several other Petitions. The present Applicant / Petitioner is a registered society which represents the fabricators of Thermocol and the persons who are doing business of decoration by use of Thermocol. As far as the Applicant / Petitioner is concerned, it is concerned with only one clause in the impugned notification which is sub clause (3) Clause 3 which reads thus:

"There will be ban in whole state for use of plastic and Thermocol for decoration purpose".

3. The aforesaid Writ Petition is filed by the Applicant and other connected Writ Petitions filed for challenging the impugned notification were heard on 12th / 13th, April, 2018. This Court dealt with the prayer for stay of the execution and operation of the impugned notification. By a detailed judgment and order dated 12th and 13th, April, 2018, the prayer for interim relief of stay of

the execution and operation of the notification made in the Writ Petition filed by the Applicant was considered and rejected. Detailed reasons have been recorded for rejecting the said prayer.

4. As of today, the said order of the Court has become final and therefore, sub clause (3) of Clause 3 which imposes a complete embargo on use of Thermocol for decoration purposes continues to operate.

5. The learned senior counsel appearing for the Applicant invited our attention to the statements made in the Affidavit in Support. He pointed out that the artisans who are the members of the Applicant have started working on decorations for Ganapati Festival of September, 2018 long back. He pointed out that the members of the Applicant have purchased Thermocol way back in October, 2017. He pointed out that they have commenced the process of cutting and shaping Thermocol for decorations in Ganapati Festival of 2018 right from October, 2017. He submitted that as the impugned order has come into force after the members of the Applicant received orders for decoration and they started working upon it. Hence, the members of the Applicant may be permitted to supply decorations made up of Thermocol for Ganapati Festival of 2018 and to that extent, by granting interim relief, the prohibition imposed on the use of Thermocol for

decorations be relaxed. His submission is that the Applicant is willing to give an undertaking that its members will buy back Thermocol used in the decorations for Ganapati Festival and will ensure that after the Ganapati Festival is over, the Thermocol is properly destroyed. He invited our attention to the judgment and order dated 12th and 13th April, 2018. He pointed out that in case of use of items of plastic, extension of time was granted for benefit of individual citizens for a period of three months. He invited our attention to the various paragraphs of the aforesaid order and in particular paragraph 36, wherein one time protection of 3 months was granted by this Court for the reasons recorded. He, therefore, submitted that similar extension be granted to the members of the Applicant till the end of Ganapati Festival of 2018 with an undertaking of the Applicant to take back Thermocol used in the decoration.

6. We have considered the submissions. As noted earlier, the prayer for stay of operation of the impugned notification was considered by this Court and for the detailed reasons recorded, the prayer was rejected by order dated 12th and 13th April, 2018. As of today, the said order has become final. Grant of relief as prayed for by the Applicant in this Notice of Motion will virtually amount to granting a relief which was sought in the Petition by

way of interim relief and which was rejected.

7. In the aforesaid order, this Court has made extensive reference to the material placed on record by the State Government in the form of an Affidavit of Shri Sanjay Sandanshiv and its annexures. After considering the said Affidavit, this Court was of the view that, there is material placed on record to show that disposable items of plastic and Thermocol cause serious environment hazards and are affecting the health of human beings and animals. The Affidavit claims that alarming material was placed before the State Government showing the harming effects of disposal of such non-biodegradable material on the environment. In the said order, after considering the stand taken by the State Government in the said Affidavit, this Court rejected the prayer for grant of interim relief. This Court accepted the contention that the impugned notification has been issued with the noble object from protecting the environment and to avoid adverse impact on health of human beings and animals which is caused by disposal of such non-biodegradable material. In paragraph 32 and other paragraphs, this Court has given reasons. This Court observed that the ban on manufacturing and use under Clause 3 is substantially in respect of disposable plastic and Thermocol items. This Court noted that such items of Thermocol and plastic

which are banned are more than often disposed of after one use as distinguished from the items made up of glass, metal, etc.

8. As regards the extension of time granted by the said order, reasons have been recorded therein. This Court dealt with the possibility of large number of citizens possessing restricted / banned items as on the date of the impugned notification. This Court noted that local bodies have been granted time of three months in view of the notification dated 11th April, 2018 to make arrangements for collection and transportation of banned items. After noticing that sufficient facilities were not available to enable to the citizens to deposit the banned plastic items and after noting that coercive action can be taken against common man even by virtue of mere possession of banned items that this Court directed that no coercive action shall be taken in terms of Section 9 of the said Act, 2006 against the individual citizens limited only to the use or possession of restricted / banned items which are covered by the impugned notification. The said relief granted to common man is no ground to grant relief to the Applicant or its members.

9. We are not impressed by the last assurance given that the members of the Applicant will buy back the Thermocol decoration items which are sold to various organisations / persons for use as a decoration in Ganapati Festival. Once the members of the

Applicant part with the possession of said Thermocol items for consideration, in law or even otherwise, they will have no control over the persons who have purchased the Thermocol items. Some of them may even choose to retain Thermocol items for its use for the next year.

10. For the reasons we have recorded above, we find that no case is made out for grant of interim relief in this Notice of Motion and accordingly Notice of Motion is dismissed.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)