

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
NOTICE OF MOTION NO.374 OF 2017  
IN  
WRIT PETITION NO.2560 OF 2007

Yusuf Hussain, Partner of M/s. Zulash Clearing  
& Shipping Agency ... Applicant  
Vs.  
The Secretary, The Clearing & Forwarding  
Unprotected Dock Labour Board and others ... Respondents

Mr. Yusuf Hussain, Applicant in person present.  
Mr. Murlidhar Kale i/b. Mr. Prafull B. Shah for Respondent No.1.

**CORAM : R. M. BORDE &  
R. G. KETKAR, JJ.**  
**DATE : JANUARY 17, 2018**

**P.C. : [Per R. G. KETKAR, J.]**

**(In Chamber)**

Heard Mr. Hussain, applicant in person and Mr. Kale, learned  
Counsel for respondent No.1 at length.

2. By this Motion, petitioner has prayed for following reliefs:
  - “a) The petitioner would like to bring to the notice of the court that the order passed by Coram Shri J. N. Patel & Shri K. K. Tated dated 22.07.2008 is for M/s. Hillson & Dinshaw Pvt. Ltd. in Writ Petition No.2214 of 2007 and the order to deposit principal amount was given to the petitioner.
  - (b) The notice of motion is for withdrawal of deposit wrongly collected by this court.”
3. It is the case of the petitioner that Writ Petition No.2214 of 2007

was instituted by M/s. Hill Son and Dinshaw Pvt. Ltd. against the Secretary, Clearing and Forwarding Unprotected Dock Labour Board (For Greater Bombay, Thane and Raigad Districts) and others. On 22.07.2008, Division Bench of this Court [Coram : J. N. Patel, J. (as His Lordship then was) and K. K. Tated, J.] admitted the Petition by issuing Rule and granted interim stay of the execution of the impugned order through the Collector subject to the petitioner therein depositing the principal amount in this Court within a period of four weeks. This Court issued further directions as regards investment.

4. Writ Petition No.2560 of 2007 was instituted by the petitioner herein. On 28.07.2011, the Division Bench of this Court [Coram: A. M. Khanwilkar, J. (as His Lordship then was) and R. Y. Ganoo, J.] referred to order dated 22.07.2008 passed in Writ Petition No.2560 of 2007 and dealt with the submissions advanced by the petitioner that the order dated 22.07.2008 was passed in Writ Petition No.2214 of 2007 and not in Writ Petition No.2560 of 2007. This Court referred to the order dated 21.04.2010 passed in Notice of Motion No.159 of 2010 taken out by the petitioner for modification and clarification of the order dated 22.07.2008 passed in Writ Petition No.2560 of 2007. By way of indulgence, this Court gave one opportunity to the petitioner to deposit the principal amount referred to in the order dated 22.07.2008 in this Court within two weeks. In pursuance thereof, petitioner deposited the

principal amount in this Court on 11.08.2011.

5. The grievance of the petitioner is that order dated 22.07.2008 directing deposit of the principal amount was not passed in Writ Petition No.2560 of 2007. The Advocate representing respondent No.1 misled this Court by submitting that the said order was passed in Writ Petition No.2560 of 2007. The petitioner is 85 years old and is a victim of perjury and miscarriage of justice. He has suffered because of the perjury committed by the Advocate for the respondent No.1. The petitioner has, therefore, taken out the present Motion for refund of the deposit made on 10.08.2011.

6. Mr. Hussain submitted that the orders dated 22.07.2008 and 28.07.2011 are obtained by playing fraud on this Court. These orders are non est and nullity. He submitted that any judgment, decree or order obtained by fraud has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings. In support of this proposition, he relied upon the decision of **A. V. Papayya Sastry Vs. Government of A.P., (2007) 4 SCC 221**. He, therefore, submitted that Motion may be made absolute in terms of prayer clauses (a) and (b).

7. On the other hand, Mr. Kale has taken us through the affidavit in reply dated 10.01.2018 made by Laxman Kisan Gaikwad, the Secretary

of the first respondent. He submitted that the Motion taken out by the petitioner is an abuse of process of Court as also abuse of process of law. The Motion is wholly misconceived and is not maintainable, and as such, is liable to be dismissed. The petitioner had, in the past, filed 5 Notices of Motion and a Review Petition on the same grounds and for the same reliefs. After hearing both sides, this Court was pleased to reject the same.

8. Mr. Kale submitted that Writ Petition No.2560 of 2007 and Writ Petition No.526 of 2011 also, filed by the petitioner Zulash Clearing & Shipping Agency were disposed of by common Judgment and Order dated 07.09.2016 by the Division Bench of this Court (Coram: Anoop V. Mohta and G. S. Kulkarni, JJ.). He has taken us through that order which refers to Notice of Motion No.342 of 2008 filed by the petitioner for recalling the order dated 22.07.2008; another Notice of Motion No.198 of 2009 for clarification of the order dated 22.07.2008 on the same ground; and Notice of Motion No.159 of 2010 also for clarification. The petitioner filed Notice of Motion No.370 of 2014 for withdrawal of the amount deposited by him on the same grounds as raised in the earlier three Motions.

9. Mr. Kale submitted that the Division Bench of this Court quashed and set aside the orders dated 06.07.2007 against which Writ Petition No.2560 of 2007 was filed and 31.07.2010 against which Writ Petition

No.526 of 2011 was filed. This Court directed the Board to re-hear the petitioner. The amount of Rs.20,00,000/- deposited in this Court with accrued interest was ordered to be retained till the final decision of the Board and four weeks thereafter, if adverse order is communicated to the petitioner. Liberty was reserved to the petitioner to apply for withdrawal of the amount if the decision was in favour of the petitioner.

10. Mr. Kale submitted that in pursuance thereof, by order dated 27.02.2017, the Board held that the petitioner is liable to pay Rs.29,97,511/- being arrears for the period from 01.11.1998 to 30.11.2001. The order is duly served on the petitioner on 01.03.2017. He submitted that till date, the petitioner has not challenged the order dated 27.02.2017. Instead, the present Motion is taken out for withdrawal of the amount deposited by him. Mr. Kale submitted that petitioner filed Review Petition (L) No.64 of 2016 seeking review of the order dated 07.09.2016. By order dated 15.12.2016, Review Petition was dismissed. The petitioner also took out Notice of Motion No.426 of 2016 for withdrawal of the amount deposited by him and the same was rejected on 17.10.2016. The petitioner took out Notice of Motion No.445 of 2016 in Writ Petition No.2560 of 2007 for correcting paragraphs 10 and 12 of the judgment dated 07.09.2016. The said Motion was dismissed on 27.10.2016. The petitioner took out Notice of Motion No.16 of 2017 in Writ Petition No.2560 of 2007 for

withdrawing the amount deposited by him. Motion was disposed of on 27.01.2017 after referring to orders dated 07.09.2016 and 17.10.2016. The petitioner also took out Notice of Motion No.90 of 2017 in Writ Petition No.2560 of 2017 for reconsidering the order dated 22.07.2008 which was dismissed on 26.04.2017. Petitioner took out Notice of Motion No.297 of 2017 seeking identical relief, which was also dismissed on 29.06.2017. Mr. Kale, therefore, submitted that no case is made out for granting any relief to the petitioner.

11. The Motion was listed before us for hearing on 11.01.2018. At that time, the petitioner submitted that he being 85 years old will not be in a position to argue the Motion in a standing position. We, therefore, permitted him to argue the matter while sitting in the Court. He, however, insisted that the matter may be heard in Chambers as the orders dated 22.07.2008 and 28.07.2011 were obtained fraudulently and that the Advocate for the respondent No.1 had committed a perjury. We acceded to his request and accordingly adjourned the Motion and kept it in Chambers on 17.01.2008. We heard the petitioner at length as also perused the written submissions tendered during the course of hearing. In our opinion, the present Motion is nothing but an abuse of process of Court as also abuse of process of law.

12. As noted earlier, the main grievance of the petitioner is that the order dated 22.07.2008 was not passed in Writ Petition No.2560 of 2007

but was passed only in Writ Petition No.2214 of 2007 instituted by M/s. Hill, Son and Dinshaw Pvt. Ltd. Advocate representing respondent No.1 misled the Court and obtained order dated 28.07.2011 directing the petitioner to deposit the principal amount within two weeks. He submitted that as the orders obtained by playing fraud, they are non est and nullity, and therefore, the petitioner is entitled to the reliefs claimed in this Motion. We do not find any merit in any of these submissions.

13. As noted earlier, petitioner had made various attempts by filing Motions for recalling / reviewing / modification / clarification of the order dated 22.07.2008. Notice of Motion No.342 of 2008 was taken out for recalling order dated 22.07.2008. Notice of Motion No.198 of 2009 was taken out for clarification of the order dated 22.07.2008. Notice of Motion No.159 of 2010 was taken out for modification / clarification of order dated 22.07.2008. Notices of Motion No.370 of 2014 and 426 of 2016 were taken out for withdrawal of the amount deposited by the petitioner. All these attempts had failed.

14. Ultimately, Writ Petition No.2560 of 2007 and Writ Petition No.526 of 2011 were finally disposed of on 07.09.2016, as indicated earlier. The order dated 06.07.2007 against which Writ Petition No.2560 of 2007 was filed as also the order dated 31.07.2010 against which Writ Petition No.526 of 2011 was filed, were quashed and set

aside. Respondent No.1 Board was directed to hear the petitioner and pass reasoned order in accordance with law. The amount of Rs.20,00,000/- deposited with accrued interest was ordered to be retained till final decision of the Board and four weeks further, if adverse order is communicated to the petitioner. Liberty was reserved to the petitioner to apply for withdrawal of the amount, if decision is in favour of the petitioner. The petitioner took out Notice of Motion No.445 of 2016 for correcting paragraphs 10 and 12 of the order dated 07.09.2016. Notice of Motion No.16 of 2017 was taken out for withdrawal of the amount deposited by the petitioner, which was disposed of on 27.01.2017. Notice of Motion No.90 of 2017 for reconsidering the order dated 22.07.2008 was taken out, which was dismissed on 26.04.2017. Notice of Motion No.297 of 2017 seeking identical relief was taken out by the petitioner, which was dismissed on 29.06.2017. Not only that, petitioner filed Petition (L) No.64 of 2016 seeking review of the order dated 07.09.2016, which was dismissed on 15.12.2016.

15. As noted earlier, by order dated 27.02.2017, the Board held that the petitioner is liable to pay Rs.29,97,511/- along with 45% levy. In paragraph 6 of the affidavit of Laxman Kisan Gaikwad, it is specifically asserted that till date, petitioner has not challenged the said order. The said fact was not controverted by the petitioner either during the course

of hearing or even in the written submissions. Instead of challenging that order, the petitioner went on filing wholly misconceived proceedings such as Review Petitions and Notice of Motions, referred earlier. This Court rejected those Motions. We are of the considered opinion that the present Motion is nothing but abuse of process of Court and abuse of process of law. We were inclined to impose exemplary costs on the petitioner, however, we refrain to do so having regard to the fact that the petitioner is 85 years and claims to be a freedom fighter. We, however, preclude the petitioner from filing proceedings either for clarification / modification of orders dated 22.07.2008 and 28.07.2011 passed in Writ Petition No.2560 of 2007 as also from filing any proceedings for withdrawal of amount deposited by him in pursuance of order dated 28.07.2011. Hence, Motion fails and the same is dismissed.

**(R. G. KETKAR, J.)**

**(R. M. BORDE, J.)**

*Minal Parab*