

Amk

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

NOTICE OF MOTION NO. 338 OF 2018
IN
WRIT PETITION NO. 2560 OF 2007

Zulash Clearing and Shipping Agency .. Applicant

In the matter between

Zulash Clearing and Shipping Agency .. Petitioner

Vs.

The Secretary,

The Clearing and Forwarding Unprotected

Dock Labour Board & Anr.

.. Respondents

Mr. Yusuf Hussain, Applicant present in person.

Mr. M. B. Kale i/b Mr. P. B. Shah for Respondent No.1.

CORAM : R. M. SAVANT & K. K. SONAWANE, JJ.

DATE : 21st AUGUST, 2018.

P. C. :

1. The above Notice of Motion is a gross abuse of the process of this Court. The above Notice of Motion was listed at serial No.52 of our daily board. But we took up the above Notice of Motion out of turn in deference to the age of the Applicant who is concerned for one Zulash Clearing and Shipping Agency as a partner who stated before us that he is 85 years of age and would not be in a position to wait for the matter to reach. However, after going through the papers, we have come to the conclusion which we have stated in the opening part of this order.

2. The above Notice of Motion has been filed in the above Writ Petition which has been disposed of on 07.09.2016. The above Notice of Motion is filed for modification which the Applicant/Petitioner has described as “amend the order” in prayer clause (a). However, prayer clause (b) is a pointer to the fact that the amendment sought is of the order dated 28.07.2011 passed by a Division Bench of this Court A. M. Khanvilkar and R. Y. Ganoo, JJ. (as their lordships then were). The said order passed by the Division Bench has its genesis, in the order dated 22.07.2008 passed by another Division Bench of this Court in Writ Petition No. 2214 of 2007 in the matter of Hillson and Dinshaw Pvt. Ltd. Vs. Secretary, Clearing and Forwarding Unprotected Dock Labour Board (For Gr. Bombay, Thane and Raigad Districts) and Ors. By the said order dated 28.07.2011, the order dated 22.07.2008 was made applicable to the Applicant/Petitioner i.e. M/s. Zulash Clearing and Shipping Agency with which the Applicant is concerned. It seems that pursuant to the said order dated 28.07.2011, the Applicant/Petitioner had deposited a sum of Rs.20 lakhs in this Court. The applicability of the said order dated 22.07.2008 to the Applicant/Petitioner was questioned by the Applicant/Petitioner on the ground that a fraud has been practiced on the Applicant/Petitioner by the Advocate appearing for the Respondent No.1 as the said order dated 22.07.2008 could not be made applicable to the Applicant/Petitioner as the said order was applicable only to the said Hillson and Dinshaw Pvt. Ltd.

3. It is required to be noted that the Applicant/Petitioner for the self same relief of recalling/reviewing/modification/clarification of the order dated 22.07.2008 has filed number of proceedings being Notice of Motion No. 342 of 2008 for recalling of order dated 22.07.2008. Notice of Motion No. 198 of 2009 for clarification of order dated 22.07.2008. Notice of Motion No. 159 of 2010 for modification of the order dated 22.07.2008. Notice of Motion No. 370 of 2014 and Notice of Motion No. 426 of 2016 were taken out for withdrawal of the amount deposited by the Applicant/Petitioner. All the aforesaid attempts of the Applicant/Petitioner failed. The Applicant/Petitioner thereafter filed one more Notice of Motion being Notice of Motion No. 374 of 2017 for the same relief that the order dated 22.07.2008 is applicable to only Hillson and Dinshaw Pvt. Ltd. and not the Applicant/Petitioner. The said Notice of Motion came up before a Division Bench of this Court (Coram : R. M. Borde and R. G. Ketkar, JJ.) who by order dated 17.01.2018 were pleased to dismiss the Notice of Motion in the background of the aforesaid facts, namely, that the Applicant/Petitioner had earlier filed number of applications for the same self relief. However, having regard to the Applicant's/Petitioner's conduct of filing applications after applications for the self same relief, the Division Bench in paragraph 15 of its order dated 17.01.2018 observed thus: (Excerpt)

“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 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.”

4. In spite of the Division Bench precluding the Applicant/Petitioner from filing any proceeding for clarification/modification of the orders dated 22.07.2008 and 28.07.2011, the Applicant/Petitioner notwithstanding the same has chosen to file the instant Notice of Motion. The Applicant/Petitioner seeks to sustain the Notice of Motion on the ground that the Applicant/Petitioner is invoking Section 152 of the Code of Civil Procedure. Significantly the order dated 17.01.2018 is not annexed to the Affidavit-in-Support and neither the Applicant/Petitioner drew our attention to the said order. In fact, after the said order dated 17.01.2018 was pointed out to us by the learned Counsel appearing for the Respondent No.1, the Applicant/Petitioner sought to brow beat the learned Counsel and even threatened him that he would take action for “perjury” against him.

5. In our view, the filing of the instant Notice of Motion as indicated above is nothing but gross abuse of the process of this Court. Though, the previous Division Bench had refrained from imposing costs on the Applicant/Petitioner in view of his advanced age, but having regard to the conduct of the Applicant/Petitioner in filing the above Notice of Motion in

spite of being precluded to do so as also his conduct in Court, we deem it appropriate to impose costs of Rs.10,000/- on the Applicant/Petitioner to be deposited with the State Legal Aid Fund within six weeks from date.

6. The Notice of Motion is, accordingly, dismissed.

[K. K. SONAWANE, J.]

[R. M. SAVANT, J.]

Arjun
Machhindra
Kadam

Digitally signed
by Arjun
Machhindra
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Date:
2018.08.24
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