

psv

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

**APPEAL (L.) NO.95 OF 2018
IN
COMPANY APPLICATION NO.464 OF 2011
IN
COMPANY PETITION NO.521 OF 1992
WITH
NOTICE OF MOTION (STAMP) NO.174 OF 2018**

Pravin Mahadeo Dhole	...Appellant
Vs.	
Vinod V. Desai & Ors.	...Respondents

Ms.Lalita Panchakshari for Appellant.
Mr.S.M, Karkera for Respondent Nos.1 and 2.
Mr.J.P. Sen, Senior Advocate, with Mr.Onkar Chandurkar for Official Liquidator-Respondent No.5.
Mr.Amar Mishra, AGP for Respondent No.6.

**CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.**

DATE : 27th JUNE 2018

P.C.:

We have heard Ms.Lalita Panchakshari, the learned Counsel appearing for appellant, Mr.S.M. Karkera, the learned Counsel for respondent Nos.1 and 2, Mr.J.P. Sen, the learned Senior Counsel for the Official Liquidator, and Mr.Mishra, AGP for Respondent No.6.

2. By the impugned order, the learned Single Judge has issued the following directions:-

- “(i) Show Cause Notice returnable on 7.3.2018 be issued to respondent no.3 Pravin Mahadeo Dhole, residing at 1206, Laxmi Apartment, Sadashiv Peth, Pune, as to why he should not be held guilty of contempt of court for breach of undertaking given to this court;
- (ii) Official Liquidator is directed to lodge FIR/complaint against respondent no.3- Pravin Mahadeo Dhole residing at 1206, Laxmi Apartment, Sadashiv Peth, Pune, and 120 workmen who gave authority to respondent no.3 and others, under the relevant provisions of law;
- (iii) FIR/Complaint to be filed with the concerned police station within 4 weeks from today;
- (iv) Police to start investigation immediately on receiving the FIR/complaint from Official Liquidator;
- (v) Respondent no.3- Pravin Mahadeo Dhole to surrender his passport with the Official Liquidator within one week from today.”

3. The basic premise on which the show cause notice as also a FIR is ordered to be registered is that there is a breach of undertaking given to the Court by the appellant/respondent No.3 as recorded in order dated 26th June 2008. The undertaking as contained in paragraph 12 of the order dated 26th June 2008 reads thus:-

“Mr.Grover in all fairness states that about 210 workmen of the company in liquidation who are desirous of taking over the MIDC plot in Ahmednagar district and are taking steps to organise themselves in that behalf have received from the Controlling Authority a sum of Rs.41,97,000/- and if the said amount exceeded their claim and in fact constitute the dues of the workers of the company in liquidation as represented by Garware Employees Union, then, that deficit will be made good and 210 workmen make a statement before this Court that they will duly forward the amount, if called upon, by the Controlling Authority. However, the amount would be made good from the amount of Rs.41,97,000/-. Needless to state that this does not mean that if other sums have been appropriated or adjusted by these 210 workmen, then, their act cannot be

challenged or questioned by the applicant Union or its members and all proceedings in this behalf can be instituted, civil and criminal, in which contentions are kept open.” (emphasis supplied)

4. It is clear that the undertaking to the Court is a statement on behalf of 210 workmen that they will duly forward the deficit amount “**if called upon by the controlling authority**”. It is an admitted position that the Controlling Authority has neither received any claims nor the Controlling Authority has called upon these workmen to make good the amount. Further from the perusal of paragraph 10 of the impugned order, we find that there is no adjudication on the contentions as urged on behalf of the appellant/ respondent No.3 that an amount of Rs.41,96,577/- was paid to the Official Liquidator as included in the amount of Rs.6,01,00,000/-. In the absence of such determination as also in the absence of controlling authority raising a demand from the concerned workmen, we find that the impugned order which entails serious consequences be not implemented. We accordingly admit the appeal. Hearing is expedited. However, pending the final disposal of the appeal, the impugned order dated 29th January 2018 passed by the learned Single Judge shall remain stayed.

5. The parties to act on the authenticated copy of this order.

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]