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

INTERIM APPLICATION NO.1232 OF 2023  
IN  
WRIT PETITION NO.1374 OF 2008

Dr. Sudhanshu Bhattacharyya

...Applicant /  
Respondent No.3

In the matter between  
Sea Face Park CHS Ltd.

...Petitioner

*Versus*

The State of Maharashtra & Ors.

...Respondents

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Mr. Nitin G. Raut, for the Applicant / Respondent No.3.

Mr. Netaji Gawade, i/b. M/s. Sanjay Udeshi & Co. for the Petitioner.

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CORAM : R.I. CHAGLA J

DATE : 31 March 2023

**ORDER :**

1. By this Interim Application, the Applicant / Original Respondent No.3 has sought direction against Respondent No.4 – Bank of Baroda to issue Letter of Extension dated 14th November, 2022 without the restrictive clause No.4.

2. The learned Counsel appearing for the Applicant has

referred to the prior facts including that the bank guarantee No.0670IGFIN000308 dated 24th December, 2008 had been furnished. The bank guarantee was renewed from time to time since 2009 by way of Letter of Extension issued by Respondent No.4 – Bank of Baroda and the last renewal is upto 21st December, 2023. For the first time in Letter of Extension dated 14th November, 2022, clause No.4 was added. Clause No.4 reads as thus:-

***“Unless the demand or claim under this guarantee is made on us in willing on or before 21/12/2023 all your right under the above guarantee shall be forfeited and we shall be released from all liabilities under the guarantee thereafter.”***

3. The learned Counsel for the Applicant states that the said Letter of Extension dated 14th November, 2022 was not accepted by the Prothonotary and Senior Master of this Court in view of the restrictive clause 4. Notice was given to the Respondent No.4 – Bank of Baroda to delete the restrictive clause 4 but Respondent No.4 declined to do so.

4. Accordingly, Application has been made by the Applicant to furnish bank guarantee without the restrictive clause. This Court

extended the time upto 31st January, 2023 to furnish a fresh bank guarantee with directions not to encash the extant bank guarantee vide order dated 19th December, 2022.

5. The learned Advocate Applicant has submitted that despite attempts being made to secure bank guarantees with other banks, no bank was ready to give the bank guarantee without the restrictive clause. The Applicant once again sought time to furnish bank guarantee and this Court by order dated 31st January, 2023 extended the time till 6th March, 2023 on directions not to encash the bank guarantee.

6. I have considered the submissions as well as taken note of the proceedings in the above Writ Petition which had gone all the way to the Supreme Court and that the order dated 2nd April, 2018 passed by this Court was stayed by the Supreme Court vide order dated 4th July, 2018 subject to the condition that the Petitioner and the Applicant / Respondent No.3 keep their respective bank guarantees alive until the disposal of the Special Leave Petition.

7. It is further noted that the Applicant has complied with

the said order dated 16th June, 2008 passed in the above Writ Petition and renewed bank guarantee from year to year since inception i.e. in the year 2009 and thereafter as per order dated 4th July, 2018 passed by the Supreme Court. It is further noted that the Applicant has made an averment that he does not desire to commit any breach of the said order dated 16th June, 2008 or the said order dated 4th July, 2018 and wants to renew the bank guarantee.

8. Having considered the objections of the Prothonotary and Senior Master of this Court to accept the bank guarantee in its present form, it is necessary to direct the Respondent No.4 – Bank of Baroda to delete clause 4 from the Letter of Extension dated 14th November, 2022 and / or issue fresh Letter of Extension bearing the same date without including clause 4. Hence, the following order:-

(i) Respondent No.4 – Bank of Baroda is directed to delete the Clause 4 in the Letter of Extension dated 14th November, 2022 and / or issue fresh Letter of Extension without inserting clause 4 therein within a period of two weeks from the date of this Order.

(ii) Till the direction in (i) above is complied with, there shall

be no encashment of bank guarantee dated 24th December, 2018.

(iii) Interim Application is accordingly disposed of.

**[R.I. CHAGLA J.]**