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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7817 OF 2023**

M/s. Harsha Wheel Movers Pvt Ltd No. 11
through its Constituted Attorney P.V. Shankar
Narayana Iyar. ... Petitioner

vs.

Kolhapur Municipal Council ... Respondent

Mr. J.A. Sarkhot a/w. Ganesh Narula i/b. Violet Almeida, for
Petitioner.

Mr. Shantanu Patil a/w. Abhijit Adagule for Respondent No.1.

CORAM : GAURI GODSE, J.

DATED : 1st APRIL, 2024

PC:

1. By this petition filed under Article 227 of the Constitution of India, the petitioner prays for directing expeditious disposal of Miscellaneous Application No. 98 of 1997 within a stipulated time. Learned counsel for the petitioner submits that the said application is filed under Section 17 of the Arbitration Act 1940, seeking a decree in terms of the award dated 22nd May 1996, directing the respondent to pay a sum of Rs.10,31,900/- with interest at the rate of 12%. She submits that the said application was dismissed by

Order dated 3rd November 2011 as not maintainable. She submits that in Arbitration Appeal No. 9 of 2012, this Court, by order dated 20th July 2017, has set aside the said order and remitted the matter back to the Trial Court to decide the Miscellaneous Application No. 98 of 1997. She submitted that since then, the application has remained pending.

2. Learned counsel for the petitioner has placed on record a copy of roznama. She points out that Miscellaneous Application no. 103 of 1997 is filed by respondents under Section 30 of the Arbitration Act 1940 for setting aside the award. She submits that hence by order dated 20th July 2017, this Court had directed that the Trial Court, before deciding the Miscellaneous Application No. 98 of 1997, permit the parties to make appropriate applications, including any application to recall the order passed on Miscellaneous Application No. 103 of 1997. She, thus, submits that the matter thereafter is being adjourned for compliance on behalf of the respondent. She further submits that because of the non-compliance by the respondent, even the petitioner's application no. 98 of 1997 is being adjourned and is not yet decided.

3. I have perused the copy of the roznama. The entries in the roznama indicate that the matter has been adjourned on various

occasions. From the perusal of the copy of the roznama placed before me, it appears that the respondent has filed an application for tagging Miscellaneous Application No. 103 of 1997 along with the petitioner's Miscellaneous Application No. 98 of 1997. Learned counsel for the respondent is unable to point out whether the respondent's Miscellaneous Application No. 103 of 1997 is still pending. Learned counsel for the respondent submits that he has no instructions regarding any steps being taken on the respondent's application.

4. Since both the learned counsels for the respective parties were unable to point out the exact stage of the respective applications of the parties, I have perused the entries in the roznama. It appears that on 26th November 2018, an application was filed in MA No. 103 of 1997 for recalling the dismissal order. Entry dated 26th November 2018 in roznama of Civil MA/200098/1997 – CNR Number: MHKO020002001997 reads as under:

*" 26-11-2018 Resumed today.
Applicant and adv. present.
Arguments by Adv. of plff. On **exh.58**
heard.
D 62 Appln by applicant in M.A. no. 103/97 for recall.
dismissal order o-Other side to say.
Adj. for hearing of **exh. 58** by Deft.
2. say by Plff. On **exh. 62**.*

CJSD"

5. By order dated 20th July 2017, this Court had directed that the Trial Court, before deciding the Miscellaneous Application No. 98 of 1997, shall permit the parties to make appropriate applications, including any application to recall the order passed on Miscellaneous Application No. 103 of 1997. From the perusal of the aforesaid entry dated 26th November 2018, it appears that the application is filed by the respondent to recall the order passed on Miscellaneous Application No. 103 of 1997. However, the learned counsel for the respondent is unable to make any statement on any application being filed by the respondent and/or pendency of Miscellaneous Application No. 103 of 1997.

6. This Court, by Order dated 20th July 2017, remitted back the matter to the trial court for deciding the petitioner's Miscellaneous Application No. 98 of 1997. It appears that no steps are taken by the respondent to recall the order passed on the respondent's application, despite liberty being granted by this court vide Order dated 20th July 2017. It is unfortunate that Miscellaneous Application No. 98 of 1997 has remained pending for execution of the award dated 22nd May 1996 on the grounds of non-compliance by the respondent. The aforesaid facts indicate that due to non-compliance on the part of the respondent for getting the Award

against them set aside, the petitioner is deprived of the fruits of the monetary Award passed in his favour in the year 1996.

7. I am mindful of the principles of law laid down by the Hon'ble Supreme Court in the decision of *High Court Bar Association, Allahabad Vs State of U.P. and others*¹. The Hon'ble Supreme Court has held that in the ordinary course, Constitutional Courts should refrain from issuing directions for time-bound disposal of cases; however, such directions may be issued in exceptional circumstances. As recorded above this is an unfortunate case where the petitioner is deprived of the fruits of a monetary Award passed in his favour in the year 1996. Relevant entries in the roznama indicate that after the order of remand passed by this Court in the year 2017 the proceedings have remained pending mainly for non-compliance on the part of the respondent. Hence, I find it appropriate to allow this petition and direct expeditious hearing of Miscellaneous Application No. 98 of 1997.

8. Hence, the Writ Petition is allowed by directing the learned Civil Judge Senior Division, Kolhapur, to decide the Miscellaneous Application No. 98 of 1997 expeditiously and shall make an endeavour to dispose of the said application as far as possible

1 2024 SCC Online SC 207

within a period of six months from the production of the copy of this Order before the concerned learned Civil Judge Senior Division, Kolhapur.

9. All concerned to act on an authenticated copy of this order.

(GAURI GODSE, J.)