Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1568 OF 2024
IN
WRIT PETITION NO. 6389 OF 2022

WITH
INTERIM APPLICATION NO. 1565 OF 2024

Bank of Maharashtra .. Applicant

In The Matter Between
Bank of Maharashtra .. Petitioner
Versus
Life Insurance Corporation of India & Ors. .. Respondents

....

- Ms. Sheetal Parkash a/w Mr. Kartik Pandey i/by Chittranjan Shah, Kaylegal & Associates for Applicant / Petitioner
- Mr. Akshay Shah for Respondent No. 1

....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 13, 2024

P. C.:

1. Heard Ms. Parkash, learned Advocate for Applicant / Petitioner and Mr. Shah, learned Advocate for Respondent No. 1. There are two interim Applications. Both seek identical directions and leave of the Court for deposit of amount since there is an admitted delay of 20 months

2. My attention is drawn to the order dated 30.05.2022 by Ms. Parkash. She would submit that Interim Application is filed seeking leave of the Court to deposit the demand draft i.e. the deposit as directed by this Court by virtue of the said order in this Court. Difficulty in making the deposit at the then time within the stipulated time has been explained in the Application, rather the same was considered when the Application was heard before me on 06.02.2024 at the time of mentioning. On 06.02.2024, the following order was passed after hearing the Applicant:-

> *"1. Not on Board. Mentioned. Taken on Board.*
>
> *2. Heard Mr. Pandey, learned Advocate for Applicant / Petitioner.*
>
> *3. In the present Interim Application, the facts are gross and shocking to say the least.*
>
> *4. Interim Application seeks a direction to permit the Petitioner to deposit Demand Draft of Rs.62,91,189/- with the Registrar Civil Appellate Side with a further direction that the said amount should be deposited in a fixed deposit until the final disposal of Writ Petition No.6389 of 2022.*
>
> *5. What is shockingly observed by this Court is that in the May Vacation before the Vacation Court, Petitioner takes an order from the Court by making a statement to the Court that the Petitioner shall deposit the amount of Rs.62,91,189/- being the outstanding amount in the Court within a period of 4 weeks from the said date. The said statement is accepted by the Court. On the basis of this statement, this Court grants complete stay to the impugned order for a period of four weeks from that date.*
>
> *6. When a question is asked whether the stay has been extended or not since the outstanding amount is yet to be deposited despite passage of more than 1 and ½ years, it is informed that the stay has not been extended.*
>
> *7. Petitioner who is Applicant in the Interim Application now seeks deposit of that amount in compliance of the order since the Registrar would not accept the same in view of the specific order dated 30.05.2022. The order of the Court is not followed by the Petitioner and the explanation offered for the delay is inadequate, vague and insufficient.*
>
> *8. What is stated in the Interim Application is that there is delay caused on the part of the Petitioner since the amount was more than Rs.25 lakhs, the concerned Bank had to seek direction from the higher authority which had led to the delay. Application is filed on 21.08.2023 and it is moved before the Court today on 06.02.2024.*
>
> *9. Mr. Pandey would submit that the Demand Draft is ready which when seen is dated 06.10.2022. He would submit that the said Demand Draft was prepared as far back as in October, 2022, but it remained to be*

> *deposited due to the lethargy of the previous Advocate and they have recently come on record.*
>
> *10. There is a clear lethargy on the part of the Petitioner in this matter after obtaining the order dated 30.05.2022 passed by this Court. Though, I have impressed upon Mr. Pandey to take appropriate instructions from the Applicant as to how much costs the Applicant is willing to deposit for considering their plea in the Interim Application in view of the above non-compliances of this order.*
>
> *11. Needless to state that the Applicant – Bank has earned interest on the amount of Rs.62,91,189/- in the interregnum as the said amount is still with them.*
>
> *12. Mr. Pandey would submit that he shall inform his Senior who shall take appropriate instructions and inform the Court on the next adjourned date. It is clarified that, the present Interim Application shall be disposed of on the next adjourned date. It shall be served on the Respondent by the Advocate for Applicant.*
>
> *13. Stand over to* ***13th February, 2024 at 02:30 p.m.****"*

3. In her usual fairness, Ms. Parkash would submit that without attempting to offer any explanation on the issue of delay, this Court should consider the position as enumerated in the Applications and the reasons stated therein and pass appropriate orders permitting Petitioner to deposit the amount of Rs. 62,91,189/- in the Court, which the Petitioner is now ready and willing to deposit immediately. She would submit that sanction of the authority is obtained for effecting the deposit and there will be no further delay.

4. *Per Contra*, Mr. Shah would submit that though the deposit order was made as far back as on 30.05.2022, considering the order of damages, the total outstanding amount as on date has now escalated to Rs. 1,39,00,000/- approximately (as on 11.07.2022 which is the date on which possession of the public premises is taken over by

Respondent). He would therefore submit that when this Court considers allowing the deposit of the aforementioned amount, this Court be pleased to also enhance the deposit amount. This submission stands rejected. Interim Application is filed by Petitioner Bank. It is open to Respondent to apply or file appropriate application due to changed circumstances and pray for orders as desired.

5. I have perused the earlier orders passed by this Court. It is seen that in the first instance at least the deposit amount directed by this Court which is now agreed to be deposited should be deposited in this Court. It is seen that the demand draft of Rs. 62,91,189/- was prepared as far back as on 06.10.2022. Ms. Parkash would submit that certain difficulties arose when they approached the Registry as also several praecipes were filed in the interregnum, but the deposit could not be made. It is seen that the deposit was to be made by 30.06.2022. There is admitted breach of that order. Applicant infact accepts the breach and does not contest the same due to logistical reasons as stated in the Interim Application. Resultantly, the amount of Rs. 62,91,189/- remained with the Petitioner and still remains so. Had it been deposited, as per the order dated 30.05.2022, it would have been invested in Fixed Deposit and in the past 20 months, it would have fetched interest @ at least 7% per annum and swelled to Rs. 70,62,560/- Non deposit of this amount has resulted in loss of interest of Rs. 7,71,371/- and has unjustly enriched the Petitioner. Hence, if the present Application is allowed, it cannot be unconditional. I am inclined to allow the Application made by the Petitioner and condone the delay of 20 months from 01.07.2022 onwards till today subject to Petitioner paying costs of Rs. 50,000/- for the delay considering the reasons enumerated in the previous order and this order.

6. Pursuant to directions passed in paragraph No. 10 of the previous order, Ms. Parkash would submit that she has already obtained instructions from the Petitioner and Petitioner is ready and willing to deposit the costs as directed by the Court of Rs. 50,000/-. The costs shall be paid by the Petitioner to some notable charity to ameliorate their hardship. Hence I direct Petitioner to pay the above costs of Rs. 50,000/- within a period of two weeks from today to **A.K. Munshi Yojana's J.T. Sheth Mandbuddhi Vikas Kendra,** a Special School imparting education and training to the needs of 150 special children in the field of Education (Classes for 6 to 18 years), early intervention (upto 6 years) and vocational training (18 years above) having its school address and building at A.K. Munshi Yojana Chowk, 3rd Panjarapole Lane, C.P. Tank, Mumbai – 400 004 [Contact Nos. 22425513 / 22423654] registered under the Society Registration Act, XXI of 1980 under No. : 387/81 GBBSD and the Public Trust Act, XXIX of 1950 under No. F-6809. RCI Reg. No. 0163. Leave is granted to Respondents to file appropriate Application if they so desire for any relief of withdrawal or any other relief.

7. In view of the above and subject to deposit of the costs as directed, receipt of which shall be placed before the Registry as a condition precedent, Applicant / Petitioner Bank is permitted to deposit the demand draft of Rs. 62,91,189/- as directed by the order dated 30.05.2022 within a period of two weeks thereafter considering the fact that the demand draft which is appended to the Interim Application will now be redundant and the Bank will have to get a fresh demand draft issued.

8. No further orders are required to be passed in the Interim Applications.

9. List the Writ Petition on **13th March, 2024.**

10. In view of the above directions, both Interim Applications are allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

Amberkar

RAVINDRA MOHAN AMBERKAR

Digitally signed by RAVINDRA MOHAN AMBERKAR
Date: 2024.02.14 18:26:22 +0530