
(2003) 12 BOM CK 0026

In the Bombay High Court

Case No : Arbitration Petition No. 514 of 2003

Percept D"Mark (India) Pvt. Ltd.

APPELLANT

Vs

Zaheer Khan and Another

RESPONDENT

Date of Decision : 10-12-2003

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9
Contract Act, 1872 — Section 27

Citation : (2004) 1 ALLMR 384 : (2004) 2 BomCR 47 : (2006) 5 CompLJ 271

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : Virag Tulzapurkar and V.C. Khatri, instructed by DSk Legal, for the Appellant; I.M. Chagla and C.U. Singh, Soma Singh, Hetal Thakore and Jyoti Garg, instructed by Thakore Jariwala and Associates for Respondent No. 1 and Janak Dwarkadas, instructed by Atul Damle, for the Respondent

Judgement

D.G. Karnik, J.—Heard the learned Counsel for the parties.

2. This is a petition u/s 9 of the Arbitration and Conciliation Act, 1996 (for short "the Act"). The facts giving rise to the disputes between the parties are briefly stated below.

3. The petitioner No. 1 is an Advertising Agency and so is the respondent No. 2. The respondent No. 1 is a cricketer who has acquired a celebrity status. On 1st November, 2000, the petitioner and the respondent No. 1 entered into a contract titled as "Promotion Agreement" which was valid initially for a period of three years commencing on 30th October, 2000 and expiring on 29th October, 2003. Under the contract, the respondent No. 1 retained services of the petitioner and appointed him as a sole and exclusive agent to manage market and render various consultancy services and other activities set out in Annexure A to the agreement. Clause No. 31 of the agreement provides for negotiation atleast 60 days prior to the expiry of the terms of the contract for its renewal. In the event the agreement is not renewed, the clause also gives a right to the petitioner of

first refusal. Clause No. 32(g) of the agreement provided for resolution of all disputes including all claims and controversies relating to the agreement by arbitration under the Arbitration Act.

4. It appears that as provided under Clause No. 31 of the agreement, negotiations were commenced between the parties regarding renewal of the agreement before 60 days of the expiry of its initial period. In pursuance of the said negotiations, the petitioner wrote a letter to the respondent on 29th July, 2003 offering to renew the contract on the terms and conditions mentioned therein. By a reply dated 10th September, 2003, the respondent No. 1 informed the petitioner of its intention of not renewing and/or extending the initial term of the agreement. Some correspondence ensued between the parties thereafter in which the petitioner referred to Clause No. 31(b) of the "Promotion Agreement" and reiterated the petitioner's right of first refusal. The petitioner also intimated to the respondent that in the event the respondent No. 1 desired to enter into any transaction covered under the clause, he was under an obligation to notify to the petitioner in writing to the petitioner all the terms and conditions of the third party offer to enable the petitioner to match the said terms of third party offer.

5. It appears that after the expiry of the initial period of the agreement, the respondent No. 1 entered into negotiations for a Promotion Agreement with the respondent No. 2. In paragraph No. 13 of the petition, the petitioner has averred that respondent No. 1 has wrongfully entered into an agreement with respondent No. 2 in breach of Clause No. 31(b) without intimating the terms of the offer made by the respondent No. 2 and without giving an opportunity to the petitioner to match the said terms in pursuance of the right of "first refusal" granted to it.

6. Learned Counsel for the respondents contend that Clause No. 31(b) of the Promotion Agreement dated 1st November, 2000 being in restraint of trade is void u/s 27 of the Contract Act. They strongly rely upon the judgment of the Supreme Court in *Niranjan Shankar Golikari Vs. The Century Spinning and Mfg. Co. Ltd.*, and *Superintendence Co. of India Ltd. v. Krishan Murgai*, reported in AIR 1980 S.C. 171. In both the cases mentioned above, the Apex Court was considering the validity of a negative covenant contained in the contract of employment which prevented the employee from directly or indirectly taking an employment with or be engaged by a third party in a business similar to that of an employer after the termination of the contract of employment with the former employer. The Court drew a distinction between the restraints put on the employee during the period of his contract of employment and the restraints which were sought to be imposed on the employee after the termination or expiry of the contract of employment. The Apex Court held that a condition in a contract of employment that during the period of employment, employee would devote his full time and attention and would not to engage himself in any other trade or business was a perfectly valid condition, not in restraint of trade. It was however, held that a covenant which restricted the future liberty of an employee

to carry on his trade, business or profession in such a manner and with such persons as he chooses, after the termination of the contract of employment, was in restraint of trade and void u/s 27 of the Contract Act. Both these judgments of the Supreme Court were considered in a later judgment of the Supreme Court reported in *M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others*, . In paragraph No. 21 on page 565 of S.C.C., the Court observed:

"The Court has to decide, as a matter of law i) whether a contract is or is not in restraint of trade, and ii) whether, if any restraint of trade, it is reasonable. The Court takes a far stricter and less favourable view of covenants entered into between employers and employee than it does of similar covenant between vendor and purchaser or in a partnership agreements and accordingly, a restraint may be unreasonable as between the employer and employee which would be reasonable as between the vendor and purchaser of a business."

7. As held by the Supreme Court in *Gujarat Bottling Co.* (supra) negative covenant restricting the liberty of a person to carry on trade or business is construed strictly as between the employer and employee and less strictly as between the vendor and purchaser of a business or in partnership agreements. It is therefore, necessary to examine the nature of the contract entered into between the parties on 1st November, 2000.

8. Under Clause 1 of the agreement, the respondent No. 1 retained the services of the petitioner as a sole and exclusive agent to manage, market, and render various consultancy services and other activities through different media and affairs as set forth in Annexure A of the agreement which include event management, celebrity endorsements, charity events, entertainment related activities, sports managements and marketing, internet market, Broad Band publicity and radio marketing. Endorsements by respondent No. 1 were to include right to use his name or part of the name, nick name, likeness, photograph, signature, voice, biographical material, statements and any similar materials relating to his name, image or any part or likeness thereof, on advertising promotional and marketing materials and on such goods and services of the clients of the petitioner. Under Clause No. 5, the respondent No. 1 was to make himself available for commercial and photographic sessions, personal appearance and product sessions. Under Clause No. 6, the respondent No. 1 agreed to wear the trade marks and logos of the petitioner or its clients on the sports wear and cricket gear and footwear during all the cricket matches in which he participated including the world cup 2003. Under Clause No. 7, it was agreed that out of the total gross revenue, the petitioner would be paid 20% commission. The petitioner agreed to generate and underwrote minimum revenue of Rs. 55 lakhs per year to the respondent No. 1. Under Clause No. 8, all affairs of the respondent No. 1 were to be solely and exclusively managed by the petitioner. If respondent No. 1 received any direct deal from any third party he was to refer them to the petitioner for managing his affairs and the petitioner was entitled to the commission thereon. Under Clause No. 11 and 12, all work

related expenses including travel undertaken by the respondent No. 1 were to be reimbursed by the petitioner. Under Clause No. 17, the petitioner was to be a sole agent of the respondent No. 1. Clause No. 23 conferred a right on the petitioner to terminate the agreement in the event respondent No. 1 failed to participate in cricket matches representing India for continuing period of four months or two consecutive official cricket events except on the ground of injury. Clause No. 27 gave right to either party to terminate the agreement for breach by the other. Clause No. 31, which would be considered in more detail some time later, contemplated negotiations between the parties for renewal of the agreement after the initial expiry and also conferred on the petitioner a right of "First Refusal" after the initial expiry. Clause No. 32(g) provides for resolution of disputes between the parties by arbitration.

9. It is a matter of common knowledge that celebrity endorsement of a product has a great commercial value. Admirers of the celebrity and many people buy a product endorsed by the celebrities on the basis of such endorsement irrespective of whether the celebrity actually uses the product or not. Sales of crores of rupees are generated on account of celebrity endorsement. "Celebrity endorsement" has thus become a marketable commodity which has a commercial value and is saleable. Read as a whole, the agreement dated 1st November, 2000 though styled as "Promotion Agreement" is an agreement under which the respondent No. 1 conferred on the petitioner the exclusive marketing rights of the marketable commodity viz. "Celebrity Endorsement". It was a sole selling agency agreement for sale of a marketable commodity-celebrity endorsement.

10. No one has ever suggested that sole selling agreements are hit by section 27 of the Contract Act. The sole selling agreements may be of two types. One, under which the manufacturer or owner of goods agrees that he would not sell his goods except through the sole selling agent and second in which the agent agrees that he would not sell products or goods of anyone other than the goods of his principal. The present agreement appears to fall under the first type under which the respondent No. 1 agreed that he would not sell his product "celebrity endorsement" except through the petitioner during the initial period of three years from 30th October, 2000 to 29th October, 2003. It involved a positive covenant on the part of the respondent No. 1 that he shall sell his product celebrity endorsement through the petitioner and also involved a negative covenant that he would not sell it except through the petitioner. Such a negative covenant is not in restraint of trade but is in furtherance of trade. It was for the purpose of regulating the trade or the manner in which the respondent No. 1 would to sell. Even the Counsel for the respondents did not suggest that that the covenant on the part of the respondent No. 1 to sell his "celebrity endorsement" exclusively through the petitioner during the initial terms of 31st October, 2000 to 29th October, 2003 was in restraint of trade and so hit by section 27 of the Contract Act. What is however, contended is that Clause No. 31(b) of the Contract which is to operate after 29th October, 2003 is void as it is a restriction

beyond the initial period of the contract.

11. It is necessary at this stage to reproduce Clause No. 31 of the agreement which reads as under:---

31. NEGOTIATION AND RIGHTS OF FIRST REFUSAL

(a) NEGOTIATION: During the third contract year, and in any event not later than August 1st, 2003 the parties shall meet to commence discussions with a view to the extension of their relationship beyond the term. For sixty (60) days thereafter, Zaheer Khan, agrees to negotiate in good faith only with percept, and not with any third party, concerning the right after the term to the use of his endorsement or for the arrangement contemplated by his agreement in association with any goods or services. Only after such hundred and eighty (180) day period from the date of the last assignment, Zaheer Khan shall have to negotiate with other persons, subject however to sub-clause (b).

(b) FIRST REFUSAL: During the term of the agreement, prior to completion of the first negotiation period provided for in sub-clause (a) above, Zaheer Khan agrees not to accept any offer for his endorsement, promotion, advertising, or other affiliation with regard to any products or services. Thereafter, Zaheer Khan agrees not to accept any offer for his endorsement, promotion, advertising, or other affiliation with regard to any goods or services or for arrangement similar to the transaction hereunder without first providing percept with written notice of such offer and all the material terms and conditions thereof and offering percept the right to match the third party offer. Percept shall thereafter have the right, exercisable by written notice to Zaheer Khan within ten (10) days of receipt, to accept Zaheer Khan's offer on the same terms and conditions offered by such third party. If percept does not accept Zaheer Khan's offer, Zaheer Khan shall thereafter have the right to enter into an agreement with such third party."

There is no difficulty in interpreting sub-clause No. (a) of Clause No. 31. It contemplates negotiations between the parties, to be commenced atleast 60 days before the initial expiry of the contract. If the negotiations fructify into a binding contract, there would be no difficulty. By the first sentence of Clause No. 31(b), the respondent No. 1 agreed not to accept any offer for his endorsement, promotion, advertising or other affiliation prior to the completion of the negotiation period provided under sub-clause (a). The validity of sub-clause (a) of the first sentence of sub-clause (b) of Clause 31 of the agreement is not doubted by the respondents. The latter part of sub-clause (b) gives the right of first refusal to the petitioner. If the contract was not renewed, the respondent No. 1 agreed that he would not accept any offer for his endorsement, promotion, advertising or other affiliation with regard to any goods or services or similar arrangement without first giving a written notice of such offer along with all material terms and conditions thereof to the petitioner and offering to the petitioner a right to match the third party offer. The petitioner thereafter had a right to accept the offer made by the respondent No. 1 within 10 days, if the

petitioner did not accept the offer of the respondent No. 1 then he was free to enter into an agreement with a third party. The latter part of Clause No. 31(b) of the agreement thus contains a separate and independent contract commonly known as a right of first refusal. Though, the latter part of sub-clause (b) of Clause 31 is contained in the very agreement dated 1st November, 2000, it is an independent contract which is a contingent upon the failure of negotiations contemplated under sub-clause (a) of Clause No. 31. For, if in pursuance of the negotiations made under sub-clause (a) of Clause 31 the parties entered into a fresh contract, sub-clause (b) of Clause No. 31 would not apply at all and it is the new contract which would govern the rights and liabilities of the parties. Sub-clause (b) of Clause 31 is thus not in the nature of a negative covenant applicable after the expiry of the initial contract but, it is an independent contract, contingent upon the happening of a future uncertain event viz. the failure of negotiations under sub-clause (a) of Clause 31. Therefore, in my opinion the ratio of the judgments of the Apex Court in the case of N.S. Golikari and Superintendents Co. of India to the effect that negative covenant to operate after the expiry of the period of employment is void, is not applicable in the present case.

12. In Gujarat Bottling Co. Ltd. & others v. Coca Cola Co. & others (supra) the Apex Court exhaustively reviewed the law relating to the validity of the contracts containing a negative covenant in commercial agreements. In paragraph No. 14 of the agreement entered into in the year 1993 between the parties in Gujrat Bottling Company's case provided that the Bottler would not manufacture, bottle, sale deed or otherwise be connect with the products, beverages of any other brands or trade marks/trade names during the subsistence of the agreement including the period of one year notice of termination. The 1993 agreement between the parties in that case was construed by the Supreme Court to be an agreement of a grant of franchiser by Coca Cola as a franchiser to Gujarat Botting Co. (GBC) as a franchisee whereby the GBC had been permitted to manufacture, bottle and sell beverages covered by the trade marks in the area covered by the agreement. The Supreme Court was required to consider whether the negative stipulation contained in paragraph No. 14 of the 1993 agreement being in restraint of trade was void under provisions of section 27 of the Contract Act. The Supreme Court noted that in England in earlier times, all contracts in restraint of trade, whether general or partial were void but the severity of the principle was gradually relaxed and it became a rule that a partial restraint might be good if reasonable although a general restraint was void. The distinction between the general and partial restraint was subsequently repudiated and the rule, in England, now is that restraints whether general of partial may be good if they are reasonable and any restraint of freedom of contract must be shown to be reasonable to be valid. The principle that agreement in restraint of trade is void is a common law principle applicable in England while it has a statutory recognition u/s 27 of the Indian Contract Act, 1872. While construing the provisions of section 27 of the Contract Act, the High Courts in India have held

that neither the test of reasonableness nor the principle that the restraint being partial or reasonable are applicable to a case governed by section 27 of the Contract Act, unless it falls within the exception. The Law Commission in its 13th report has recommended that the provision (section 27 of the Contract Act) should be suitably amended to allow such restrictions and all contracts in restraint of trade, general or partial as were reasonable in the interest of the parties as well as public. No action is, however, been taken by the Parliament on the said recommendations (See paragraph No. 23 of the judgment in Gujarat Botting Company) Therefore, the argument of Shri Tulzapurkar that the restraint put under sub-clause (b) of Clause 31 that the restraint in the present case being partial and reasonable is not void can be sustained only if one comes to the conclusion that this clause is not in restraint of trade.

13. Whenever a person enters into a contract with another regarding the sale of a product or a thing. He necessarily agrees that the product or that thing which he had agreed to sell, would not be sold by him to another. This is implicit in the agreement in as much as once he agrees to sell a thing to "A" he cannot sell that thing to B. Nobody has ever suggested that the covenant or an implicit covenant contained in the contract for sale between the parties that the seller would not sell the thing which he had agreed to sell to any other persons is void u/s 27. Every other restriction contained in a contract of sale between the parties cannot be said to be void. Similar is a case of a sole selling agency agreements or franchisee agreements. There is a growing tendency among commercial men to enter into sole selling or franchisee agreements. They necessarily contain a negative stipulation that the sole selling agent or franchisee shall not sell the competitor's products of similar description. It is too late in the day to contend that such negative covenant contained in the sole selling agency or franchisee agreement that the seller or agent shall not sell the competitor's products of similar description is void. In the case of Gujrat Botting Company while considering the validity of Clause No. 14 in the 1993 agreement between GBC and Coca Cola, the Supreme Court observed (in paragraph No. 31 of its judgment:)

"The 1993 Agreement is thus a commercial agreement whereunder both the parties have undertaken obligations for promoting the trade in beverages for their mutual benefit. The purpose underlying paragraph 14 of the said agreement is to promote the trade and the negative stipulation under challenge seeks to achieve the said purpose by requiring GBC to wholeheartedly apply to promoting the sale of the products of Coca Cola."

14. A negative stipulation in a contract may not necessarily be in restraint of trade. Often, such negative stipulations are necessary so that the agent puts his wholehearted efforts in promoting the sale of the product agreed to be sold by him. If he is allowed to sell the products of competitors his loyalties could be divided and he would not put his wholehearted efforts in promoting the product of the manufacturer whose product he has agreed to sell and promote.

Therefore, a negative covenant in a contract that he would not sell a similar product of a competitor is not necessarily in restraint of trade but could be in furtherance of trade.

15. Before I examine sub-clause (b) of Clause 31, let me consider generally the contracts containing of clause of First Refusal. Clause of "First Refusal" is not uncommon in contracts between the parties. One of the common illustration where a clause of first refusal is found is a shareholders agreement entered into by the two groups of person who promote a company. Such contract often contains a clause under which each group agrees with the other that it shall not sell the shares held by it to anybody else unless they are first offered to the other group and the other group refuses to purchase them at a pre-determined price or the price to be determined in accordance with the agreement between the parties. Such contracts, have not been held to be invalid as in restraint of trade because their purpose is only to regulate the sale and promote the initial agreement between the parties under which they came together for setting up of a company. Another illustration is of a clause contained in the Memorandum and Articles of Association of a Private Limited Company under which a member is not entitled to sell shares to outsiders unless they are first offered to the existing members, in the manner provided in the Articles. Such clauses has a statutory recognition under Clause (iii) of sub-section (1) of section 3 of the Companies Act, 1956. Similar clause is also sometimes found in a conveyance whereby vendee or the purchaser of the property agrees to resell it to the vendor in future at a specified time or requires the vendee to first offer it to his vendor in the event he desires to sell. When two brothers effect a partition of their joint property, they often agree that in the event any of them desires to sell the property allotted to him in partition, he would first offer it to the other brother. Such contracts have been held to be valid and enforceable. It can therefore, be said that a clause of "First Refusal" contained in a contract between the parties is not per se void or hit by section 27 of the Contract Act.

16. Clause No. 31(b) in the present case is in the nature of a contract of "First Refusal". The restriction put under latter part of sub-clause (b) on the respondent to first offer his product "Brand endorsement" to the petitioner on the terms offered to him by a third party is not agreed with a view to put a restraint on the respondent No. 1 in his freedom of contract but with a view to promote trade, at worst to regulate trade. After all, the respondent No. 1 was promoted by the petitioner for three years. It is stated at the Bar that an amount in excess of 3 crores has been paid to the respondent No. 1 through "Brand endorsements" and other activities covered under the agreement dated 1st November, 2000 which is far in excess of Rs. 55,00,000/- per year guaranteed by the petitioner. The respondent No. 1 with open eyes entered into the contract with the petitioner granting it a right of first refusal. The petitioner promoted him wholeheartedly in the hope either of a renewal of the contract or atleast a contractual right that it would have a right of first refusal. In my opinion, therefore, the contention that sub-clause (b) of Clause 31 of the contract is hit

by section 27 of the Contract Act is devoid of merit and is rejected.

17. The learned Counsel for the respondents also referred to and relied upon the judgments of this Court in

i) Taprogge Gesellschaft MBH Vs. IAEC India Ltd., .

ii) M/s. Sociedade de Fomento Industrial Ltd. and others Vs. Ravindranath Subraya Kamat and others, .

iii) Bhavesh J. Bhatt Vs. Cyrus N. Baxter and Another, and

iv) Jet Airways (I) Ltd. Vs. Mr. Jan Peter Ravi Karnik, .

All these judgments are on the point that a negative covenant contained in a contract of employment restraining the employee not to work for the competitor after the period of the contract of service are void. There can be no dispute on this proposition. However, the present contract firstly is not a contract of employment and secondly a negative covenant contained therein is not to operate after the period of the contract. The right of first refusal conferred under latter part of sub-clause (b) of Clause 31 is an independent contract. Merely because the clause is contained in the agreement dated 1st November, 2000 does not make it a negative covenant operating beyond the period of the contract. It is an independent contract which was contingent upon there being no renewal of the earlier contract and that clause became enforceable on the happening of the contingency viz. non renewal of the earlier contract.

18. Shri Dwarkadas appearing for the respondent No. 2 contended that respondent No. 2 was not a party to the original contract dated 1st November, 2000 between the parties. There is no arbitration agreement between the petitioner and respondent No. 2 and hence, petition u/s 9 is not maintainable qua the respondent No. 2. He therefore, submitted that no injunction can be granted against the respondent No. 2 in a petition u/s 9 of the Arbitration Act. Shri Dwarkadas relied upon the order of this Court in Arbitration Petition No. 479 of 2001 passed on 27th August, 2001 by Rebello, J., Charu Trading Co. Pvt. Ltd. v. Saimangal Investrade Ltd. & another. That was an interlocutory order in which while issuing notice to the respondents, the learned Judge granted ex parte injunction only against the respondent No. 1 and declined to grant it against respondent No. 2 on the ground that respondent No. 2 was not a party to the arbitration agreement. Shri Dwarkadas also referred to and relied upon a judgment of the Delhi Court in B.S.M. Contractors Pvt. Ltd. Vs. Rajasthan State Bridge and Construction Corpn. Ltd. and Another, . In the case the Delhi High Court rejected the petition against the respondent No. 3 on the ground that there was no arbitration agreement between the petitioner and respondent No. 2. The Court however, did not decline to grant an injunction against respondent Nos. 1 and 2 on that ground but declined it on considering the merits of the case. Hence, it cannot be said that merely because respondent No. 2 is not a party to the arbitration agreement, no injunction can be granted against the respondent

No. 1. In paragraph No. 2 of the petition, the petitioner has made it clear that no relief is claimed against the respondent no. 2. The petitioner could have filed the petition without joining respondent No. 2 as a party. However, since the petitioner knew that the respondent No. 1 had entered into an agreement with respondent No. 2 and the interest of respondent No. 2 are likely to be affected in the event injunction is granted against respondent No. 1, the petitioner, made the respondent No. 2 a party to the petition to enable it to put forward its case. This was an act of good faith on the part of the petitioner. The relief against respondent No. 1 cannot be denied to the petitioner merely on the ground that respondent No. 2 is not a party to the arbitration agreement.

19. Shri Dwarkadas referred to and relied upon an old judgment of the Division Bench of this Court in Dinkarrao Ganpatrao Kothare v. Narayan Vishwanath Mandlik, reported in 1924(82) I.C. 628. In the case, it was held that a covenant and the deed of sale reserving to the vendor and his heirs a right of pre-emption or first refusal to arise on an intended sale of property and unlimited in point of time was void. Shri Chhagla for the respondent No. 1 and Mr. Dwarkadas for the respondent No. 2 strenuously contended that sub-clause (b) of Clause 31 was unlimited in period of time and therefore, void. They submitted that under sub-clause (b), the respondent No. 1 would be required to make an offer to the petitioner even at the distant period of time whenever he wished to endorse a product. I am presently not concerned with such a situation. Clause 31(b) in the agreement dated 1st November 2000 came into force on 30th October, 2003 on the failure of negotiations for renewal. The respondent No. 1 appears to have entered into a contract with respondent No. 2 some time in November 2003. (though the date of the contract is not disclosed either by the respondent No. 1 or respondent No. 2). The petitioner came to know of it on or about 1st December, 2003 and has filed a petition on 4th December, 2003. It is therefore not necessary for me to consider presently, whether sub-clause (b) of Clause 31 operates ad-indefinitum and therefore void.

20. At one stage, Mr. Chhagla submitted that sub-clause (b) of Clause 31 was applicable only during the period of the third year of the contract i.e. 30th October, 2002 to 29th October, 2003 and was not applicable after 30th October, 2003. The contention is stated only to be rejected. As stated earlier, sub-clause (b) of Clause 31 was a contingent contract which became operative only on non renewal of the contract under sub-clause (a) of Clause 31.

21. In the circumstances, prima facie case is made out by the petitioner. Though the learned Counsel were heard for a period spanning over three sittings. Mr. Chhagla submitted that the respondent No. 1 wants to file an affidavit in reply and therefore, the petition should not be disposed of finally. Hence, only an ad interim relief is granted in terms of prayer Clause (a). Petition is admitted. Let the petition be listed for final hearing two weeks after the respondent No. 1 files an affidavit in reply.

Prayer of the learned Counsel for the respondent No. 1 for stay of this order is

rejected.

All concerned to act on a copy of this order duly authenticated by the Associate.