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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.243 OF 2015

M/s Jain Infraprojects Co. Ltd.,
Through its Authorized Person
Prosenjit Das s/o Samarendra Das,
Age-29 years, Occ - Service,
R/o 5th Floor, Premlata,
Shakespeare Sarani,
Kolkata-17

PETITIONER

VERSUS

1. Fouress Engineering (India) Ltd
A Body Corporate,
Through its Authorized Person,
Champalal s/o Jagannath Totala,
Age-48 years, Occ - Service
R/o C-1/5, Sara Pride,
Ranjeet Nagar, Aurangabad
District - Aurangabad
2. State Bank of India,
Industrial Finance Branch, Mumbai,
Arcade World Trade Center
Cuff Parade, Mumbai-05

RESPONDENTS

.....
Mr. S. D. Tawshikar, Advocate for the petitioner
Mr. A. D. Kasliwal, Advocate for respondent No.1
Mr. S. V. Adwant, Advocate for respondent No.2
.....

[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 18th MARCH, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. In a suit filed by present respondent No.1, seeking perpetual injunction and declaration, on appearance, the petitioner - defendant No.1 had filed an application at Exhibit-26 questioning jurisdiction of the Court of Civil Judge, Senior Division at Aurangabad contending that the transaction between the plaintiff and defendant No.1 had taken place at Kolkata. It was further contended that defendant No.1 had invoked bank guarantee from defendant No.2 and the bank is situated at Mumbai and, therefore, the court lacks territorial jurisdiction on all counts and the court at Aurangabad has no jurisdiction to entertain the suit, as such, the plaint be returned to the plaintiff for presentation before proper court.

3. According to learned advocate for the petitioner, no proper opportunity was afforded to the petitioner in the proceedings while application Exhibit-26 was being heard and decided. He refers to quite a few instances and the process sheet of the proceedings. He, therefore, urges that an opportunity of re-hearing of the application be granted.

4. Learned advocate for respondent No.1 - plaintiff however, contends that having regard to the conduct of defendant No.1, no leniency be shown to him. Examination in chief in the form of affidavit of the plaintiff is already on record. The petitioner has not been diligent in prosecuting the matter and further that there is proper explanation in paragraph No. 16 of the plaint that the court at Aurangabad has jurisdiction and it is not questionable.

5. Learned advocate for respondent No. 2 - defendant No.2, however, supports the petitioner to the extent of re-hearing of the application.

6. Taking into consideration aforesaid, I deem it appropriate that interest of justice would be sub-served by granting one more opportunity to defendant No.1, of hearing application Exhibit-26 afresh, by setting aside the impugned order, albeit subject to payment of costs.

7. Accordingly, the impugned order dated 10th September, 2014 on Exhibit-26 in Special Civil Suit No. 97 of 2013 passed by Civil Judge, Senior Division, Aurangabad stands set aside, subject to payment of costs of Rs.10,000/- to be deposited in

the trial court within a period of four weeks from today and to be paid to the plaintiff. Learned Judge to decide application Exhibit-26 afresh, after affording opportunity of hearing to the parties. In case of failure to deposit the costs during the aforesaid period, the impugned order would stand restored.

8. Rule is made absolute in aforesaid terms. Writ petition stands disposed of accordingly.

[SUNIL P. DESHMUKH, J.]

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