

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 232 OF 2015

M/S.TANDA SHIPPING PRIVATE
LIMITED., BY ITS AUTHORIZED
DIRECTOR MR. BHUPINDER SINGH.

... Petitioner

Versus

M/S.KGN ORE CARRIER BY ITS PARTNER
MR. ABDUL KARIM NOOR MOHAMMAD.

... Respondent

Mr. J. P. Mulgaonkar, Advocate for the petitioner.

Coram:- M. S. SANKLECHA, J.

Date:- 28th April, 2015

P.C.

This petition challenges an orders dated 12/02/2014, 18/07/2014 and 08/09/2014 passed by the Executing Court.

2. All the three impugned orders relate to a Barge by the name M.V. Gurmit Star (said Barge). The first impugned order dated 12/02/2014 allowed the respondent-Decree Holder's application for the shifting of the said Barge which was already attached. The second impugned order dated 18/07/2014 dismissed the petitioner's application seeking that they be allowed to ply the said Barge so as to enable them to earn income which would result in paying off the Decree Holder as well as the other creditors, besides also, seeking the Court's permission to enter the said Barge so as to remove the water, which had accumulated in the said Barge.

The third impugned order dated 08/09/2014 also dismissed the petitioner's application for permission to ply the said Barge to enable it to earn income to pay off not only the Decree Holder, but also other creditors.

3. All the three impugned orders in execution proceedings have their origin in the decree dated 29/06/2012 passed by the Trial Court, directing the petitioners to pay to the respondent-Decree Holder a sum of Rs.1.05 Crores along with interest.

4. Being aggrieved, the petitioner preferred an appeal to this Court. On 30/08/2012, this Court admitted the appeal and also stayed the decree dated 29/06/2012 on the condition that the petitioner shall deposit the decretal amount within six weeks from the order of this Court. The petitioner was unable to deposit the amount within the time stipulated. Consequently, the stay came to an end. Thereafter, on the respondent-Decree Holder's application, the Executing Court, by an order dated 17/06/2013, attached the said Barge, but it continued in the custody of the petitioner. Thereafter, the three impugned orders came to be passed by the Executing Court, one allowing the respondent- Decree Holder's application and two dismissing the petitioner's applications. Notwithstanding the petitioner's objection, by the impugned order dated 12/02/2014, the Executing Court allowed the respondent- Decree Holder's application.

5. At the very outset, after the facts were narrated, I asked the learned Counsel appearing for the petitioner, whether in the present facts, as the Appellate Court is seized of the petitioner's appeal from the decree dated 29/06/2012, would it not be proper to move interim application before the Appellate Court. Mr. Mulgaonkar, the learned Counsel appearing for the petitioner submits that the three impugned orders, passed by the Executing Court not only cause prejudice to the petitioner, but were unsustainable in law. Thus, this Court should entertain the petition filed from the impugned orders and the three impugned orders would have no bearing to the pending appeal from decree dated 29/06/2012.

6. In my view, the genesis of the impugned orders is the order dated 29/06/2012 of the Trial Court, by which, the petitioner was directed to pay to the respondent a sum of Rs.1.05 Crores. This order has been appealed against by the petitioner. The Division Bench of this Court has admitted the appeal on 30/08/2012 and had also granted stay of the decree dated 29/06/2012, subject to securing the amounts due. It was on account of the inability of the petitioner to satisfy the conditions of the order that the stay came to an end. The respondent- Decree Holder proceeded further for execution of the decree dated 29/06/2012 which has resulted in three impugned orders of the Executing Court. The foundational order is seized of by the Division Bench of this Court. Therefore, to avoid multiplicity of the

orders and different forums applying their mind to the dispute, essentially arising out of the decree dated 29/06/2012, it would be appropriate that the petitioner moves an application for interim relief as sought by it in this petition, by filing an application in the pending appeal before the Division Bench, if it so desires.

7. In view of the above, I see no reason to entertain the present petition. Accordingly, the petition is disposed of in the above terms.

M. S. SANKLECHA, J.

SMA