

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.3875 OF 2013
ALONG WITH
CIVIL APPLICATION NO.2008 OF 2015
IN
FIRST APPEAL NO.1462 OF 2013

CA NO.3875 OF 2013

The Superintending Engineer,
Sangli Irrigation Circle, and Another.. Applicants
Vs
Mahalakshmi Infraprojects Ltd and Others.. Respondents
—

CA NO.2008 OF 2015

Mahalakshmi Infraprojects Ltd and Others.. Applicant

In the matter between-

The Superintending Engineer,
Sangli Irrigation Circle, and Another.. Appellants
Vs
Mahalakshmi Infraprojects Ltd and Others.. Respondents
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Shri Vijay D. Patil for the Applicants (Original Appellant) in CA No.3875 of 2013.

Shri Ashutosh M. Kulkarni for the Applicant in CA No.2008 of 2013 (Original Respondent No.1 in FA).

Shri V.S. Tadke i/by Shri Dnyandeo D. Shinde for the Respondent No.3.
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CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ
DATED : 17TH JULY 2015

PC.

1. Heard the learned counsel appearing for the parties. The Appeal preferred by the Applicants in Civil Application No.3875 of 2013

has been admitted for final hearing. There is a money decree passed by the Trial Court. The decree is in the sum of Rs.2,83,08,850/- with future interest thereon at the rate of 18% per annum. We have perused the impugned judgment. In the plaint, there were separate claims made by the First Respondent/Plaintiff. There were several issues framed on each claims. The learned Trial Judge has not recorded separate findings on each issue. All the 36 issues have been considered together. It is very difficult to understand as to how the learned Trial Judge has arrived at the figure of Rs.2,83,08,850/-. Moreover, the future interest granted at the rate of 18% per annum is *prima facie* excessive.

2. Considering the facts of the case and the nature of the findings recorded, the impugned decree will have to be stayed subject to the condition of the Appellants depositing the principal amount of Rs.2,83,08,850/-.

3. It is pointed out that in terms of the Paragraph 3 of the operative part of the decree, the amount of Rs.3,18,935/- is payable with interest at the rate of 18% per annum. The finding is that the said amount has been already recovered by the Appellants from the First Respondent/Plaintiff. It is not clear as to whether the said amount is included in the decretal amount of Rs.2,83,08,850/- as specified in Clause (2) of the operative part of the said decree. As regards the

amount mentioned in Clauses (5) to (7) of the operative part of the decree, there is no specific decree passed directing the Appellants to pay the amounts mentioned therein.

4. It is pointed out by the learned counsel appearing for the Appellants that in terms of the ad-interim order dated 15th October 2013, the sum of Rs.1,41,50,000/- has been deposited. Therefore, for depositing the balance amount, a reasonable time will have to be granted to the Applicants.

5. The Civil Application No.2008 of 2015 has been taken out by the First Respondent/Plaintiff for withdrawal of the amount deposited by the Appellants. The learned counsel appearing for the First Respondent in the Appeal has placed on record a copy of the Application for withdrawal made by the First Respondent. He pointed out that the Advocate for the Appellants recorded No Objection for withdrawal of the amount. When the present Appeal is pending and ad-interim stay is granted by this Court, in fact, the Application for withdrawal ought not to have been entertained by the Executing Court. Therefore, on the so called No Objection recorded by the Advocate for the Appellants, the Executing Court could not have acted upon. In any case, ultimately it is for the Appellate Court to decide whether permission can be granted to the Original Plaintiff to withdraw the decretal amount during the pendency of the Appeal.

6. The learned counsel appearing for the First Respondent states that the First Respondent is prepared to furnish a bank guarantee for securing the entire decretal amount. If the First Respondent wants to withdraw the amount deposited, not only the amount withdrawn but also the interest which may be accrued thereon for a period of 10 years will have to be secured. In the event, the decree passed by the Trial Court is set aside, the First Respondent will have to refund the amount withdrawn with interest.

7. Hence, the Applications are disposed of by passing the following order:

ORDER :

- (a) There will be interim stay of Clauses (2) to (9) and (11) of the operative part of the impugned decree subject to condition of the Appellants depositing a sum of Rs.2,83,08,850/- with the Trial Court within a period of three months from today. It is obvious that the said amount will be inclusive of the amount of Rs.1,41,50,000/- deposited by the Applicants in terms of the ad-interim order;

- (b) If the balance amount is not deposited within a period of three months from today, the stay shall stand vacated without further reference to the Court;
- (c) It will be open for the Original Plaintiff to withdraw the amount deposited by the Appellants, subject to furnishing bank guarantee of any nationalized bank for the entire decretal amount as well as for the interest which is likely to be accrued on the amount deposited by the Appellants for a period of 10 years. The bank guarantee shall be subject to the satisfaction of the Trial Court;
- (d) Before accepting the bank guarantee, the Appellants in the Appeal shall be heard by the Trial Court;
- (e) The Applications are disposed of on above terms.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)