

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.801 OF 2015

IN

WRIT PETITION NO.8453 OF 2013

Kalpataru Retail Ventures Pvt. Ltd.

.. Applicant/
Org. Res. No.1.

IN THE MATTER BETWEEN

Maharashtra State Electricity

Distribution Company Ltd.

.. Petitioner

Versus

Kalpataru Retail Ventures Pvt. Ltd. and another

.. Respondents

Mr. Sudhir Talsania, Senior Advocate a/w Saket Mone i/by Mr. S. K. Tyagi, for the Applicant/Original Respondent No.1.

Ms. Deepa Chavan a/w Mr. Rahul Sinha & Mr. Ashish Singh i/by DSK Legal, for the Respondent/Original Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 23rd JUNE, 2015

PC.

1. The above Civil Application has been filed by the Applicant/
original Respondent No.1 for the following relief :-

“This Hon'ble Court be pleased to modify Order dated 30th January, 2014 passed in Civil Application No.3147 of 2013 in Writ Petition No.8453 of 2013 and grant liberty to the Applicant to unconditionally withdraw the said amount of deposit of Rs.2,86,00,000/- along with interest, if any, accrued thereon;”

In the context of the said relief, it would be apposite to refer to paragraph 3 of the order dated 30th January, 2014 of which modification is sought.

The said paragraph 3 reads thus :-

“Heard the Learned Counsel for the parties. In so far as the entitlement of the Petitioner MSEDCL to the amount claimed vide order passed under Section 126 is concerned, the same is the subject matter of the Petition as the Chief Engineer, Electrical has allowed the Appeal against the order passed under Section 126 against which the above Petition has been filed. The Petitioner's entitlement is therefore contingent upon the result of the above Petition since the Applicant has succeeded before the Chief Engineer, Electrical and since the amount was deposited with the Petitioner as a pre-condition for filing of the Appeal and was not lying with the Petitioner as an amount paid to it pursuant to any bill, the Civil Application is required to be allowed and is accordingly allowed. The Applicant would be entitled to withdraw the said amount of Rs.2,86,00,000/- which is lying in deposit in this Court. However, the said withdrawal is on the condition that the Applicant furnishes a bank guarantee of a nationalised bank for the said amount and keeps it alive pending the above Petition. With the aforesaid directions, the Civil Application is disposed of.”

Hence, the Applicant was allowed to withdraw the amount of Rs.2,86,00,000/- deposited in this Court on the condition that the Applicant furnishes a Bank Guarantee of a nationalised bank. It appears that the said amount of Rs.2,86,00,000/- has not been withdrawn yet by the Applicant/original Respondent No.1.

2. The above relief namely that the Applicant be permitted to withdraw the said amount of Rs.2,86,00,000/- along with interest if any,

unconditionally, is sought by placing reliance on the order of the Apex Court dated 12th January, 2015 passed in Civil Appeal No.320 of 2015. The said Civil Appeal arose out of the order dated 19th November, 2014 passed by a Learned Single Judge of this Court in Civil Application No.2508 of 2014 in Writ Petition NO.7889 of 2014 in the matter of MSEDCL Vs. M/s. Reliable Space Pvt. Ltd. and another. By the said order dated 19th November, 2014 the Respondent No.1 in the said Petition was permitted to withdraw the amount by furnishing a Bank Guarantee. Against the said order dated 19th November, 2014 the matter was carried to the Apex Court by the Respondent No.1 in the said Petition. It seems that exception was taken to the direction issued in the said order permitting the Respondent No.1 to withdraw the amount on furnishing Bank Guarantee. The Apex Court by the said order dated 12th January, 2015 has set aside the said direction issued by a Learned Single Judge of this Court in the said Civil Application No.2508 of 2014 in the matter of furnishing a Bank Guarantee and prior to setting aside the said directions has observed to the following effect (excerpt) :-

“In our opinion, the High Court was not justified in directing the appellant to furnish the bank guarantee of any nationalized bank to the tune of Rs.42 crores subject to the satisfaction of the Registrar, particularly when the appellant has succeeded before the appellate authority and the said amount of Rs.46 crores was deposited as required under the Statute to maintain the appeal.”

Hence, the Apex Court was of the view that since the amount was deposited as and by way of a pre-deposit to maintain the Appeal, the direction issued by the Learned Single Judge of this Court was without legal foundation and the same was therefore liable to be set aside. Hence, what has weighed with the Apex Court is the fact that the said amount was deposited with the Appellate Authority as by way of statutory compliance to maintain the Appeal. The said order is sought to be relied by the Applicant in the present matter as the fact of the deposit being made for maintaining the Appeal is concerned, is common to both the matters. The Learned Senior Counsel relying upon the said order dated 12th January, 2015 passed by the Apex Court in Civil Appeal No.320 of 2015 would therefore contend that the order dated 30th January, 2014 passed by this Court directing the Applicant to furnish a Bank Guarantee for withdrawal of the amount requires modification in terms of the order passed by the Apex Court to the effect that the Applicant be permitted to unconditionally withdraw the amount.

3. Per contra, the Learned Counsel appearing for the Respondent /original Petitioner Ms. Deepa Chavan would contend that the order dated 12th January, 2015 of the Apex Court does not lay down any proposition of law so as to be binding on this Court. In support of the said contention, the Learned Counsel sought to place reliance on the judgments of the

Apex Court on the aspect as to what constitutes a binding precedent. The said judgments are reported in 1990 (Suppl.) SCC 141 in the matter of District Magistrate and another Vs. Kulbir Chand, (1992)1 SCC 489 in the matter of State of Punjab and others Vs. Surinder Kumar and others and (2007)3 SCC 720 in the matter of Sanjay Singh and another Vs. U. P. Public Service Commission, Allahabad and another. The Learned Counsel would next contend that the facts in the case that was before the Apex Court and the facts in the instant case stand apart and therefore the said order cannot be applied. The Learned Counsel would lastly contend that the order dated 08.10.2013 passed in the instant matter having been complied with by the Respondent in the matter of making the deposit in this Court the Applicant would not be entitled to withdraw the said amount as the Respondent has changed its position to its detriment by depositing the said amount.

4. In my view, it is not possible to accept the contentions urged on behalf of the Respondent No.1. As indicated above, the above Civil Application has been filed seeking modification of the order dated 30th November, 2014 relying upon the order of the Apex Court passed in Civil Appeal No.320 of 2015. The Apex Court has in terms observed in the said order that since the amount was deposited by the Appellant in the said Appeal as and by way of making the statutory compliance to maintain the

Appeal, the directions issued by the High Court of furnishing a Bank Guarantee were without any foundation and were therefore, required to be set aside. In so far as the factual basis is concerned, the same is identical to the factual basis in the instant matter as in the instant matter also the amount was deposited as and by way of statutory compliance to maintain the Appeal. The Apex Court having considered the said position and having thereafter observed that the direction issued by the High Court was without any legal foundation, it therefore, cannot be said that this Court is not bound by the order passed by the Apex Court on the ground that no proposition of law is laid down by the Apex Court. The said order in the matter of permitting to withdraw the amount without furnishing the Bank Guarantee would equally apply in the facts of the present case where the amount was also deposited as and by way of statutory compliance to maintain the Appeal. Hence, in my view the judgments cited on behalf of the Respondent No.1 would have no application. For the aforesaid reason the submission of the Learned Counsel appearing for the Respondent No.1 that the factual basis or the facts in the two cases stand apart would also have to be rejected. In so far as the last contention of the Learned Counsel for the Respondent i.e. original Petitioner of having deposited the amount in this Court and having changed its position to its detriment is concerned, in my view the said amount is the amount which

the Applicant had deposited before the Appellate Authority for maintaining the Appeal and therefore, the amount belongs to the Applicant. The Respondents entitlement to the said amount is contingent upon the decision that would be rendered in the above Writ Petition filed by it. The Respondents right to the said amount is therefore yet to crystallize. Hence, the last contention of the Petitioner would also have to be rejected. In the background of the order dated 12th January, 2015 passed by the Apex Court in Civil Appeal No.320 of 2015, the above Civil Application would have to be allowed and is accordingly allowed in terms of prayer clause (a).

5. At this stage, the Learned Counsel appearing for the Respondent No.1 prays for stay of the instant order so as to enable the Respondent to approach the Apex Court. The Learned Senior Counsel for the Applicant opposes the same. Since the Respondent desires to approach the Apex Court, the instant order is stayed for a period of four weeks from date.

[R.M. SAVANT, J]