

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6875 OF 2014
AND
WRIT PETITION NO. 6540 OF 2015

Bata (India) Ltd.	.. Petitioners
vs.	
Mahendra Builders and anr.	.. Respondent

Mr. A.A. Kumbhakoni, Sr. Advocate i/b Umesh Mankapure for the Petitioners in both petitions.

Mr. P.S. Dani, Sr. Advocate i/b Ms Janhavi Bejoa for Respondent No.2 in Writ Petition No. 6875 of 2014 and for Respondent Nos.1 and 2 in Writ Petition No. 6540 of 2015.

CORAM : M. S. SONAK, J.
DATE : 31 JULY 2015.

P.C. :-

1] Rule in both petition. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] In these two petitions, the main issues which arise are as under:

- (a) Whether the Trial Court was right in requiring Bata (India) Limited to make deposits of certain amount during the pendency of the suit and thereafter to strike out their defence on grounds of non-compliance;
- (b) The issue of handing over of possession of the suit premises to Mahendra Builders.

3] On the second issue, Mr. A.A. Kumbhakoni, learned senior counsel appearing for the Bata (India) Limited has submitted that there would be no objection to Mahendra Builders taking over possession of the suit premises. This is of course, without prejudice to the rights and contentions of both parties. Mr.A.A.Kumbhakoni, however, submitted that the suit premises are under a lock put-up by the police authorities and therefore, it is for Mahendra Builders to take over the possession of the suit premises from the police authorities.

4] Mr. P.S. Dani, learned senior counsel appearing for Mahendra Builders, on the other hand, pointed out that it is Bata (India) Limited, which has from time to time, asserted that they were in possession of the suit premises. Further, the police authorities, at one stage, had applied for certain orders in the pending suit and therein the police authorities have made it clear that they have not put up any lock upon the suit premises.

5] Rather than to go into the aforesaid issues, both the parties agree that it would be appropriate, if a Court Receiver is appointed to take over the possession of the suit premises, if necessary, by

breaking open the lock with police assistance and thereafter hand over the same to Mahendra Builders. The Court Receiver is, accordingly, appointed and directed to do the needful within a period of fifteen days from today.

6] Both the parties agree and undertake to bear the expenses/fees of the Court Receiver in the equal measure. The statement is accepted.

7] Mr. A.A. Kumbhakoni states that Bata (India) Limited have not created any third party rights in the suit premises and that they have no objections to Mahendra Builders taking over the possession of the suit premises. This is of course subject to the rights and contentions of both the parties.

8] On the first aspect, Mr. A.A. Kumbhakoni submits that Bata (India) Limited was not at all licensee in respect of the suit premises. But rather, the business was undertaken in the suit premises in pursuance of the joint venture agreement with Mahendra Builders. In these circumstances, Mr. A.A. Kumbhakoni submitted that even the Small Causes Court would not have jurisdiction to entertain the

suit. In any case, the order which requires Bata (India) Limited to make deposits pending the suit is in excess of jurisdiction. Now that, the possession of the suit premises is directed to be delivered to Mahendra Builders, the recurring liabilities towards deposit shall cease. Accordingly, there is no necessity, at this stage to go into the issue as to whether the direction for deposit could at all have been made. The appropriate order to be made, in the peculiar facts and circumstances of the present case would be to direct Bata (India) Limited to secure the amounts directed to be deposited upto 31 July 2015 by way of bank guarantee from a Nationalised Bank. Accordingly, Bata (India) Limited is directed to furnish before the Trial Court bank guarantee from a Nationalised Bank securing the amount upto 31 July 2015, within a period of six weeks from today.

9] The aforesaid bank guarantee so furnished, should be kept alive until disposal of the suit and a month thereafter. Further, the same shall abide by final orders that may be made in such suit.

10] In case, such bank guarantee is furnished before the Trial Court within a period of six weeks from today, then the impugned order dated 6 February 2014 shall stand set aside. If however, there

is a default in furnishing of bank guarantee within the period indicated, then the impugned order dated 6 February 2014 shall continue to operate. The defence of Bata (India) Limited in the suit, shall then stand struck of.

11] It is further once again made clear that the contentions of both the parties on the merits of the respective issues are kept open for the decision by the Trial Court.

12] Further, the order dated 3 August 2013 made by the Trial Court, shall stand modified to the aforesaid extent.

13] Rule is disposed of in both the petitions to the aforesaid extent.

14] All concerned including the Court Receiver to act upon an authenticated copy of this order.

15] Place these matters for reporting compliance on 19 August 2015 on the supplementary board.

(M. S. SONAK, J.)