IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1091 OF 2015

M/s.Allied Ferromelt Pvt. Ltd. ... Appellant

Vs.

Maharashtra State Electrical
Distribution Company Ltd. ... Respondent

Mr.A.V. Anturkar, Sr.Adv. i/b Prathamesh Bhargude for the Appellant
None for Respondent

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **17th NOVEMBER, 2015**

P.C.:

1. In this appeal, the order dated 29.1.2014 passed by the learned Joint Civil Judge Senior Division, Satara dismissing the suit under Order 39 Rule 11(1) of the CPC is challenged. The plaintiff, i.e., the present appellant had filed suit for declaration and injunction and for recovery of compensation. Finally, Special Leave to Appeal (Civil) Nos.1337-1338/2003 were filed. While disposing of those Appeals, the Supreme Court gave specific directions in respect of bank guarantee to the plaintiff. The order of the Supreme Court was not complied with by the plaintiff and his application seeking remission from furnishing bank guarantee was rejected by the trial Court. Thereafter, the application was moved by the respondents (defendants) under Order 39 Rule 11 of the CPC and it was allowed.

2. Mr.Anturkar, the learned Senior Counsel appearing for the appellants/plaintiffs, has made two-fold submissions. Firstly, he submitted that the plaintiffs have neither disobeyed the orders of the Court nor committed any breach of the undertaking given to the Supreme Court. He relied on the order passed by the Supreme Court on 1.12.2004 and submitted that the parties agreed before the Supreme Court and agreement of the parties which is recorded by the Court cannot be termed either as an order of the Court or an undertaking given by the parties to the Court. Secondly, he submitted that under Rule 11 of Order 39 of CPC, which is a Bombay High Court amendment, the word used is “orders of the Court” and these orders should be other than interim orders. The orders contemplated under Rule 11 of Order 39 are non-interim orders. The learned Judge of the trial Court has committed an error in interpreting this Rule and applying the said provision to the violation of interim order, the same needs to be set aside.

3. Perused the order passed by the learned trial Judge. The learned judge has reproduced the order dated 1.12.2004 passed by the Supreme Court in the SLP Nos.1337-1338 / 2003 which is reproduced for ready reference as follows:

> “Heard learned counsel for the parties at length.
>
> We find no ground to interfere with the order of the High Court on the point of jurisdiction. The special leave petitions are dismissed.

> The Civil Court has restrained the defendant-Maharashtra State Electricity Board from encashing the bank guarantee given by the plaintiff. It is agreed that the bank guarantee will neither be encashed by the plaintiff nor by the defendant and the plaintiff shall keep it alive by renewing it from time to time until final disposal of the suit. In case by this time the bank guarantee has already been discharged, the plaintiff shall furnish a fresh bank guarantee and keep it alive during the pendency of the suit. In case the bank guarantee is required to be renewed or a fresh bank guarantee is required to be furnished, the same shall be done by the plaintiff within four weeks from today".

On a reading of the same, it is clearly seen that the parties have agreed that the bank guarantee will neither be encashed by the plaintiff nor by the defendant and it is the responsibility of the plaintiff to keep alive the bank guarantee by renewing it from time to time until final disposal of the suit. This first portion of the order 'can be considered as an agreement between the parties' recorded in the order, however, depending on the manner in which the order is passed in some cases the agreement also takes colour of the order. However, in the latter part of the said order, a specific direction is given by the Supreme Court to the parties. The Supreme Court has ordered the plaintiff to furnish a fresh bank guarantee and keep it alive during the pendency of the suit and fresh bank guarantee if required to be furnished, the same shall be done by the plaintiff within four weeks from the date of the order. Thus, it cannot be accepted that the Supreme Court has recorded passively the terms agreed by the parties. But the Supreme Court has given specific directions to the plaintiff in respect of keeping alive the bank guarantee till the final disposal of the suit.

4. Rule 11 of Order 39 reads as follows:

> "11. Procedure on parties defying orders of Court, and committing breach of undertaking to the Court. - (1) Where the Court orders any party to a suit or proceeding to do or not to do a thing during the pendency of the suit or proceeding, or where any party to a suit or proceeding gives any undertaking to the Court to do or to refrain from doing a thing during the pendency of the suit or proceeding, and such party commits any default in respect of or contravenes such order or commits a breach of such undertaking, the Court may dismiss the suit or proceeding, if the default or contravention or breach is committed by the plaintiff or the applicant, or strike out the defences, if the default or contravention or breach if committed by the defendant or the opponent.

5. The section is expressly clear that in the order passed by the Court should be during the pendency of the suit or the proceeding and if it is violated, the Court has power to dismiss the suit or proceeding. It shows that the section does not at all qualify the applicability of the rule to only non-interim orders. The requirement of applicability of this rule is that the suit or the proceedings should be pending before the Court and thus, it necessarily covers breach of the interim orders passed by the Court.

6. In view of this, the submissions of the learned Senior Counsel for the appellant are not convincing and non interference is required in the impugned order.

7. Appeal is dismissed.

(MRIDULA BHATKAR, J.)