IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2279 OF 2011
IN
WRIT PETITION NO.706 OF 2007

A. K. Mukharjee ..**Applicant**

Vs.

Pune Municipal Corporation ..**Respondent**

Mr. Ganesh Kamat i/b M. D. Bhambhawani for the Applicant
Mr. A. P. Kulkarni for the Respondent No.1

CORAM : R. M. SAVANT, J.
DATE : 4th SEPTEMBER, 2015

P.C.

1 The above Civil Application has been filed for the following relief:

> "1. It is therefore prayed to this Honourable court be pleased to issue necessary direction to the Respondent to release the bank guarantee amount to Rs.1,01,10,000/-"

2 The said relief has been sought on the ground that the contract between the Petitioner and the Respondent Municipal Corporation in respect of the water treatment plan was rescinded by the Municipal Corporation. It is the case of the Applicant that 90% of the work was complete at the said stage whereas it is the case of the Respondent Corporation that 80% of the work was

complete. The Suit was filed claiming various reliefs including damages. However, in the context of the present Civil Application, what is required to be noted is that the relief was sought as regards restraining the Defendant Corporation from invoking Bank Guarantee of Rs.1,01,10,000/-. The said Bank Guarantee was furnished by the Applicant in terms of clause (18) of the contract conditions and was to operate as an additional security deposit till the defect liability period was to get over. The initial security was in the sum of Rs.27,56,500/- which was the earnest money deposit amount, which on the tender of the Applicant being accepted, the same was converted to a security deposit.

3 It seems that the said amount of RS.27,56,500/- has been appropriated by the Municipal Corporation after the rescinsion. The relief sought in the instant application is on the basis that since the contract has been got completed through another agency and since the defect liability period is over more than 7 years back, the said Bank Guarantee be released to the Applicant/Petitioner. The above Petition is arising out of the rejection of the application Exhibit -5 for injunction filed by the Applicant/Petitioner which injunction was sought in respect of the encashment of said Bank Guarantee of Rs.1,01,10,000/-. The above Petition has been admitted by a Learned Single Judge of this court on 21-2-2007 and interim reliefs are operating in favour of the Applicant/Petitioner. However the Petitioner is directed to keep the said

Bank Guarantee alive pending the hearing and final disposal of the above Petition.

4 In so far as the Suit is concerned, the aforesaid case pleaded in the Civil Application has not been pleaded or has not been incorporated in the Suit. The facts as aforesaid have been stated for the first time in the above Civil Application in this court. This Court would therefore not in a position to consider the reliefs sought by way of the above Civil Application as the injunction applications were not adjudicated on the basis of the case now sought to be set up by the Applicant/Petitioner.

5 In my view therefore, no reliefs can be granted to the Applicant / Petitioner in the above Civil Application, the same is accordingly rejected.

6 It would be open for the Applicant / Petitioner to amend the plaint so as to incorporate the averments which are now sought to be pleaded in the above Civil Application, in the plaint to seek appropriate reliefs. If any such application is filed for amendment, the same would be considered by the concerned Court on its own merits and in accordance with law. It is however, clarified that since the above Petition is pending, the direction as contained in the order dated 21-2-2007 to keep the Bank Guarantee alive would continue to operate. If the plaint is allowed to be amended by the Trial Court, the

Applicant/Petitioner would be at liberty to approach this Court to seek leave to apply for interim reliefs before the Trial Court on the basis of the amended plaint.

[R.M.SAVANT, J]