

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12067 OF 2015

The Bombay Dying and
Manufacturing Company Ltd and
Anr.

Petitioners

Vs

Shri Pravin Premraj Mehta and
Anr.

.. Respondents

Mr.G.S.Godbole, Senior Advocate, with I. Gogri, R. Patil i/b M/s
Negandhi, Shah & Hlmayatulla, Advocates for Petitioners.

Ms. Rohini M. Amin, Advocate for Respondent no.1.

CORAM : R.G.KETKAR,J.
DATE : 05/12/2015

PC:

1. Heard Mr.G.S.Godbole, learned senior counsel for the petitioners and Ms. Rohini Amin, learned counsel for respondent no.1. at length. Leave to amend so as to substitute District Pune by District Sangli is granted. Mr. Godbole orally applies for deletion of respondent no.2 as respondent no.2 is not a decree holder. On the motion made by Mr Godbole, leave to delete respondent no.2 is granted. Amendment shall be carried out forthwith.

2. Rule. Ms. Amin waives service for respondent no.1. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

3. By this petition under Article 227 of the Constitution of

India, original defendants no.1 and 2 have challenged order dated 31.10.2015 passed by the learned District Judge, Sangli in Misc. Civil Appeal No. 260 of 2015. By that order, the learned District Judge issued notice of the application to the first respondent and declined to pass any interim order as he was not convinced for passing any interim order in the absence of other party.

4. Mr. Godbole submitted that respondent no.1, hereinafter referred to as 'plaintiff', instituted Special Civil Suit No. 70 of 2011 in the Court of Civil Judge, Senior Division, Sangli for recovery of amount of Rs. 12,57,728/-. The suit was partly decreed on 24.7.2014. The learned trial judge directed defendants no.1 and 2 to pay an amount of Rs.8,93,959/- to the plaintiff within a period of one month from the date of the order along with interest at the rate of 12% per annum on that amount from the date of institution of the suit till realization of the amount.

5. Aggrieved by that decision, defendants no.1 and 2 filed Appeal in the District Court, Sangli. Pending that Appeal, they took out Misc. Civil Application No.260 of 2015 on 15.10.2015. Mr. Godbole submitted that in fact the defendants no.1 and 2 have deposited amount of Rs. 14,50,000/- with the office of Sheriff of Bombay by depositing Pay Order on 6.10.2015. In short, he submitted that defendants no.1 and 2 have deposited

entire decretal amount in the office of Sheriff, Bombay even before filing application for stay on 15.10.2015.

6. Mr. Godbole submitted that having regard to the fact that money decree is passed against them and further having due regard to the fact that defendants no.1 and 2 have already deposited the entire decretal amount, the learned District Judge ought to have granted stay to the impugned order. In any case, the learned District Judge ought to have granted ad-interim order of stay and issued notice to respondent no.1-plaintiff. Without considering these aspects, the learned District Judge held that he was not convinced to pass any interim order in the absence of any other parties. No reasons are recorded while declining ad-interim order. If the decree is not stayed, appeal will be rendered infructuous. For all these reasons, he submitted that the impugned order is liable to set aside.

7. On the other hand, Ms Amin supported the impugned order. She submitted that the decree was passed as far back as on 24.7.2014 and defendants no.1 and 2 did not move in the matter. It is only when respondent no.1 took out execution proceedings in pursuance whereof warrant of attachment was issued, defendants no1 and 2 have moved District Court for interim order. She submitted that the learned District Judge rightly refused to grant any interim order.

8. I have considered the rival submissions advanced by the

learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the suit instituted by the plaintiff is partly decreed. Defendants no.1 and 2 are directed to pay an amount of Rs.8,93,959/- together with interest at the rate of 12% per annum from the date of the suit till realization of the amount. Mr. Godbole submitted that defendants no.1 and 2 have deposited Rs.14,50,000/- which is the entire decretal amount on 6.10.2015, that is to say, prior to filing of the application on 15.10.2015. In my opinion, as the defendants no.1 and 2 have already deposited the entire decretal amount while issuing notice to the first respondent, the learned trial Judge should have granted ad-interim relief. Without recording any reasons, the learned District Judge simply issued notice to the other side, thereby virtually rendering the appeal infructuous. In view thereof, the impugned order is liable to be set aside and in my opinion, the following order will meet the ends of justice.

(i) There shall be ad-interim stay to the decree passed by the learned trial Judge in Spl.S.C. Suit No.70 of 2011. Respondent no.1 shall file reply to the application within one week from today and shall serve copy in advance on the other side.

(ii) The learned District Judge will decide confirmation of ad-interim order and pass appropriate order in accordance with law. It will be open for the respondent no.1 to oppose the application for continuation of the ad-interim order as also to apply for

withdrawal of the amount deposited by defendants no.1 and 2, subject to conditions.

(iii) All contentions on merits are expressly kept open. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)