IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.1159 OF 2014

Toshniwal Chemical and Industries Ltd. and another … Applicants
Vs.
Heetu Chemicals and Alkalies Limited … Respondent

Mr. T. N. Tripathi i/b. T. N. Tripathi & Co. for Applicants.
Mr. Vishal Kanade a/w. Ms Chhaya Rane i/b. M/s. Shah & Sanghavi for Respondent.

CORAM : R. G. KETKAR, J.
DATE : 10TH AUGUST, 2015

P.C. :

Heard Mr. Tripathi, learned Counsel for applicants and Mr. Kanade, learned Counsel for respondent.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908, original defendants have challenged the judgment and order dated 15.09.2014 passed by the learned Judge, City Civil Court, Greater Bombay in Summons for Judgment No.293 of 2014 in Summary Suit No.3934 of 2008 (High Court Suit No.1559 of 2005). By that order, the learned trial Judge granted conditional leave to defend the Suit subject to depositing the sum of Rs.13,00,091/- in the Court within 4 weeks from the date of the order. After depositing the amount within 4 weeks, defendants were permitted to file written statement within 2 weeks thereafter. On depositing the amount, Registrar (Civil) was directed to invest the amount in any Nationalized Bank, initially for the period of 1 year and continue to renew the same for the like period, until further orders. On failure of the defendants to deposit the amount within 4 weeks, Summons for Judgment was to be made absolute. Summons for Judgment No.293 of 2014 was disposed of accordingly. In view thereof, leave to convert this C.R.A. into Writ Petition is granted.

Amendment shall be carried out forthwith.

3. Mr. Kanade submitted that defendants did not comply the impugned order by depositing the amount within 4 weeks from the date of the order. The Suit instituted by the respondent is decreed on 11.02.2015. He has tendered photocopy of the decree passed on 11.02.2015, which is taken on record and marked 'X' for identification.

4. Mr. Tripathi, therefore, seeks permission to withdraw the W.P. with liberty to adopt appropriate proceedings challenging the impugned decree.

5. In view of these submissions, Writ Petition is allowed to be withdrawn and disposed of as withdrawn with liberty to adopt appropriate proceedings challenging the impugned decree. It is made clear that I have not examined the merits of the proceedings either way. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab