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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL No.404 OF 2015

Maganbhai Manjibhai Gajipara & Anr. ...Appellants
Vs.
Su-Raj Diamonds N.V. & Ors. ...Respondents

WITH
NOTICE OF MOTION No. 1169 OF 2015
IN
APPEAL No. 404 OF 2015
IN
SUMMONS FOR JUDGMENT No.4 OF 2013
IN
SUMMARY SUIT No. 391 OF 2012

Maganbhai Manjibhai Gajipara & Anr. ...Applicants

In the matter between

Maganbhai Manjibhai Gajipara & Anr. ...Appellants
Vs.
Su-Raj Diamonds N.V. & Ors. ...Respondents

Mr.Birendra Saraf a/w. Mr. Rohan Sawant & Ms. Manisha Mane i/b.
ALMT Legal for Appellants

Mr.Rohan Cama a/w. Mr. Mahesh Londhe a/w. Mr. Negaji Gawade i/b.
Sanjay Udeshi & Co. for Respondent No.1

CORAM : V. M. KANADE &
B.P COLABAWALLA, J.J.

DATE : JULY 30, 2015

P.C. :

1. Heard the learned counsel appearing on behalf of the Appellants
and Respondents.

2. The Appellants – Original Defendant Nos. 3 & 6 who have challenged the ad-interim order passed by the Learned Single Judge directing them to deposit an amount of Rs.2,06,68,338/- in the Court pending the determination of the jurisdiction issue which has been framed under section 9A of the Civil Procedure Code.

3. Shri Saraf, learned counsel appearing on behalf of the Appellants submits that an order under Order XXXVII Rule 5 of the CPC does not warrant the facts and circumstances of the present case. It is submitted that the Learned Single Judge was impressed on the fact that the Appellants had mentioned this liability in the balance-sheet and has further observed that it is an internal dispute between the partners -Appellant Nos.2 to 5. Reliance was placed on the judgment of the Apex Court in the case of **Raman Tech. & Process Engg. Co. and Anr. Vs. Solanki Traders [(2008) 2 Supreme Court Cases 302]**.

2. In our view, firstly, the order under challenge is an ad interim order. Secondly, the Appellants have permitted to furnish a bank guarantee for the same amount. Thirdly, the issue of jurisdiction which has been raised by the Appellants is pending for determination. It is an admitted position that the dispute between the partners, inter alia, with respect to the operation of the partnership business and as such, we are of the view that the Learned Single Judge has taken into consideration both the facts that the amount is mentioned in the balance-sheet as alleged, which is due and payable to the Plaintiffs and secondly, there is a dispute between the parties.

3. Under these circumstances, we are of the view that no case, therefore, is made out for interfering with the impugned order passed by the Learned Single Judge. Hence the appeal is dismissed. Hearing of the preliminary issue is expedited.

[B.P COLABAWALLA, J.]

[V. M. KANADE, J.]

Vaishali Tikam