

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

**APPEAL NO.105 OF 2014
IN
COMPANY APPLICATION (L) NO.646 OF 2013
IN
COMPANY PETITION NO.306 OF 2012
WITH
NOTICE OF MOTION NO.1410 OF 2014
IN
APPEAL NO.105 OF 2014**

M/s Viraj Electric Corporation

... Applicant

v/s

VHB Life Sciences Ltd.

... Respondent

Mr P.D. Sampat i/b Mr Vilas A. Jadhav for Applicant.

Mr P.N. Modi, Sr. Counsel with Mr Ranjit Bhosale i/b M/s Crawford Bayley and Co. for Respondent.

**CORAM : MOHIT S. SHAH, C.J. &
B.P. COLABAWALLA, J.**

DATE : 27th JANUARY, 2015.

P.C.:

The appeal is admitted. In the facts and circumstances of the case, by consent of the parties, appeal is taken up for final disposal.

2. Company Petition No.306 of 2012 was filed by the Appellant herein for winding up of the Respondent – Company on the basis of the

non-payment of the Appellant's claim. In the said Company Petition, the learned Company Judge passed an order dated 27 September 2013 stating that the Respondent Company would deposit a sum of Rs.52,36,614/- with the Prothonotary and Senior Master of this Court and out of the said amount, Rs.45,00,000/- was permitted to be withdrawn by the Appellant upon furnishing the bank guarantee for the said amount of Rs.45,00,000/-. The record indicates that the Union Bank of India had agreed to furnish that bank guarantee if the Appellant was permitted to withdraw the amount of Rs.45,00,000/- from the aforesaid amount deposited by the Respondent with the Registry of this Court.

3. The order has also worked out the modalities and the order further provided that the amount to be withdrawn by the Appellant upon furnishing the bank guarantee will be subject to the outcome of the Suit which the Appellant proposes to file within a period of eight weeks from the date of the order i.e. from 27 September 2013. The order further provided that if the Suit was not filed within a period of eight weeks, the Respondent will be entitled to seek refund of the amount from the Prothonotary and Senior Master of this Court by encashing the bank guarantee and also refund of the balance amount. **

4. Be that as it may, the eight weeks' period for filing the Suit was to expire on 22 November 2013. It appears that 23 November 2013 was a fourth Saturday and 24 November 2013 being a Sunday, the Court

** Words “ *It is common ground before us that the sum of Rs. 45,00,000/- has been withdrawn by the Appellant and to secure the same, a bank guarantee has been furnished in favour of the Prothonotary and Senior Master of this Court*” deleted pursuant to the order dated 11 February 2015 on the praecipe for speaking to minutes.

was closed on both days. The Appellant filed Summary Suit No.4611 of 2013 in the Bombay City Civil Court on Monday, 25 November 2013.

5. Upon the Respondent herein (Defendant in the Suit) raising an objection that the Suit was not filed within the time limit stipulated by this Court in the order dated 27 September 2013, and also praying for a refund as a consequence provided in the said order dated 27 September 2013, the Appellant filed Company Application No.(L) No.646 of 2013 seeking condonation of delay of two days in filing the Summary Suit in the Bombay City Civil Court.

6. By the impugned judgment dated 21 January 2014, the learned Company Judge dismissed the Company Application. Hence the present appeal.

7. After the matter was heard for some time, the learned counsel for the parties suggested that the parties have arrived at a consensus for curtailing the procedural controversies in the matter in the following terms:-

- (i) The impugned order dated 21 January 2014 is set aside, Company Application (L) No.646 of 2013 is allowed and the delay of two days in filing Summary Suit No.4611 of 2013 in the Bombay City Civil Court is condoned. The Suit shall be treated as having been filed in the time limit stipulated in the order dated 27 September 2013;

- (ii) **The Appellant is permitted to withdraw the entire amount of Rs. 52,36,614/- together with accrued interest thereon^{##}** lying with the Prothonotary and Sr. Master of this Court, but the amount will not be released directly in favour of the Appellant. At the first instance, the amount shall be released in favour of a Nationalised Bank (to be informed by the Appellant) for the purpose of enabling the said Bank to furnish a bank guarantee for the said amount, within a period of 15 days from the date of disbursement of the amount by the Prothonotary and Sr. Master of this Court to the said Bank. After disbursement, and till such time the bank furnishes the bank guarantee in favour of the Prothonotary & Senior Master of this Court, the said amount shall be treated by the said Bank as a deposit made by the Prothonotary and Sr. Master of this Court;
- (iii) Upon furnishing of the bank guarantee by the Bank to the Prothonotary and Sr. Master of this Court, the Bank shall be at liberty to release the said amount in favour of the Appellant;
- (iv) ^{\$\$}It is ordered that the Respondent/Defendant is granted unconditional leave to defend Summary Suit No.4611

^{##} Substituted for the words “*the Appellant already having withdrawn the sum of Rs.45,00,000/- is permitted to withdraw the balance amount of Rs.7,36,614/- with accrued interest, if any*” pursuant to the order dated 11 February 2015 on the praecipe for speaking to minutes.

^{\$\$} The following words are deleted “*Upon furnishing of the bank guarantee as aforesaid*” pursuant to the order dated 11 February 2015 on the praecipe for speaking to minutes.

of 2013, which shall ^{\$\$} be transferred to the list of commercial causes. The Summons for Judgment No.230 of 2014 in Summary Suit No.4611 of 2013 shall accordingly stand disposed of;

- (v) The Respondent (Defendant) shall be entitled to file its written statement and counter claim, if any, in the said Suit within a period of **three months** ^{**} from today. The hearing of the Suit is expedited and the Bombay City Civil Court shall endeavour to try and decide the Suit as expeditiously as possible and preferably by 31 December 2015;
- (vi) The bank guarantee to be furnished on behalf of the Appellant shall be kept alive, operational and valid for a period of one year and in case the Suit is not disposed of in the meantime, the same shall be kept alive year to year till the disposal of the Suit and for a period of three months thereafter;
- (vii) In the event the Suit filed by the Appellant in the Bombay Civil Civil Court is dismissed, or decreed for a lesser amount, the Appellant shall bring back the entire amount, or part thereof, as the case may be, withdrawn by it together with interest as may be determined by the

^{\$\$} The word “*then*” deleted pursuant to the order dated 11 February 2015 on the praecipe for speaking to minutes.

^{**} Substituted for the words “*one month*” pursuant to the order dated 11 February 2015 on the praecipe for speaking to minutes.

Bombay City Civil Court at the time of disposal of the Suit. In other words, if the Bombay Civil Civil Court either dismisses the suit or decrees it for a lesser amount than what is withdrawn by the Appellant, then in that event, the Respondent will be at liberty to have the said bank guarantees encashed (either in full or in part, as the case may be), and the Appellant would be liable to pay interest on this amount as determined by the Bombay City Civil Court at the time of disposal of the Suit.

8. This order is made without prejudice to the rights and contentions of the parties and all contentions are kept open. We have not expressed any view on the merits of the matter.

9. The appeal as well as Notice of Motion taken out in the appeal, are disposed of in the above terms.

CHIEF JUSTICE

B.P.COLABAWALLA, J.