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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO.929 OF 2015
IN
CHAMBER SUMMONS (L) NO.2202 OF 2015
IN
SUIT NO.543 OF 2015
ALONGWITH
NOTICE OF MOTION (L) NO.3475 OF 2015**

Saundarya Productions Pvt. Limited
and Anr.

.... Appellants.

V/s

Sanjay Gupta and Others

.... Respondents.

Dr. Milind Sathe, Senior Counsel alongwith Mr. Rajiv Narula
i/b M/s. Jhangiani Narula Associates for the Appellant.

Mr. Ashish Kamath alongwith Ms. Mansi Nair i/b Naik Naik
&Co. for Respondents.

**CORAM: V. M. KANADE &
REVATI MOHITE DERE, JJ.**

DATE: 21st December, 2015

ORAL ORDER: (Per V.M. Kanade, J.)

1. Appellants have filed this appeal being aggrieved by the judgment and order dated 07/12/2015 passed in Chamber Summons (L) No. 2202 of 2015 in Suit No.543 of 2015. By

the said order, the learned Single Judge refused to extend time granted under clause 2(b)(vii) of an Order dated 25/06/2015 passed in the suit filed by Respondent No.1/original Plaintiff.

2. It will be necessary to narrate brief facts which are relevant for the purpose of deciding this appeal. Appellant No.1 is a Private Limited Company and is carrying on business of producing various films. Appellants approached Respondent No.1/Plaintiff sometime in March, 2014 as a Writer and Director of Appellant No.1 - Firm. On 14/04/2014, confirmation letter was executed by and between the parties and it was agreed that Respondent No.1/original Plaintiff would be paid an amount of Rs 5 crores for the said purpose and a token amount of Rs 45,90,000/- was paid by Appellant No.1 -Firm to Respondent No.1/original Plaintiff. The receipt of the amount was acknowledged by Respondent No.1/original Plaintiff. Some disputes and differences arose between the parties and therefore the Appellants demanded refund of token amount of Rs 45,90,000/-. Since the token amount was not refunded, Appellants filed two complaints in Indian Film & TV Producers Council ("IFTPC") against Respondent No.1/original Plaintiff. Again, attempts were made to reconcile the differences between the parties. However, since the conciliation was not possible, Federation of Western India Cine Employees ("FWICE") informed its

affiliates directing them to stop cooperating with Respondent No.1/original Plaintiff.

3. Respondent No.1/original Plaintiff filed a suit in this Court being Suit No.543 of 2015 for an order of injunction, restraining IFTPC and FWICE and their affiliates from enforcing the non-cooperation directive passed in the meeting of JDSC held on 27/05/2015. Notice of Motion was also taken out by Respondent No.1/original Plaintiff. In the said Notice of Motion, parties arrived at settlement and submitted agreed minutes of the order which were taken on record and the order was passed by consent which was reproduced in para 2 of the said order.

4. A gist of the consent order was that the Plaintiff agreed to deposit a sum of Rs 20,00,000/- with the Prothonotary & Senior Master in four equal installments of Rs 5 lakhs each on/or before 23/09/2015 and the direction issued by Defendant No.4 dated 27/5/2015 was stayed. Under clause 2(b)(iv) of the said consent order, it was provided that after the said amount of Rs 20,00,000/- was deposited by the Plaintiff in Court, the order of Defendant No.4 was to stand withdrawn and recalled. Clause 2(b)(v) provided that Defendant Nos. 1 and 2 i.e. the Appellants herein would be entitled to file civil suit in respect of the claim before the civil court. Respondent No.1/Plaintiff was also entitled to file

counter-claim or independent suit against the Appellants/Defendants. Clauses 2(b)(vi) and 2(b)(vii) are crucial for the purpose of deciding the issue raised in this appeal. Clause 2(b)(vi) provided that after the Appellants (Original Defendant Nos. 1 and 2) institute a suit, an amount of Rs 20,00,000/- would stand transferred to the credit of such suit and the Appellants would also be entitled to apply to that Court for refund/withdrawal of the said deposit which would be considered by the Court. Clause 2(b)(vii) provided that if the Appellants (Original Defendant Nos. 1 and 2) fail to file the suit and secure the appropriate relief relating to the deposit on/or before 31/10/2015, deposit shall be refunded to the Plaintiff with accrued interest. Alternatively, it was also provided that the deposit shall abide by the order passed in the suit filed by Defendant Nos. 1 and 2.

5. Respondent No.1/original Plaintiff deposited an amount of Rs 20,00,000 /- before 23/09/2015. Appellants filed suit on 22/10/2015.

6. Application by way of praecipe was filed by Defendant No.2 for speaking to the minutes of the consent order dated 25/06/2015, seeking clarification/modification of the said order. The learned Single Judge, however, declined to clarify or modify the said order.

7. Chamber Summons was filed by the Appellants, seeking extension of time granted under clause 2(b)(vii) of the said order passed by the learned Single Judge (Coram: G.S. Patel, J.) dated 25/06/2015. The learned Single Judge (Coram: A.K. Menon, J.) by order dated 07/12/2015 came to the conclusion that the Appellants were not entitled to extension of time or any modification of the order dated 25/06/2015.

8. Before we take into consideration the rival submissions, it may be relevant to take into consideration two clauses of the said consent order dated 25/06/2015 on which there is some controversy regarding their interpretation. Clauses 2(b)(vi) and 2(b)(vii) of the said consent order read as under:-

“2(b)(vi) If the Defendant No.s 1 and 2 institute such suit in any competent Court, the amount of deposit of Rs 20,00,000/- shall stand transferred to the credit of such suit and Defendant Nos. 1 and 2 shall be entitled to apply to that Court for retention / withdrawal of such deposit and such application made by Defendant Nos. 1 and 2 shall be considered independently uninfluenced by this order, and on its own merits. Similarly, the Plaintiff shall be entitled to contend that the Deposit is

liable to be refunded to him. All rights and contentions in this behalf are kept open.”

“2(b)(vii) If Defendant Nos. 1 and 2 fail to file the suit and secure appropriate reliefs relating to the deposit on or before 31st October, 2015 the deposit shall be refunded by the Prothonotary & Senior Master to the Plaintiff with accrued interest. Alternatively, the deposit shall abide by the order passed in the suit filed by the Defendant Nos. 1 and 2.”

On plain reading of these clauses, it is apparent that Clause 2(b)(vi) governs the consequence upon the Respondent No.1/original Plaintiff depositing an amount of Rs 20,00,000/- and thereafter the suit being filed by the Appellants. The first consequence is that the amount of deposit of Rs 20,00,000/- was to stand transferred to the credit of such suit. The wording of the said clause clearly reveals that there was no question of the Appellants filing an application for transferring the amount from the Office of Prothonotary & Senior Master to the Court in which the suit was to be filed. The wording “shall stand transferred to the credit of such suit” connotes that there was an automatic transfer of this amount to the credit of the suit. The learned Single Judge

before whom the application for clarification was made, in our view, has incorrectly observed that no application was made by the Appellants for transferring the amount from the Office of Prothonotary & Senior Master to the credit of the suit. In our view, this observation is patently contrary to the connotation and interpretation which can be given to the words “shall stand transferred to the credit of such suit”.

9. Clause 2(b)(vi) does not put any time limit on the date on which the suit is to be filed or application for interim relief has to be filed by the Appellants. The said clause further makes it clear that if such an application is made, it shall be decided on its own merits and uninfluenced by the consent terms. It was also clarified that Respondent No.1/Plaintiff could file an application for refund of the said amount to him.

10 In juxtaposition to Clause 2(b)(vi), Clause 2(b)(vii) deals with the case where the suit and an application for interim relief is not filed on/or before 31/10/2015. The said clause therefore makes it clear that in the event by 31/10/2015 suit is not filed and the application for interim relief is not made, the deposit shall be refunded by Prothonotary & Senior Master to Respondent No.1/original Plaintiff with accrued interest. Interestingly, the last sentence in the said clause clarifies that the deposit shall abide by the order passed in the suit filed by the Defendant Nos.1 and 2.

11. Upon a conjoint reading of Clauses 2(b)(vi) and 2(b)(vii) , it is apparent that once a suit is filed on or before 31/10/2015, the deposit shall then be withdrawn in favour of the Appellants or Respondent No.1/original Plaintiff as per the order passed by the Court in the suit.

12. In our view, both, the learned Single Judge before whom the application for clarification was filed as well as the learned Single Judge before whom the application for extension of time was filed, have not taken into consideration the obvious interpretation of these two clauses viz 2(b)(vi) and 2(b)(vii) of the consent order. It is an admitted position that the suit was filed on 22/10/2015 and in the suit itself application for interim relief was made, though Summons for Judgment was not separately filed. It therefore cannot be said that there was no application for interim relief filed prior to 31/10/2015. In our view, both the learned Single Judges on account of incorrect interpretation of two clauses have come to the conclusion that question of granting extension of time does not arise since both the parties had filed consent terms and the suit was disposed of in terms of the consent terms.

13. Mr. Kamath, the learned Counsel appearing on behalf of Respondent No.1/original Plaintiff, submitted that these submissions were not made before the learned Single Judge

either in the application for speaking to the minutes or in the Chamber Summons. He relied on the judgment of the Apex Court in *Mohd Akram Ansari vs. Chief Election Officer and Others*¹ and more particularly on para 14 of the said judgment. He also relied on the judgment of the Apex Court in *Smt. Periyakkal and Others vs. Smt. Dakshyani*². He submitted that since the Consent Terms were filed in the suit filed by Respondent No.1/original Plaintiff, it was not open for the Appellants now to seek extension of time.

14. In our view, ratio of the judgments relied upon by the learned Counsel for Respondent No.1/original Plaintiff will not apply to the facts of this case as we have observed hereinabove that both the learned Single Judges have wrongly interpreted Clauses 2(b)(vi) and 2(b)(vii) of the Consent Terms.

15. In view of what is stated in Clause 2(b)(vii) viz."Alternatively, the deposit shall abide by the order passed in the suit filed by the Defendant Nos.1 and 2.", it is obvious that by the said clause it was clarified that the deposit would abide by the order which would be passed by the Court once the suit was filed before 31/10/2015. Once it is clarified in the said clause that the deposit would abide by the order of the Court, it is apparent that Section 148 of the Civil

1 (2008) 2 SCC 95

2 (1983) 2 SCC 127

Procedure Code would come into operation and the Court could certainly grant time for seeking interim relief. If the interpretation which is sought to be given to the said clauses by Respondent No.1/original Plaintiff is accepted, it would lead to absurd consequences. On the one hand, Respondent No.1/original Plaintiff, by virtue of the said consent terms, got the consent order passed by the learned Single Judge (Coram: G.S. Patel, J.) and merely because the application for interim relief was not filed within the date mentioned in Clause 2(b)(vii), it was now sought to be contended that the Respondent No.1/original Plaintiff could withdraw that amount unconditionally. Obviously, this was not the intention of the parties which can be seen from the aforesaid two clauses.

16. It is quite well settled that the Court before whom the application is made can mould the relief in order to see that justice has to be made. This principle can be seen from Order XLI Rule 33 of Civil Procedure Code, which reads as under:

“ORDER XLI

APPEAL FROM ORIGINAL DECREES

33. Power of Court of Appeal.- The Appellate Court shall have power to pass any decree and make any order which

ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection, [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]: although an appeal may not have been filed against such decrees]:

[Provided that the Appellate Court shall not make any order under section 35-A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order]"

The principle analogous to Order 41 Rule 33 therefore can be made applicable by this Court under Clause 15 of Letters Patent. Therefore even if no prayer for interim or ad-interim relief is made, the Court can, in order to see that justice is done, mould the relief. This, in our view, is equally applicable in applications which are filed seeking clarification or for extension of time.

17. Taking an overall view of the matter, we are of the view

that the impugned order passed by the learned Single Judge is liable to be set aside. The Appellants are permitted to file their Summons for Judgment within the time prescribed by law and if such an application is made, it will be decided by the Court in accordance with law. Till such time no orders are passed on the Summons for Judgment, the Prothonotary & Senior Master shall not refund the amount deposited by Respondent No.1/original Plaintiff.

18. Appeal is allowed in the aforesaid terms and disposed of. Since appeal itself is disposed of, Notice of Motion taken out therein does not survive and it is accordingly disposed of.

(REVATI MOHITE DERE, J.)

(V. M. KANADE, J.)