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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4731 OF 2016

Bhagavati Refinery Pvt. Limited
Through Managing Director
Shri. Punamchand Ramanand More,
S. No. 70, Varkhedi Road, Pachora
Taluka - Pachora, District - Jalgaon

PETITIONER

VERSUS

1. Bhaskar Food Pvt. Limited
Having Corporate Office at
435, 4th Floor, Orbit Mall, Indore,
Through Managing Director,
Mr. Nipun Garg
2. Bajrangilal Shrinivas (Lal Broker)
R/o Budhwar Chowk, Amravati,
District - Amravati
3. Ramswarup Radhakissan Broker Pvt. Ltd.,
R/o 215, 216, Vikram Tower,
1st Floor, Sapna Sangit,
Main Road, Indore
4. Babulal Kanhyalal and Sons,
302, Royal Dimond, Yashwant Niwas
Indore

RESPONDENTS

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Mr. Hemantkumar F. Pawar, Advocate for the petitioner
Mr. H. H. Padalkar, Advocate for respondent No.1

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 26th JULY, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the appearing parties finally with consent.

2. Having heard learned advocates for the appearing parties, it may not be necessary to go into the facts, which are not largely disputed. The sum and substance in the writ petition is that special civil suit No.47 of 2009 has been filed by the petitioner seeking recovery of Rs.72,22,000/- along with 16% interest i.e. of about Rs. 4,84,920/- up to filing of the suit and damages to the tune of Rs.69,19,386/- which is pending before second joint Civil Judge, Senior Division, Jalgaon. The petitioner, in the suit proceedings had also filed an application under Order XXXVIII of the Civil Procedure Code seeking restraint on disposal of the property of defendant No.1, which accordingly had been granted under an order dated 16th January, 2016 passed on Exhibit-141. As such, defendant No.1 had been restrained from transferring and creating third party interest in the properties, namely, lands gut No.16/1, 16/2, 16/3 and 22/6 situated at Bopenmatabad, Taluka – Nandgaon-Khandeshwar, District - Amravati till final disposal of the suit.

3. Subsequently, defendant No.1 had filed an application at Exhibit-155 for modification of aforesaid order, purporting the same to be under Order XXXIX Rule 4 of the Civil Procedure Code.

4. The trial court had considered that the suit is for recovery of Rs.72,22,000/- with 16% interest and for damages of Rs.69,19,386/-. The trial court also considered that defendant No. 1 purports to be a solvent company having turnover of about Rs.163 crores, whereas the suit is concerned with an amount of Rs.75,06,920/- plus interest and damages of almost like amount and further that the suit is not in respect of the properties dealing with which has been restrained under order on Exhibit-141. The order on Exhibit-141 had been passed in order to secure interest of the petitioner – plaintiff.

5. The trial court, it appears that, further during the hearing of application Exhibit-155, has considered that defendant No. 1 had shown its readiness to furnish bank guarantee in respect of the principal amount claimed in the suit i.e. about Rs.75 lacs and as such, a restraint on dealing with the properties which are not subject matter of the suit would not be necessary, since that may cause hardship and loss to defendant No. 1.

6. As such, the trial court went on to grant application Exhibit-155 modifying earlier order on Exhibit-141 setting aside temporary injunction and substituting the same with direction to furnish bank guarantee of Rs.75,06,920/-. Learned advocate for respondent No. 1 states that accordingly bank guarantee has been duly furnished.

7. It is against aforesaid order dated 30th March, 2016, modifying order passed on Exhibit-141, the petitioner purported to have been aggrieved is before this court.

8. Mr. Padalkar, learned advocate for respondent No. 1 submits that defendant No. 1 – respondent No. 1 is in a position to assure that interest of the petitioner – plaintiff in respect of balance claim in the suit can be taken care of by giving solvent security / surety and additionally an undertaking to deposit the decretal amount, if any, and as such, restraint on dealing with the properties referred to in order on Exhibit-141 may not be necessary. Defendant No. 1 is in a position to give such an assurance.

9. Mr. Pawar, learned advocate appearing for the petitioner – plaintiff, on instructions, accedes to the request and submits that

a stipulation be put in the undertaking that in the event decree is passed in favour of the petitioner, defendant No.1 would pay up the entire decretal amount within a period of one week from the date of receipt of the decree. Learned advocate for respondent No. 1 – defendant No. 1 states, on instructions, that defendant No. 1 would file an undertaking to that effect.

10. In view of aforesaid, impugned order dated 30th March, 2016 passed by 2nd Joint Civil Judge, Senior Division, Jalgaon on Exhibit-155 in Special Civil Suit No. 47 of 2009 stands modified and following clauses be added to the impugned order.

“(C) Defendant No.1 is hereby directed to furnish solvent security / surety in respect of balance claims in the suit apart from the amount of Rs.75,06,920/- referred to in clause “B”, to the satisfaction of the court.

(D) In addition to aforesaid, defendant No.1 shall file an undertaking to the effect that he would pay to the plaintiff or deposit in the court entire decretal amount, if any, within a period of one week from the date of receipt of the decree.”

11. Aforesaid two clauses “C” and “D’ shall be deemed to have

been incorporated and deemed to have been part and parcel of order dated 30th March, 2016 passed by 2nd Joint Civil Judge, Senior Division, Jalgaon on Exhibit-155.

12. In view of aforesaid, writ petition stands disposed of with direction to the trial court to proceed with the suit as expeditiously as possible, preferably within a period of twelve months from the date of receipt of writ of this order. Rule stands discharged accordingly.

[SUNIL P. DESHMUKH, J.]