

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

WRIT PETITION NO. 3112 OF 2010

M/s Jamshedpur Engineering &
Machine Manufacturing Co. .. Petitioner
Vs.
M/s Essar Ferro Alloys Co. & anr. .. Respondents.

***Along with
CIVIL APPLICATION NO. 1929 OF 2016***

M/s Essar Ferro Alloys Co. .. Applicant
In the matter between
M/s Jamshedpur Engineering &
Machine Manufacturing Co. .. Petitioner
Vs.
M/s Essar Ferro Alloys Co. & anr. .. Respondents.

Ms.Prabha Badadare, for the Applicant & orig. Respondent No.1.
Mr.Agnel Carriero i/b Mulla & Mulla & CB & C, for orig.
Petitioner.

***CORAM : N.M.Jamdar, J.
Friday, 7 October 2016.***

P.C. :

The Civil application is listed on board for vacating the stay granted. The Writ Petition is admitted by order dated 20 April 2010 and suit filed by the Respondents has been stayed since then.

Therefore, by consent of parties the Writ Petition itself is taken up for consideration.

2. The Petition is filed by the deponent in the suit instituted by Respondents. In this suit an application was filed by the Petitioner, on 21 September 2007 seeking permission to file Written statement after proceedings which are pending in the Board for Industrial & Financial Reconstruction (BIFR) are complete. The learned Civil Judge by the impugned order has rejected the application only on the ground that it has no power to file a written statement. As far as the prayer to keep the suit adjourned *sine die* the matter was adjourned for the Respondents-Plaintiffs to file Say.

3. Heard learned counsel for the parties.

4. The impugned order was passed on 5 December 2008. The Apex Court in the case *Salem Advocate Bar Association, T.N. Vs Union of India – (2005) 6 Supreme Court Cases 344*, has held that it is not impermissible for the Court to extend the time to file Written statement after period of 90 days if the conditions specified in the said decision are met. Therefore, since there is no adjudication on the rival contentions regarding cause made out to extend the stay was put to the learned counsel for the parties whether application could be restored to be heard afresh by the learned Civil Judge

Senior Division Daman. The learned counsel for Respondents / Plaintiffs stating that since suit is pending since the year 2007 and impugned order is passed in 2008 no purpose will be served by restoring the application at this stage and the Court may consider imposing suitable costs for granting the relief. Considering this position I am of the opinion that the impugned order as far as it refuses permission to the Petitioner to file Written statement needs to be quashed and set aside. Accordingly, it is quashed and set aside. The application filed by the Petitioner in respect of liberty to file Written statement is granted. The Written statement to be filed within period of six weeks from today, subject to the Petitioner paying cost of ₹ 15000 to Respondents.

5. As far as the question whether the suit needs to be stayed, it is kept open for the learned Civil Judge to decide depending upon the proceedings before the BIFR. Since the suit is filed in the year 2007, the learned Civil Judge, Daman will take up the suit on priority basis after the Written statement is so filed. The learned counsel for the Petitioner on behalf of the Petitioner assures the Court that Petitioner will cooperate with the early disposal of the suit. This submission is accepted. Civil Application does not survive.

6. In view of the above order, Writ Petition is dismissed.

(N.M.Jamdar, J.)