

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1728 OF 2016

M/S. SMS INDIA PVT. LTD.

...Petitioner

Versus

M/S. MACHINE TOOLS (INDIA)
LTD. AND ORS.

...Respondents

....

Mr. Rajesh Kachare a/w. Mehul Gada and Mr. Chirag Shah i/b.
M/s. Tamhane & Co. for the Petitioner.

Mr. Surel S. Shah a/w. Mr. Rohit Shetty, Advocate for the
Respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 10th FEBRUARY, 2016

P.C.

1. Heard Mr. Rajesh Kachare, learned Counsel for the
petitioner and Mr. Surel Shah, learned Counsel for respondent
No.1, at length.

2. On the oral application made by Mr. Kachare,
respondent Nos.2 and 3 are deleted from this Petition.
Amendment shall be carried out forthwith.

3. Rule. Mr. Surel S. Shah waives service on behalf of
respondent No.1. At the request and by consent of the parties,

Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'respondent No.1' has challenged the order dated 20.4.2015 passed by learned trial Judge, presiding over Court Room No.24 of the Bombay City Court at Bombay in Summary Suit No.509 of 2014. By that order, learned trial Judge allowed the Notice of Motion No.1527/2014 in terms of prayer clause (b) and directed respondent No.1 to deposit amount of Euro 1,11,962.40(=Rs.94,04,841/-) out of the total receivables of the defendants, namely, Euro 5,92,600/-.

5. Mr. Kachare submitted that the plaintiff took out Notice of Motion No.1527/2014 *inter alia* praying for injunction restraining respondent No.1 and/or respondent No.2 Deutsche Bank from making payment of Euro 1,11,962.40 = Rs.94,04,841/-; for mandatory injunction directing respondent No.1 and/or respondent No.2 to deposit Euro 1,11,962.40=Rs.94,04,841 out of the total receivables of the defendants namely Euro 5,92,600. He submitted that the

plaintiff filed application Exh.X on 20.4.2015. By that application, the plaintiff amended prayer clause (b) and sought mandatory injunction directing respondent No.2 to deposit Euro 1,11,962.40=Rs.94,04,841 out of the total receivables of the defendants namely Euro 5,92,600. Respondent No.1 herein gave no objection to the proposed amendment. By order dated 20.4.2015, amendment was allowed. Amended prayer clause (b) reads thus : -

“(b) That pending the hearing and final disposal of the suit herein, this Honorable Court be pleased to, by a temporary order and injunction direct Respondent No.2, either through themselves or their agents servants or any person claiming through or under, to deposit in this Honorable Court Euro 1,11,962.40=Rs.94,04,841 out of the total receivables of the Defendants namely Euro 5,92,600/-.”

6. In the impugned order dated 20.4.2015, learned trial Judge quoted the unamended prayer clause (b) and directed respondent No.1 to deposit said amount. He, therefore, submitted that the impugned order is liable to be set aside.

7. On the other hand, Mr. Shah submitted that the plaintiff intended to obtain mandatory order against respondent No.1 to deposit Euro 1,11,962.40=Rs.94,04,841 out of the total

receivables of the defendants namely Euro 5,92,600. However, inadvertently application Exh.X was filed claiming mandatory injunction against respondent No.2. Upon taking instructions, he states that he will withdraw application Exh.X. In other words, plaintiff is seeking relief in terms of prayer clause (b) as is unamended. In short, the plaintiff is claiming relief in terms of prayer clause (b) against respondent No.1 and not respondent No.2 Deutsche Bank. He further consents for setting aside the impugned order.

8. In view thereof, by consent of the parties, the Petition is disposed of in the following terms :

- i. Impugned order dated 20.4.2015 is quashed and set aside. Notice of Motion No.1527 of 2014 is restored to the file of the trial Court for deciding the same in accordance with law.
- ii. Application Exhibit 'X' stands withdrawn. In view thereof order dated 20.4.2015 passed below Exhibit 'X' stands dissolved.
- iii. As the plaintiff is now pressing Motion in terms of

unamended prayer clause (b), learned trial Judge will decide the same in accordance with law.

- iv. As the plaintiff has withdrawn application Exh.X, Mr. Shah also seeks permission to withdraw Contempt Notice of Motion No.2604/2015. Same shall stand withdrawn. The plaintiff shall take out formal application before the trial Court for withdrawing that Contempt Notice of Motion. If such application is taken out the learned trial Judge will dispose it of as withdrawn.
- v. Parties agree to appear before the trial Court on 22.2.2016. Learned trial Judge is requested to dispose of the Motion as expeditiously as possible and preferably within four weeks from the date of appearance of the parties.
- vi. All contentions on merits are expressly kept open.
- vii. Rule is made absolute in aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)