

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST.NO. 12004 OF 2016
WITH
CIVIL APPLICATION ST. NO.12005 OF 2016**

Peniair Thermal Management India Pvt Ltd	..Appellant
Vs.	
Citibank & Anr.	..Respondents

**Ms Ankita Singhania a/w Mr. Udit Mendiratta a/w Mr. Priyank Ladoia i/b
Tri Legal for the Appellant
Mr. Krishna Chandra Dubey for the Respondent No.2**

**CORAM : R. M. SAVANT, J.
DATE : 15th JULY, 2016**

P.C.

1 The above Appeal From Order takes exception to the order dated 20-4-2016 passed by the Learned Judge of the City Civil Court, Mumbai, by which order the Application for ad-interim reliefs made by the Appellant i.e. the original Plaintiff came to be rejected. The ad-interim relief sought was in respect of the encashment of the bank guarantee by the Respondent No.2 herein which is a performance guarantee furnished by the Appellant in favour of the Respondent No.2 through the aegis of the Respondent No.1 i.e. the Citibank Ltd. The rejection of the ad-interim relief is on the ground that the bank guarantee has already been invoked by the Respondent No.2 pursuant to which a demand draft in favour of the Defendant No.2 has been issued by the Citibank Ltd. and that the Defendant No.2 who is going to encash the same.

2 The Trial Court has also observed that there is no compliance of Rule 3 of Order 39 of the Civil Procedure Code in the matter of serving notice on the Defendant No.2 to remain present in the Court. The above Appeal From Order was moved before a Learned Single Judge of this Court (G. S. Kulkarni J.) on 20-4-2016 on which day an order granting ad-interim relief came to be granted restraining the Respondents from encashing the amount under the bank guarantee and / or depositing any demand draft if so issued by the Respondent No.1 (vide paragraph 7 of the order dated 24-4-2016). The said order has thereafter continued upto this day in the above Appeal From Order.

3 It was sought to be contended on behalf of the Appellant by Ms. Singhania that the prerequisites for the bank acting upon the request of the Defendant No.2 for invocation of the guarantee has not been satisfied in the instant case which prerequisites are mentioned in clause (9) of the performance guarantee. It is therefore the submission of Ms Singhania that the case for invocation of bank guarantee was not made out.

4 Per contra Mr. Dube the Learned Counsel appearing for the Respondent No.2 would point out that the conditions in the said performance guarantee as contained in clause (9) have been complied as the request letter dated 15-4-2016 itself contained the compliance. It is not necessary for this

Court to go into the rival contentions as admittedly the Notice of Motion filed by the Appellant / Plaintiff is pending before the City Civil Court Mumbai. It would be in the said Notice of Motion that the said contentions can be urged and can be considered by the Learned Judge of the City Civil Court.

5 In my view, considering the fact that the issue involved in the Notice of Motion whether an injunction restraining the beneficiary from invoking the bank guarantee could be granted. It would be just and proper to direct the City Civil Court Mumbai to decide the Notice of Motion expeditiously and within a particular time frame. Hence the following directions :

(i) The Learned Judge of the City Civil Court Mumbai is directed to hear and decide the Notice of Motion in question latest by 31-8-2016.

(ii) The Learned Counsel Mr. Dube appearing for the Respondent No.2 i.e. the Defendant No.2 in the Suit states that an affidavit in reply would be filed within two weeks from date in the said Notice of Motion in the City Civil Court Mumbai. Rejoinder if any to be kept ready by the Appellant i.e. the original Plaintiff after the receipt of the reply affidavit.

(iii) The Trial Court would decide the Notice of Motion on its own merits and

in accordance with law by giving proper opportunity to the parties and uninfluenced by the impugned order.

(iv) Ad-interim order which is operating in the above Appeal From Order and which is extracted hereinabove (in paragraph 2) would continue to operate till the disposal of the Notice of Motion.

(v) The contentions of the parties are explicitly kept open for being urged before the Trial Court.

6 With the aforesaid directions the Appeal From Order is accordingly disposed of.

7 The Learned Counsel Mr. Dube appearing for the Respondent No.2 undertakes to file vakalatnama in the above Appeal From Order within one week from date.

8 In view of the disposal of the above Appeal From Order, Civil Application St.No.12005 of 2016 does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]