

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2812 OF 2016

M/s. Shree Satpuda Tapi Parisar Sahakari
Sakhar Karkhana Ltd. & Ors. ... Petitioners
Vs.
Noble Resources and Trading India Pvt.
Ltd. & Anr. ... Respondents

Mr. Niranjan S. Mundargi i/b. The Law Point, Advocate for the petitioners.
Mr. Mihir Desai, Senior Advocate a/w. Ms. Shilpa Nair i/b. Trilegal for
respondent no. 1.
Mr. Avinash D. Khamkedkar, APP for the respondent/State.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **6th December, 2016**

P.C.:

Rule. By consent, rule is made returnable forthwith.

2. This Writ Petition is filed by the petitioners invoking the jurisdiction of this Court under Article 227 of the Constitution of India thereby requesting to quash and set aside the order dated 3rd August, 2016 passed by the Metropolitan Magistrate and seeking direction that the respondent no. 1 to accept the last instalment of Rs.17.50 lakhs as per the consent terms.

3. Respondent no. 1 has lodged 7 complaints against the petitioners/accused. The parties have entered into consent terms in respect of payment of an amount of Rs.3,50,00,000/- through those cheques which are subject matter in those criminal cases filed under

section 138 of Negotiable Instrument Act. As per the consent terms, it was agreed that the entire money was to be paid of Rs.17,50,000/- each in 18 instalments. Out of 18 instalments, 17 instalments were accepted and it was agreed that on payment of 18th instalment in May 2013, all the documents handed over to the complainant against the security of the amount will be returned to the present petitioners. A civil litigation in respect of Rs. 4 crores is also going on. The said suit is decreed against the petitioners. In the said Civil suit, Deed of mortgage is the main security document.

4. The learned counsel for the petitioners submitted that the said Deed of Mortgage is required to be handed over as soon as 18th instalment would be paid, however, respondent no. 1 is not willing to part with the original Deed of Mortgage and therefore, they refused to accept the last instalment intentionally to avoid handing over the said original Deed of Mortgage. The learned counsel submitted that it amounts to clear cut abuse of process of law, as the respondent no. 1 has deviated from the agreed terms of consent before the learned Magistrate.

5. The learned counsel for respondent no. 1 has submitted that respondent no.1 is ready and willing to hand over the original cheques and also ready to hand over the photocopy of Deed of Mortgage and mortgage

related documents to the petitioners, as the original documents are required in Execution proceedings in the Civil Court. He further submitted that the consent terms do not envisage handing over the original mortgage related documents.

6. In view of the submissions made by the learned counsel for both the parties and on perusal of the consent terms, I am of the view that the order dated 3rd August, 2016 passed by the learned Magistrate, at this stage, cannot be said to be illegal. Moreover, in order to adjudicate the issue, the evidence is required on the point of interpretation of this consent terms. Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)