

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3932 OF 2015
IN
FIRST APPEAL NO. 21 OF 2016

M/s. Sitara Shipping

.....Applicant
(Original Defendant)

V/s.
The Board of Trustees of
the Port of Mumbai

.....Respondent
(Original Plaintiff)

* * * * *

Mr. Manoj R. Khatri, Advocate for the appellant.

Ms. Prachi Sawant a/w. Mr. Kunal Chheda i/by. M.V. Kini & Co.,
Advocate for the respondent.

Coram :- Smt. R.P. SondurBaldota, J.

22nd April, 2016.

P.C. :-

1). This Civil Application is for stay of execution, operation and implementation of the judgment and decree dated 9th June, 2015 passed by the Bombay City Civil Court in Suit No. 8679 of 2000 directing the applicant to pay a sum of Rs.56,30,896/- to the respondent, Bombay Port Trust.

2). The brief facts of the case are that, the applicant as a shipping agent of M/s Sea Star Shipping and Marine Services Inc were on 22nd October, 1991 allotted by the respondent yard in their area for the purpose of storage and loading and unloading of containers. In the course of it's business as a shipping agent, the applicant had provided 17 containers to M/s. Patheja Brothers Forgings and Stampings for the purpose of carrying various export consignments. M/s. Patheja Brothers Forgings and Stampings loaded the containers and entrusted the same to the applicant for forwarding to Haji Bunder dock area for export. The respondent collected all the containers and since then, the containers were in charge of the authorised representative of the respondent. On 15th January, 1997, the cargo loaded in 17 containers was seized by the Customs, SIIB Department for misdeclaration by the exporter i.e. M/s. Patheja Forgings and Stampings Ltd. The containers not being part of the cargo, were not seized but continued to be kept in the yard as a storage device for the cargo seized. The applicant time and again requested the customs department for release of the containers by removing the goods kept therein without avail. At the same time, the respondent continued to charge ground rent for the 17 containers from time to time. The request of the applicant for waiver of the ground rent in the circumstances in which it was placed, was rejected by the respondent. Infact, a request had come from the customs department also to the respondent for waiving the ground rent but the respondent did not accede to the request. The 17 containers of the applicant were later released by the customs department only on 30th October, 2009 pursuant to the orders passed by this Court in Writ Petition No. 2732 of 1999 filed by the applicant.

3). In the meantime, the respondent had filed suit against the applicant claiming a sum of Rs. 56,20,896/- alongwith interest on the amount of Rs.42,74,446/- at the rate of 18% p.a. from the date of the suit till payment towards the outstanding rent. This suit was decreed by the Bombay City Civil Court by the judgment and decree dtd. 9th June, 2015, which has been challenged.

4). Mr. Khatri, the learned Advocate appearing for the applicant submits that storage of the containers on the property of the respondent was not at the choice or desire of the applicant. It had to leave the containers there, since the cargo therein was seized by the customs department which had left the cargo in the containers, instead of moving it to some storage space. He submits that infact the applicant had suffered losses on account of the non-availability of the containers.

5). It is obvious that, on account of the inefficiency on the part of the customs department and apathy on the part of the respondent, the applicant had to suffer not just the inconvenience, of loss of business but also the litigation. In the circumstances, the applicant is entitled for stay of the impugned decree.

6). Ms. Sawant, learned Advocate appearing for the respondent, requests that since the decree is a money decree, the applicant be directed to deposit atleast part of the decreetal amount in the Court. In the facts and circumstances of the present case, any such direction to the applicant will amount to adding insult to the injury and misery of the applicant at the hands of the customs department, as well as, the respondent. Hence, the Civil Application is allowed in terms of prayer clause (b). Costs to be cost in cause.