

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11238 OF 2015

M/s.Ferro Steels & Anr. .. Petitioner

vs.

M/s.Veendeep Oiltek Exports .. Respondent

Mr.A.K.Saxena for the petitioner

Mr.Swanand Ganoo i/b Mr.Rajesh Ravindran for the respondent nos.1
and 2

CORAM : K. K. TATED, J.
DATE : AUGUST 12, 2016

PC.:

1 Heard the learned counsel for the parties.

2 By this petition under Article 227 of the Constitution of India, the Petitioner defendant challenges the order dated 16.10.2015 passed by Bombay City Civil Court, Mumbai rejecting defendant's application dated 16.10.2015 for extension of time to comply the order dated 13.3.2015 in Summons for Judgment No.235 of 2012 by which the Trial Court directed defendant to deposit sum of Rs.24,91,234/- within 4 weeks.

3 The learned counsel for the defendant submits that order passed by Trial Court on 13.3.2015 was challenged by them before this court

by preferring Writ Petition No.5078 of 2015. He submits that, that Writ Petition was dismissed by this court on 2.7.2015. Thereafter, immediately they made application before the Trial Court on 16.10.2015 for extension of 6 weeks time to deposit the amount of Rs.24,91,234/-. He submits that, in that application, they specifically stated that Writ Petition filed by the defendant was rejected by Hon'ble Court on 2.7.2015 and hence, they require six weeks time to comply the order passed in Summons for Judgment.

4 The learned counsel for the defendant submits that the Trial Court erred in coming to the conclusion that the defendant failed to make out any case for extension of time to deposit the amount. He submits that the Trial Court in impugned order recorded that when Writ Petition No.5078 of 2015 was rejected by High Court, the defendant failed to make appropriate application for extension of time to comply the said order i.e. to deposit the amount. He further submits that the Trial Court failed to consider the fact, that the defendant required some time to arrange the amount which was more than Rs.24 lacs.

5 The learned counsel for the defendant submits that defendant has good chance of success in the present matter. He submits that pursuant to the order passed by this court on 20.11.2015, defendant deposited sum of Rs.24,91,234/- in the Registry of this court on 23.11.2015.

6 The learned Counsel for the defendant submits that delay in filing application and to deposit the amount may be condoned in the interest of Justice. In support of this contention, he relies on the

judgment of Division Bench of this court in the matter of ***B.C. Shah & Co. vs. T.P. Kanani***, 1974 BLR Vol LXXVII page 512. He submits that in this authority, the Division Bench of this court held that it is for the court to examine the merits of application for delay and grant the extension sought for only if sufficient cause is made out for not having complied with the conditions in time. He also relies on the unreported judgment dated 21.8.2013 in Writ Petition No.7448 of 2013 of this court (Coram: Ravi K. Deshpande, J.) in the matter of ***M/s. Godavari Edible Bran Oil Ltd. vs. M/s. Ferro Steels***. On the basis of these submissions and the authorities, the learned counsel for the defendant submits that this court be pleased to set aside the impugned order dated 16.10.2015 passed by Bombay City Civil Court at Bombay and allow the defendant's application dated 16.10.2015 to file their written statement as they already deposited the amount in this court. He submits that if petition is not allowed, irreparable loss and injury will be caused to the petitioner.

7 On the other hand, the learned counsel for the respondent plaintiff vehemently opposed the present Writ Petition. He submits that the defendant failed to make out sufficient cause for extension of time to deposit amount as per order dated 13.3.2015 passed by Trial Court in Summons for Judgment No.235 of 2013. He submits that, though defendants challenged the order dated 13.3.2015 before this court by preferring the Writ Petition No.5078 of 2015, this court has not entertained the same. He submits that said Writ Petition was dismissed by this court on 2.7.2015. He submits that at the time of dismissal, advocate for defendant failed to make any application for extension of time to deposit the amount in Trial Court. He submits that though this court dismissed defendant's Writ Petition on 2.7.2015, defendant filed

application for extension of time in Trial Court on 16.10.2015 i.e. after more than 2 ½ months. He submits that these facts were considered by the Trial Court at the time of rejecting defendant's application for extension of time by order dated 16.10.2015. Hence, there is no question of entertaining the present Writ Petition and same be dismissed with costs.

8 I have heard both the sides.

9 It is to be noted that in the present proceeding, the defendant initially filed Writ Petition No.5078 of 2015 challenging the order dated 13.3.2015 passed by Trial Court in Summons for Judgment No.235 of 2012. That Writ Petition was rejected by this court by order dated 2.7.2015. Thereafter defendant made application on 16.10.2015 before Trial Court for extension of time to deposit amount of Rs.24,91,234/-. The Trial Court failed to consider the fact that matter was pending before this court i.e. Writ Petition No.5078 of 2015 and because of that there was delay on the part of defendant to comply the said order. In any case, the defendant already deposited entire amount i.e. Rs.24,91,234/- in this court.

10 Considering the fact that defendant complied the order dated 13.3.2015 passed by Trial Court and the law laid down by our in the matter of ***B.C. Shah & Co. vs. T.P. Kanani*** (Supra) and considering the judgment dated 21.8.2013 in Writ Petition No.7448 of 2013, I am satisfied that defendant has made out a case for allowing this Writ Petition. But at the same time, they have to pay cost of Rs.10,000/- to the respondent/plaintiff within four weeks from today, failing which Writ Petition shall stand dismissed without referring back to the court.

Hence, following order is passed:

- a) Impugned order dated 16.10.2015 passed by Trial Court rejecting defendant's application dated 16.10.2015 for extension of time to deposit Rs.24,91,234/- in Summons for Judgment No.235 of 2012 in Summary Suit No.3092 of 2012 (High Court Summary Suit No.8744 of 2012) is set aside and application allowed.
- b) Registry is directed to transfer sum of Rs.24,91,234/- deposited by the defendant in the Registry of this court to the Bombay City Civil Court at Bombay in the account of Summary Suit No.874 of 2012 along with interest, if any, immediately.
- c) Petitioner defendant to file written statement within four weeks from today and serve copy on the other side failing which Trial Court to proceed with the matter without written statement.
- d) Petitioner defendant either to pay sum of Rs.10,000/- by way of cost to the plaintiff or their advocate directly or deposit in Trial Court within four weeks from today, failing which Writ Petition shall stand dismissed without referring back to the court.
- e) If cost is deposited in court, respondent plaintiff is entitled to withdraw the same without furnishing any security.
- f) Trial Court is directed to invest the amount of Rs.24,91,234/- with interest if any, as and when they receive from the Registry of this court in a fixed deposit account of any Nationalized Bank, initially for a period of one year and

same shall be renewed from time to time till the hearing and final disposal of the Summary Suit No.3092 of 2012 (High Court Summary Suit No.8744 of 2012)

g) Writ Petition stands disposed of accordingly.

JUDGE