

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 1152 of 2014.

M/s Rajat Pharmachem Ltd. & OrsApplicants.

Versus

Canbank Factors Ltd and AnrRespondents.

Mr Shreeram Shirsat a/with Harsh Parte for the applicant.
Ms Jyothi Menon i/by M. Janardhanan for the Respondent
No.1.

Smt. M.R.Tidke, APP for the Respondent-State.

CORAM : A.S.GADKARI, J.

DATE : 17th June, 2016

PC.

1) The applicants have filed the present application under Section 482 of the Code of Criminal Procedure, challenging the interlocutory Order dated 3/11/2014 passed by the learned Additional Sessions Judge, Greater Mumbai in Misc Application No. 3325 of 2014 in Criminal Appeal No. 1014/2014, thereby, while suspending the substantive sentence imposed by the Trial Court, directed the applicants to deposit 30% of the compensation amount in the Trial Court within three weeks from the date of passing of the said order.

2) The applicants herein are convicted under section 138 of the Negotiable Instruments Act, and the applicants no. 2 and 3 are sentenced to suffer simple imprisonment for one year by the learned Metropolitan Magistrate, 58th

Court, Bandra, Mumbai in C.C. No. 4259/SS/2009 by its Judgment and Order dated 10/9/2014. By the same Judgment and Order, the Trial Court has also directed the applicants to pay jointly and severally the compensation of Rs.7,63,47,000/- along with interest thereon @ 9% per annum from 24/6/2009 till complete realization of the total amount to the complainant within 45 days from the date of passing of the said Judgment and Order i.e. from 10/9/2014 and in default the applicants no. 2 and 3 have been ordered to suffer simple imprisonment for three months.

3) A perusal of the record reveals that feeling aggrieved by the said Judgment and Order dated 10/9/2014 passed by the Trial Court, the applicants have preferred Criminal Appeal No. 1014 of 2014 in the Court of Session at Greater Mumbai. The applicants also filed Bail Application No. 2630 of 2014 for releasing them on bail and the Misc. Application No.3325 of 2014 for suspension of the sentence. That by an Order dated 3/11/2014 the learned Judge of the Appellate Court has admitted the appeal and the same is now pending for final adjudication. As far as the Bail Application No. 2630 of 2014 is concerned, by an Order dated 3/11/2014 the learned Judge of the Appellate Court allowed the said application and directed that the applicants no. 2 and 3 to be released on bail on certain conditions.

4) As far as Misc.Application No. 3325 of 2014 filed by the applicants no. 2 and 3 for suspension of the execution and implementation of the Order passed by the Trial Court is concerned, the Appellate Court while allowing the said application has directed that the operation and execution of the substantive sentence imposed by the learned Metropolitan Magistrate, Mumbai in C.C.No. 4259/SS/2009 is suspended until further orders, subject to the condition that the appellants/applicants herein to deposit 30% of the compensation amount in the Trial Court within three weeks from the date of passing of the said Order i.e. from 3/11/2014.

5) By the present application, the applicants have impugned the said Order dated 3/11/2014 passed in Misc. Application No. 3325 of 2014 as stated herein above. The record discloses that the present application is filed on 18/11/2014 and it came up for hearing before this Court firstly, on 24/11/2014. That on the basis of the statement made by the learned counsel appearing for the applicants that he would take sometime to take instructions with respect to the amount which can be deposited by the applicants in pursuance to the impugned Order dated 3/11/2014, the present application was adjourned to 3/12/2014 and this Court granted stay to the impugned Order dated 3/11/2014. In the Order dated 24/11/2014 this Court has observed that the 30% of the compensation

amount roughly would be Rs.2,29,04,100/-. It further appears from the record that the said interim relief was subsequently extended from time to time. The present application thereafter came up for hearing on 30/4/2015. This Court in its Order dated 30/4/2015, has observed that in pursuance of the Order dated 24/11/2014 the applicants have neither deposited the said amount mentioned in the Order dated 24/11/2014 nor any statement to that effect was made. That it is further recorded in the said Order that the learned counsel for the applicants submitted that he would ascertain and make positive statement in that behalf within a week and the present application was adjourned to 7/5/2015. It is further recorded in the said Order dated 30/4/2015 that, if the applicants do not come up with the specific statement, this Court will consider vacating the Order of stay.

(6) The present application was thereafter adjourned from time to time and came up for hearing today before this Court.

Upon an enquiry made by this Court to the learned counsel appearing for the applicants about the facts recorded in the Orders dated 24/11/2014 and 30/4/2015 and the response of his clients thereto, the learned counsel, even on instructions from the concerned, is unable to make any positive statement regarding the deposit of the compensation amount in the

Trial Court. The learned counsel for the applicants submitted that instead of 30% of the total amount of compensation, some reasonable amount may be directed to be deposited in the Trial Court. The applicants were unable to tell what would be the reasonable amount which they would intend to deposit in the Trial Court. It is to be noted here that, the term “reasonable” is a relative term. According to me, in view of the facts of the present case, wherein the applicants have been directed to pay the compensation of Rs.7,63,47,000/- along with interest @ 9% per annum from 24/6/2009 till its realization, the directions to deposit 30% of the said compensation amount by the Appellate Court while suspending the sentence is a right and appropriate direction given by it while exercising its judicial discretion.

7) From the record, it clearly appears to me that, for obtaining the stay to the impugned Order dated 3/11/2014, passed by the learned Judge of the Appellate Court, the applicants made a statement, as mentioned in the foregoing paragraphs and, therefore, this Court by an Order dated 24/11/2014 granted stay to the impugned Order. That the applicants did not adhere to their statement recorded in the Order dated 30/4/2015 and the stay is extended from time to time on the basis of said statement as stated earlier. It is, thus, clear from the record

that the applicants by making a solemn positive statement before this Court on different occasions, that they would consider to deposit the amount of compensation in Court, have initially obtained stay to the impugned Order which was extended from time to time on their statement. It further appears to me that the applicants are not at all interested in depositing the said amount and are in fact, trying to dodge the deposit of the amount directed by the Appellate Court. The conduct and approach of the applicants cannot be countenanced and is deprecated.

8) Be that as it may, the substantive sentence imposed upon the applicants has been suspended by the impugned Order dated 3/11/2014 by the learned Judge of the Appellate Court by exercising its judicial discretion. It is also to be noted here that the complainant is also entitled for exercising his lawful remedy and after the Trial Court has held the applicants guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, the Appellate Court in its discretion has imposed the said condition which according to me is just, right and proper and needs no interference by this Court.

9) The substantive appeal filed by the applicants bearing Criminal Appeal No.1014 of 2014 is pending before the Appellate Court for its final adjudication. As this Court has declined to entertain the present application, the Appellate Court as well as the Complainant are at liberty to take

appropriate steps against the applicants in furtherance of the impugned Order dated 3/11/2014, as may be permissible in law.

10) As stated earlier, no interference is called for with the impugned Order at the instance of this Court and the present application is accordingly dismissed.

(A.S.GADKARI, J.)

Ladda (P.S.)