IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11561 OF 2015

INPAC PROJECTS INTERNATIONAL PRIVATE LIMITED AND ANR. ...Petitioners

Versus

RESURGENT FOUNDATIONS PRIVATE LIMITED AND ORS. ...Respondents

....

Mr. Shekhar Jagtap a/w. Akshay Kapadia i/b. J. Shekhar & Co., for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 9th FEBRUARY, 2016

P.C.

1. Heard Mr. Shekhar Jagtap, learned Counsel for the petitioners, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as the 'plaintiffs' have challenged the judgment and order dated 29.11.2014 passed by learned 2nd Joint Civil Judge, Senior Division at Pune below Exh.46 in Special Summary Suit No.71/2014. By that order, learned trial Judge granted unconditional leave to defend to the respondents, hereinafter referred to as the 'defendants'

and directed them to file written statement within one month.

3. The plaintiffs instituted Special Summary Suit against the defendants on 5.5.2014 for recovery of Rs.2,12,24,815/-. The case of the plaintiffs is that on 12.8.2013 a meeting was convened between the parties. In that meeting the defendants accepted their liability of Rs.2,10,00,000/- to be paid to the plaintiffs as and by way of full and final settlement. Said meeting was attended by the plaintiffs and defendant Nos.1 to 3. The minutes of that meeting are also signed by the plaintiffs and defendant No.3.

4. Defendant Nos.1 to 3 filed application at Exh.46 seeking leave to defend *inter alia* alleging that the plaintiffs have not complied with the terms and conditions of the minutes of the meeting and the defendants are not liable to pay the amount as per the minutes of that meeting. The defendants contended that the plaintiffs did not submit clearance certificate and in fact Income Tax Department had directed the defendants to pay Rs.1,05,00,000/- directly towards the income tax.

5. Mr. Jagtap submitted that clause (2) of the minutes

specifically recorded that the final figures settled as full and final settlement shall be Rs.2,10,00,000/- payable to the plaintiffs. Clause (4) recorded payment of Rs.2,10,00,000/- in installments. Thus, defendant Nos.1 to 3 accepted their liability to make payment of Rs.2,10,00,000/-. Learned trial Judge however observed that the plaintiffs did not comply with requirement of clause (3) and (5) of the minutes. Mr. Jagtap submitted that the plaintiffs have completed the work of commissioning the project in December, 2011 and said fact is not disputed by the defendants. In any case, learned trial Judge ought to have granted conditional leave to defend subject to depositing substantial amount in the trial Court. He, therefore, submitted that the impugned order deserves to be interfered with.

6. I have considered the submissions advanced by Mr. Shekhar appearing for the petitioners. I have also perused the material on record.

7. On 12.8.2013 the meeting was convened between the plaintiffs and defendant Nos.1 to 3. Clauses 2 to 5 of minutes of said meeting dated 12.8.2013, read thus :

> "2. The final figures settled as full and final settlement shall be Rs.210 lakhs payable to OCB Engineers & Inpac Projects in total. The split shall be finalized and sent to the companies by end of tomorrow. However, the final monies payable shall not exceed Rs.210 lakhs, including all taxes & duties.
>
> 3. All the contracts will be closed, final documentation submitted and closure certificates including commissioning certificate to be exchanged prior to the closure of payments as defined hereunder. All commissioning spares available at the site if any, shall be handed over by OCB to EGB Projects.
>
> 4. The payment timelines agreed for the above payment of Rs.210 lakhs from EGB Private Limited & RFPL shall be as follows:
>
>   - August 13, 2013 – Rs.15 lakhs
>   - August 31, 2013 – Rs.50 lakhs
>   - September 30, 2013 – Rs.50 lakhs
>   - October 30, 2013 – Rs.50 lakhs
>   - November 30, 2013 – Rs.50 lakhs.
>
> 5. OCB Engineers shall provide the Income Tax letters which indicates the Department's consent to make direct payment to the department in installments, which will relieve Enmas GB from the responsibility of paying to Income Tax Department on behalf of OCB, as advised earlier by the IT Department letter to EGB Projects Limited."

8. Perusal of clause (3) and clause (5) thereof clearly required the plaintiffs to submit documents and closure

certificates including commissioning certificate and also commissioning the spare parts, if any available at the site. The plaintiff was required to provide the income tax letters indicating the consent of the Income Tax Department for direct payment to the department in installments.

9. In para-5 of the impugned order, the learned trial Judge observed that the plaintiffs did not file any evidence to show that they had submitted documents. It was admitted that Income Tax Department issued notice to defendant to make direct payment of Rs.1,05,00,000/- in Income Tax Department on behalf of the plaintiffs. Learned trial Judge recorded that the conditions of minutes of meeting are not complied with by the plaintiffs. After recording this categorical finding, learned trial Judge referred to the decision of Apex Court in the case of ***Jyotsna vs. T.S. Parekh and company, AIR 1977 Supreme Court 577*** and observed that the case falls in para 'b'. In other words, the defendants have raised a triable issue indicating that they have a fair and bonafide or reasonable defence although not a possibly good defence, and therefore they are entitled to unconditional leave to defend.

10. The impugned order is discretionary. Learned trial Judge has exercised the discretion considering the material on record. It cannot be said that the discretion exercised by the learned trial Judge is arbitrary or capricious or perverse. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. The Petition fails and the same is dismissed. Liberty is reserved with the plaintiffs to take out appropriate application for disposal of the suit in a time bound manner. If such an application is made, learned trial Judge will pass appropriate order. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)