

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO.203 OF 2016
IN
ARBITRATION PETITION (L) NO.620 OF 2016
WITH
NOTICE OF MOTION (L) NO.1640 OF 2016
IN
APPEAL (L) NO.203 OF 2016

- | | | |
|--|---|--------------|
| 1. Ganage Pressing Private Limited |] | |
| a Company incorporated under the Companies |] | |
| Act, 1956 and having its registered office at |] | |
| third floor, "Symphony" A Building Range |] | |
| hills Corner, Bhosle Nagar, Pune 411 0201 |] | |
| |] | |
| 2. Rojee Tasha Stampings Private Limited |] | ..Appellants |
| A company incorporated under the Companies |] | Original |
| Act, 1956 and having its registered office at |] | Respondents |
| third Floor, "Symphyny" A building Range |] | |
| hills Corner, Bhosle Nagar, Pune 411 020. |] | |
| |] | |
| 3. Poona Tools Private Limited |] | |
| A company incorporated under the Companies |] | |
| Act, 1956 and having its registered office at |] | |
| third Floor, "Symphyny" A building Range |] | |
| hills Corner, Bhosle Nagar, Pune 411 020. |] | |
| |] | |
| 4. Automotive Metal Stampings Private Limited] |] | |
| A company incorporated under the Companies |] | |
| Act, 1956 and having its registered office at |] | |
| third Floor, "Symphyny" A building Range |] | |
| hills Corner, Bhosle Nagar, Pune 411 020. |] | |

V/s.

Tata Motors Limited.	]	
A company incorporated under the Companies	]	<u>Respondent</u>
Act, 1913 and having its registered office at	]	Original
Bombay House 24, Homi Mody Street, Mumbai	]	petitioner
400 001, Maharashtra	]	

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Mr. S. U. Kamdar, Senior Advocate a/w Mr. Mustafa Doctor, Senior Advocate a/w Mr. Dharam Jumanani a/w Ms. Manik Joshi a/w Mr. Pranav Arora I/by M/s Crawford Bayley & Co. for the Appellants.

Mr. Pravin Samdani, Senior Advocate a/w Mr. Rahul Narichania, Senior Advocate a/w Mr. Gaurav Kothari a/w Mr. Vivek Shetty a/w Mr. Kumar Katariya I/by AZB & Partners, for respondent.

Ms. Pooja Bhaidkar, 2nd Assistant to Court Receiver present.

**CORAM : B. R. GAVAI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.
(VACATION BENCH)**

DATE : 23rd MAY, 2016.

Oral Judgment : [PER: B. R. GAVAI, J.]

1. The appellants in this appeal, challenge the order dated 16th May, 2016 passed by learned Single, in Arbitration Petition (L) No.620 of 2016.

2. The petition was filed by the respondent herein, which has been referred to in the order passed by the learned Single Judge as, “Tata Motors”, under Section 9 of the Arbitration and Conciliation Act, 1996, seeking certain interim reliefs against the present appellants who are referred by the learned Single Judge as “Ganage Pressings Pvt. Ltd.”, in relation to certain tools belonging to Tata Motors which were handed over by it to M/s Ganage Pressings for manufacturing certain components for Tata Motors under Supply Agreement dated 28th August, 2015.

3. The factual position which is not in dispute is that Tata Motors

has engaged the services of M/s Ganage Pressings for manufacturing certain components for its vehicles for a period of almost last 30 years. However, it appears that there were certain difficulties in the functioning of M/s Ganage Pressings, which led to shortfall in the manufacturing of components. It is also not in dispute that the tools for manufacturing the said components are owned by M/s Tata Motors which were handed over to M/s Ganage Pressings, initially without there being any agreement and subsequently under agreement of 2015.

4. It is the contention of M/s Tata Motors that on account of shortfall of supply of components, its production got substantially affected thereby leading to losses. It had made certain communications with M/s Ganage Pressings for improving its functioning. It is also the contention of M/s Tata Motors that inspite of rendering financial assistance as well as the other assistance to M/s Ganage Pressings, on account of rivalries between two groups, the functioning of M/s Ganage Pressing did not improve.

5. It is further their contention that ultimately the situation went to such an extent that electricity supply to the plant owned by M/s Ganage Pressing was disconnected thereby seriously disrupting the manufacturing of components having direct adverse effect on manufacturing of the vehicles. In this background, the aforesaid petition under Section 9 of the Arbitration & Conciliation Act, came to be filed before the learned Single

Judge of this Court.

6. Initially the learned Single Judge, vide order dated 4th May, 2016 had appointed Court Receiver to take possession of the tools which were given by M/s Tata Motors to M/s Ganage Pressings. By the impugned order the learned Single Judge issued various directions inter alia directing Receiver to hand over the possession of tools which were taken by him in his possession, to M/s Tata Motors, so also to take possession of remaining tools and hand over the same to M/s Tata Motors. Certain other directions are contained in the operative part of the order passed by the learned Single Judge, therefore, we do not wish to reproduce the same again in the present order.

7. Being aggrieved by the said order, M/s Ganage Pressing has approached this Court by filing present appeal.

8. Shri. Kamdar, learned Senior Advocate, appearing on behalf of the present appellants submits that the learned Single Judge has grossly erred in passing the impugned order. Learned Senior Advocate submits that while considering application for injunction, the Court is required to take into consideration prima facie case, irreparable injury and the balance of convenience. It is submitted that the learned Single Judge has only taken into consideration the injury that would be caused to M/s Tata Motors, but has not at all taken into consideration irreparable loss that would be caused to the appellants on account of impugned interim

order. Learned Senior Advocate submits that the learned Single Judge in any case has utterly failed to weigh the balance of convenience between the parties. It is submitted that on account of impugned order, the total functioning of M/s Ganage Pressing has come to standstill. Learned Senior Advocate submits that the entire functioning of the appellants is dependent upon the supply of the goods to M/s Tata Motors. It is submitted that if the impugned order is permitted to exist, it would result in totally disrupting the functioning of M/s Ganage Pressing thereby causing huge financial losses to the appellants and taking away livelihood of number of employees employed by the appellants.

9. Shri. Kamdar, learned Senior Advocate, further submits that the learned Single Judge has also taken into consideration various e-mails which are not forming part of the record and as such has taken into consideration extraneous material. It is submitted that on this ground also, the impugned order is liable to be set aside.

10. Shri. Samdani, learned Senior Advocate, appearing on behalf of respondent, on the contrary submits that the learned Single Judge has given sound and cogent reasoning while passing the impugned order. Learned Senior Advocate submits that in so far as e-mails are concerned, though the e-mails were produced before the learned Single Judge at the time of hearing of the application, he is willing to argue the appeal dehors the said material. Learned Senior Advocate further submits that even if

those e-mails are ignored, it would reveal that M/s Tata Motors had made out a prima facie case and a case of causing irreparable injury. It is further submitted that the balance of convenience tilts heavily in favour of grant of relief as prayed by M/s Tata Motors before the learned Single Judge.

11. Learned Senior Advocate submits that inspite of giving assistance to the appellants so as to improve its functioning, on account of rivalry between two groups, the functioning of the appellants had come to standstill. He submits that on account of discontinuation of supply of electricity, plants had come to standstill and thereby stopped total production of the components. He submits that due to non supply of components, there was direct adverse effect on the manufacturing activity carried out by Tata Motors, resulting into losses to it. Learned Senior Advocate submits that in any case, the ownership of the tools lies fully and solely with Tata Motors and clause No.26.16 of the agreement empowers Tata Motors to take away tools at any point without notice and without intimation.

12. The present appeal is in the nature of appeal against the order as provided under Order 43 Rule (1) (r) of the Code of Civil Procedure. The scope of such an appeal has been explained by the Hon'ble Supreme Court in **Wander Ltd and another -vs- Antox India P. Ltd, 1990 (Supp) Supreme Court Cases 727**. It would be appropriate to

refer to paragraph No.14, which reads thus :-

“14. The appeals before the Division bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage, it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in **Printers (Mysore) Private Ltd. v. Pothan Joseph** (SCR 721).

“.....These principles are well established, but as has been observed by Viscount Simon in *Charles Osenton & Co. v. Jhanaton*... the law as to the

reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case.”

The appellate judgment does not seem to defer to this principle.

13. In the light of law laid down by Apex Court, we will examine the correctness of the order, passed by the learned Single Judge.

14. As already held by the Apex Court, an interference would be warranted by us only if the view taken by the learned Single Judge is either perverse or impossible and not merely because we find that the other view is more probable.

15. We may state that in view of objection raised by learned Senior Counsel for appellants, we would not be referring to e-mails which were not part of record for consideration before the learned Single Judge.

16. The perusal of the e-mail dated 29th April, 2016 sent by Mr. R. D. Ganage to the other group and which is forming part of the record would reveal that the Axis Bank has blocked account operations of the company until the revised resolution with joint signatories is submitted to them with the consent of both the families.

17. The perusal of the said communication would also reveal that there was demand by the other group for release of unsecured loans and

personal properties. However, Mr. Ganage informed the other group that considering such a request when the company was going through critical situation, was totally unfair. Not only that, but the said communication would clearly reveal that Tata Motors management has supported Ganage Pressings in its difficulty by releasing funds

18. The communication would further reveal that the accounts department exploited by the group of S. B. Ganage.

19. The material placed on record would also reveal that since there was difficulty in continuity in operation of Ganage group company, a meeting was held between the representatives of the group and the Tata Motors. The Minutes of said meeting are placed on record at page No.595 of the paper Book. The said minutes would clearly show that M/s Ganage has expressed difficulties for continuity in operation as Ganage group from 26th April, 2016. The said group also requested for trade advance of Rs.4.50 crores from the Tata Motors. Accordingly Tata Motors had also agreed to give it advance of Rs.2.50 crores.

20. The perusal of the affidavit filed on behalf of appellants, before the learned Single Judge would also reveal that the appellants themselves have admitted that the electricity supply of the factory at Chakan and Pimpri was disconnected from 6th May, 2016 till 12.5.2016. It is also admitted that the electricity supply of the factory at Uttaranchal was disconnected on 6.5.2016. However, it is stated in the affidavit that the

appellants (respondents therein) were in position to start operation by releasing the balance payment towards electricity bills and other service provider at any point, if dedicated tools are returned to the appellants (respondents therein).

21. The perusal of the e-mail dated 30.4.2016 addressed by Shri. Shivaji Ganage to the Tata Motors would reveal that he has attempted to put entire blame on Tata Motors regarding the internal disputes between two groups. The tenor of the language used in the said communication would reveal that, sort of threats are given to the Tata Motors by the sender of the said communication.

22. It further appears that with intimation addressed to the Ganage Pressing on 30th April, 2016, Tata Motors had sent truck to the plant of Ganage Pressing to take back its dedicated tools. The said communication would reveal that inspite of giving an amount of Rs.2.5 crores to the Ganage Group, electricity, transport, contractor payment and employees salaries were not paid resulting into stoppage of TML PVBU & CVBU B/W lines. It appears that though the trucks were sent to the plant, the appellants refused to permit them to enter into their factory premises. It appears that this was done by Tata Motors in view of clause No.26.5 of the agreement between the parties. Instead of responding to request of Tata Motors who are undisputedly the owner of dedicated tools, M/s Ganage Pressing has given a letter of threats to Tata Motors.

23. The learned Single Judge in his order from paragraph No.21 onwards has given elaborate reasons as to why he finds it necessary to grant relief as claimed in the application. It has been observed by the learned Single that M/s Ganage Pressing owed nearly Rs. 430 crores to various banks, financial institutions and IDBI Bank Limited. It has been further observed that M/s Ganage Pressing has been serially defaulting in paying their statutory taxes to the tune of Rs. 51 crores. It has been further found that electricity supply to the Ganage Pressing factory has been disconnected by Maharashtra State Electricity Board and the Uttarakhand Power Corporation Limited. Though it is sought to be contended by learned Senior Advocate Shri. Kamdar, that outstanding amounts of financial institutions and disruption of electricity are common to the manufacturing activities, we find that the same cannot be said to be irrelevant consideration while considering application for interim relief.

24. The learned Single Judge has also found that on account of appellants not functioning properly, the functioning of the manufacturing plant of Tata Motors was adversely affected thereby causing huge losses. The learned Single Judge, has further found that if tools are permitted to be kept in open place, the possibility of these tools being damaged /deteriorated cannot be ruled out.

25. The learned Single Judge on the contrary has found that if the Tata Motors is permitted to use those tools and make alternate

arrangement for production of components, it will help in augmenting the manufacturing activities. In so far as the balance of convenience is concerned, the learned Single Judge has found that the loss, if any, to the appellants was of such a nature which always can be compensated in terms of money.

26 The reasoning given by the learned Single Judge cannot be said to be perverse. The reasons given by the learned Single Judge are well founded and based on material placed on record.

27. In that view of the matter, we do not find that there is any merit in the appeal. The appeal, therefore, stands dismissed.

28. In view of dismissal of appeal, Notice of Motion (L) No.1640 of 2016 does not survive and the same is disposed of accordingly.

29. At this stage, learned Senior Counsel appearing for the appellants seeks stay to the order passed by the learned Single Judge for a period of two weeks. In the background of the view taken by the learned Single Judge and affirmed by us, we are not inclined to grant the prayer made by learned Senior Counsel for the appellant. The oral prayer is rejected.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[B.R.GAVAI, J.]