IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 16738 OF 2016
IN
SECOND APPEAL NO.572 OF 2014

Lupin Limited
A Company incorporated under
Companies Act, Having its Corporate
Office at 3rd Floor,
Kalpataru Inspire, Off W.E. Highway,
Santacruz (East), Mumbai-400 055
and Works at A-28/A,
MIDC Industrial Area, Chikalthana,
Aurangabad – 431 210
Through its one of
the Principal Officer .. **APPLICANT**

VERSUS

1. M/s Sahkar Agencies Private Limited,
Central Naka, MGM Road,
CIDCo, Aurangabad

2. Aurangabad Municipal Corporation,
Through its Commissioner,
Aurangabad .. **RESPONDENTS**

WITH
CIVIL APPLICATION NO. 8177 OF 2017
IN
SECOND APPEAL NO.572 OF 2014

M/s. Sahakar Agencies Private Limited,
Central Naka, MGM Road,
CIDCO, Aurangabad
Through it's Authorised Signatory,
Dhiraj s/o Deshbandhu Agrawal .. **APPLICANT**
(Appellant/Original Defendant No.2)

VERSUS

1. Lupin Limited,
   A-28/A, MIDC Industrial Area,
   Chikalthana, Aurangabad-431210

2. Municipal Corporation, Aurangabad,
   Through its Commissioner,
   Municipal Corporation Office,
   Aurangabad **.. RESPONDENTS**
   (Resp.No.1-Original Plaintiff and Resp.No.2 Orig.Defendant No.1)

Mr. P.M. Shah, Senior Advocate instructed by Mr.L.D. Vakil, Advocate for the applicant in C.A.No.16738/2016 and for respondent No.1 in C.A.No.8177/2016

Mr. Shrihari Ane, Senior Advocate instructed by Mr.D.V. Soman and A.D. Soman, Advocates for applicant in C.A.No.8177/2016 and for respondent No.1 in C.A.No.16738/2016

Mr. Deelip Patil-Bankar, Advocate for respondent No.2 Corporation, in both the Civil Applications

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CORAM : SANGITRAO S. PATIL, J.
RESERVED ON : 25th JULY, 2017
PRONOUNCED ON: 1st AUGUST, 2017

ORDER :

The applicant in Civil Application No. 8177 of 2017 is the appellant, while the applicant in Civil Application No. 16738 of 2016 is respondent No.1 in Second Appeal No.572 of 2014. They were original defendant No.2 and the plaintiff respectively in Regular

Civil Suit No.81 of 2010. Respondent No.2 -Municipal Corporation of Aurangabad was defendant No.1 in that suit. For the sake of convenience the parties are hereinafter referred to by the same nomenclatures, by which they were described in Regular Civil Suit No.81 of 2010. In both of these civil applications, the respective applicants (i.e. defendant No.2 and the plaintiff respectively) have sought permission to withdraw the amount deposited by respondent No.1 in the Court of Civil Judge, Senior Division at Aurangabad, hence, they are being decided by this common order.

2. The plaintiff was bringing chemicals within the local limits of defendant No.1 for manufacturing medicines. According to the plaintiff certain chemicals which fall within the category of goods included in Entry No.34-D of the Octroi Schedule “O” adopted by defendant No.1-Corporation, on which the prescribed octroi was at the rate of Rs.1%. Defendant No.1 assigned the contract to defendant No.2 from the year 2006 onwards for recovery of octroi. According to defendant No.2, the chemicals imported by the plaintiff were falling in Entry No.34-C of the Octroi Schedule “O” for

which the prescribed octroi duty was at the rate of Rs.2.75%. The plaintiff instituted Regular Civil Suit No.81 of 2010 in the Court of Civil Judge, Senior Division (Corporation) at Aurangabad, seeking declaration to the effect that defendant No.2 was not entitled to charge and collect octroi duty in excess of Rs.1% of the goods brought by the plaintiff and further sought the relief of injunction restraining defendant No.2 from charging and collecting the octroi duty in excess of Rs.1%.

3. The plaintiff had sought interim relief before the trial Court restraining the defendants from taking coercive action against the plaintiff. Interim relief was granted by the trial Court. The order of granting interim relief was challenged by defendant No.2 by filing Writ Petition No.616 of 2008. The said writ petition came to be disposed of in terms of the compromise between defendant No.2 and the plaintiff on 29th January, 2008. As per the said terms of the compromise, the plaintiff deposited the disputed excess amount of octroi duty at the rate of Rs.1.75% in the Court of Civil Judge, Senior Division, Aurangabad, till

the disposal of the suit. The amount so deposited by the plaintiff was invested in the fixed deposit in Nationalised Bank, as per the consent terms.

4. Regular Civil Suit No. 81 of 2010 came to be decreed on 11th January, 2013. Defendant No.2 preferred Regular Civil Appeal No.42 of 2003 against the judgment and decree passed by the trial Court. The said appeal came to be dismissed by the learned Ad-hoc District Judge, Aurangabad, on 23rd June, 2014.

5. Defendant No. 2 preferred the present Second Appeal No. 572 of 2014 against the judgments and decrees passed by the trial Court as well as the First Appellate Court. Defendant No.2 filed Civil Application No.9612 of 2014, seeking stay to the effect and operation of the said judgments and decrees. The said application came to be disposed of as per the order dated 8th December, 2014, on the basis of the statement made by the plaintiff that it has not filed any application in the trial Court for withdrawal of the amount deposited in terms of the order dated 29th January, 2008 and that pending hearing of the Second Appeal, the plaintiff

would not file any application for withdrawal of that amount. That statement came to be recorded.

6. The learned Senior Counsel appearing for the plaintiff submits that the current economy is in slowdown, which has adversely affected the business of the plaintiff. The plaintiff needs to consistently upgrade and update its business by investing in new technology and new research to meet the market demands. The plaintiff is facing the financial deficiencies to meet the business activities and market goals. The plaintiff is in need of the funds for achieving its business objectives. The trial Court as well as the First Appellate Court have recorded the concurrent findings validating the claim of the plaintiff in respect of the rate of octroi duty on the goods brought by it. In the circumstances, the learned Senior Counsel submits that the excess amount of octroi deposited by the plaintiff may be allowed to be withdrawn on furnishing bank guarantee equal to that amount from any Nationalised Bank. According to him, no prejudice would be caused to defendant No.2 because in case defendant No.2 succeeds in this appeal, the amount so withdrawn by

the plaintiff would be made available immediately on the strength of the bank guarantee. He submits that the claim made by defendant No.2 for withdrawal of that amount is not at all maintainable, particularly when there is concurrent findings of the trial Court as well as the First Appellate Court that defendant No.2 is not entitled to recover octroi duty at the rate exceeding Rs.1%. He, therefore, submits that Civil Application No.8177 of 2017 filed by defendant No.2, may be rejected.

7. On the other hand, the learned Senior Counsel appearing for defendant No.2 submits that in view of the consent terms dated 29th January, 2008, submitted by the plaintiff and defendant No.2 before this Court in Writ Petition No.616 of 2008, which have been accepted by the Court while disposing of that petition, the plaintiff cannot seek withdrawal of the amount deposited by it towards octroi at the rate of Rs.1.75% in the Court of Civil Judge, Senior Division at Aurangabad, till the final outcome of the present litigation. He submits that though there is mention in Clause 4 (a) of the consent terms that the amount would be deposited till disposal

of the suit, as per the Clause 4 (c), the amount so deposited by the plaintiff and invested in the fixed deposit was subject to the final outcome of the litigation. Since the litigation is still pending. The plaintiff cannot seek withdrawal of that amount. He then pointed out to the order dated 8th December, 2014 passed by this Court in this Appeal while disposing of Civil Application No.9612 of 2014 filed by defendant No.2, wherein on instructions of the plaintiff a statement was made that the plaintiff has not filed any application for withdrawal of the amount deposited in terms of the order dated 29th January, 2008 and pending hearing of the appeal also, the plaintiff would not make any application for withdrawal of that amount. After recording the said statement the civil application was disposed of by this Court with the observations that the deposit made in pursuance of the order dated 29th January, 2008, should be renewed during the pendency of this Second Appeal and would abide by the outcome of the appeal. In view of this statement of the plaintiff, the learned Senior Counsel for defendant No.2 submits that the plaintiff cannot seek withdrawal of the amount deposited and invested in pursuance of the order dated

29th January, 2008. According to him, the reason given by the plaintiff for withdrawal of that amount is not at all acceptable.

8. He further submits that defendant No.2 also is running a business. It also requires money to update its business to run it effectively. Defendant No.2 also is ready to furnish bank guarantee, if the amount deposited by the plaintiff is allowed to be withdrawn by defendant No.2. He, therefore, submits that defendant No.2 may be allowed to withdraw the said amount.

9. It would be worthwhile here to reproduce the minutes of the consent order dated 29th January, 2008 passed in Writ Petition No.616 of 2008, which reads as under:-

> *"1. Rule.*
>
> *2. By consent rule made returnable forthwith.*
>
> *3. Respondent No.1/plaintiff to make the payment to the petitioner/defendant No.2 an amount of Octrai at the rate 1%.*
>
> *4. (a)* ***The disputed amount*** *of Octrai calculated at the rate 1.75% to* ***be deposited*** *by the respondent No.1/plaintiff* ***in the Court***

of Civil Judge Senior Division, Aurangabad, ***till disposal of the suit.***

(b) The deposit of the disputed amount as per clause 4(a) above, to be deposited in the Trial Court on or before 10th day of every month to follow.

(c) ***The amount so deposited*** *be invested in Fixed deposit by Trial Court, in any Nationalised bank which* ***will be subject to the final out come of the litigation.***

5. The impugned orders Exhibit-E and I be set aside and modified in terms of this consent order.

6. The hearing of the suit be expedited and should be decided within a period of 6 months."

(Emphasis supplied).

10. As per the term No. 4 (a) of the minutes of the consent order, the disputed amount of octroi calculated at the rate of Rs.1.75% was to be deposited by the plaintiff in the Court of Civil Judge, Senior Division, Aurangabad, till disposal of the suit. As per the Clause (c), the said amount was to be invested in the fixed deposit in any Nationalised Bank and was to be subject to the final outcome of the litigation. It is, thus,

clear that Clause 4 (a) relates to the period during which the amount was to be deposited in the Court i.e. till the disposal of the suit, while Clause (c) speaks of the duration of investment of that amount i.e. upto the final outcome of the litigation. Clause 4 (a) cannot be interpreted to mean that amount deposited was to be withdrawn immediately after disposal of the suit. The litigation, admittedly, is still pending and therefore, the disposal of the amount deposited by the plaintiff would have to await till final outcome of this litigation.

11. Here, a reference may be made to the order dated 8th December, 2014 passed in Civil Application No. 9612 of 2014 by this Court, which reads as under :-

> *"1) Heard Mr. Shrihari Ane, learned Sr. Counsel for the applicants; Mr. P.M.Shah, learned Sr. Counsel for Respondent No.1; and Mr. U.K.Patil, learned Counsel for Respondent No.2, at length.*
>
> *2) Rule. Rule is made returnable forthwith. Learned Counsel waive service on behalf of respective respondents. At the request and by*

consent of parties, the Civil Applications are taken up for final hearing.

*3) **Mr.Shah, upon taking instructions, states that Respondent No.1 has not filed any application for withdrawal of the amount** deposited in terms of order dated 29th January, 2008 passed by this Court in Writ Petitions No.616/2008; 617/2008 & 618/2008; **and pending hearing of these appeals, Respondent No.1 will also not make any application for withdrawal of the amount. Statements made by Mr. Shah are recorded.***

(Emphasis supplied)

4) In view thereof, the Civil Applications are disposed of. Costs in cause. The deposit made in pursuance of the order dated 29th January, 2008 passed by this Court in Writ Petitions No.616/2008; 617/2008 & 618/2008, shall be renewed during pendency of these Second Appeals and will abide by the outcome of the appeals. Order accordingly."

12. In my view, sub-clauses (a) and (c) of Clause 4 of the minutes of consent order read with the statement made by the plaintiff as recorded in para 3 of the order dated 8th December, 2014, would make it difficult for

the plaintiff to seek withdrawal of the amount deposited and invested on account of the disputed octroi duty at the rate of Rs.1.75% at this stage. The need of money claimed by the plaintiff for upgrading and updating its business by investing in new technology and new research to meet the market demands, cannot be a ground for setting at naught clauses (a) and (b) of the consent term No.4 referred to above. As long as those terms are enforceable, the amount so deposited/invested, cannot be allowed to be withdrawn either by the plaintiff or defendant No.2.

13. Moreover, when the plaintiff has made solemn statement before the Court, which has been accepted and acted upon while passing the order dated 8th December, 2014, that it would not file any application for withdrawal of that amount during the pendency of this Appeal, the plaintiff cannot be allowed to retract from that statement at this stage. Prior to making such statement, the plaintiff certainly must have taken into consideration the future requirements of its business including the need of money to make it competitive. In the above circumstances, the plaintiff is estopped from

seeking withdrawal of the amount deposited by it in the trial Court which has been invested in a Nationalised Bank.

14. So far as the claim of defendant No.2 for withdrawal of the amount deposited by the plaintiff is concerned, I do not find any reason to entertain it, particularly, when the trial Court as well as the First Appellate Court have rejected its claim for recovery of the octroi duty at the rate exceeding Rs.1%. It seems that defendant No.2 filed application for withdrawal of that amount just to give counter-blast to the application of the plaintiff. Defendant No.2 will have to wait for final decision of this appeal, so as to claim the amount so deposited in the event of its succeeding in the appeal.

15. In the above circumstances, both the Civil Applications are liable to be rejected and accordingly rejected. No costs.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE