IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO.206 OF 2016
IN
FIRST APPEAL NO.49 OF 2016

M/s. Jakhotiya Plastics Pvt. Ltd.
Having office at 318/319,
Kundaim Industrial Estate,
Kundaim, Ponda, Goa, through
duly authorized representative,
Mr. Dinesh Sharma. …. Applicants

V/s

1. Smt. Smita Laxman Gaude,
aged 37 years,
w/o Laxma Surya Gaude.

2. Master Sanat Laxman Gaude,
aged 6 years,
represented by his legal guardian,
Smita Laxman Gaude.

3. Master Akash Laxman Gaude,
aged 4 years,
represented by his legal guardian,
Smita Laxman Gaude.

4. Smt. Savitri Surya Gaude,
aged 60 years,
w/o. Surya Gaude,
All r/o. H.o.118, Gad Wada,
Khandola, Marcel, Goa. … Respondents

Shri Y.V. Nadkarni, Advocate for the applicants.
Shri E. Afonso, Advocate for the Respondents,

Coram:- NUTAN D. SARDESSAI, J.

Reserved on : 7th APRIL, 2017
Pronounced on : 16th JUNE, 2017

ORDER :

The applicants have sought the indulgence of this Court to permit them to furnish a Bank Guarantee in view of the change in circumstances and once again praying for a stay of the impugned judgment and award passed by the learned MACT.

2. Shri Y.V. Nadkarni, learned Advocate came to be heard on behalf of the applicants who adverted to the Bombay Amendment to Order XLI Rule 3 CPC and submitted that there were ample powers in this Court to permit the applicants to furnish security and dispense with the deposit of the amount disputed in the appeal. He placed reliance in **Sihor Nagar Palika Bureau V/s. Bhabhlubhai Virabhai & Co. [(2005) 4 SCC 1], United India Insurance Company V/s. Jagdish Singh & Ors. [(1999) 9 SCC 57]** and submitted that this Court could well in the exercise of its discretion permit the applicants to furnish security and dispense with the deposit of the amount disputed in the appeal.

3. Shri E. Afonso, learned Advocate for the respondents vehemently opposed such a plea and at the outset placed reliance in **Bhusawal Municipal Council V/s. Nivrutti Ramchandra Phalak & Ors. [(2015) 14 SCC 327]**. It was his further contention that the petition as filed

by the respondents was a beneficial piece of legislation and the respondents were entitled to reap its benefit. The case had a chequered history inasmuch as an earlier direction was issued to the applicants to deposit the amount in Court but who had failed to do so. There was no question of granting any liberty to the applicants to furnish a Bank Guarantee assuming for a moment that there was any change in circumstances. The rights of the respondents could not be scuttled and no such benefit could be granted to the applicants. Their application was once dismissed and therefore no leave could be granted to the applicants to furnish any Bank Guarantee.

4. It was not in dispute that this Court vide the order dated 17/06/2016 was pleased to stay the impugned award subject to the deposit of the awarded amount within a period of 6 weeks. Thereafter by the order dated 12/08/2016 a last and final opportunity was granted to the applicants of two weeks to make the deposit failing which the stay would stand vacated automatically. The applicants thereafter carved a case that they were in grave financial hardship and when an order was made dated 26/08/2016 vacating the interim stay

and directing the learned MACT to expedite the execution proceedings. It is only on the basis of the fair concession of Shri E. Afonso learned Advocate for the respondents that he would not press for the arrest and detention of the applicants that the applicants were secured by the order dated 1/10/2016 and the applicants were not made to suffer the consequences of arrest and detention before the Executing Court. The applicants now seeks to furnish a Bank Guarantee on the premise that they are facing a lot of financial hardship and that their assets have been mortgaged to the Banks but nonetheless to secure the interest of the respondents, they were seeking the indulgence of the Court to furnish a Bank Guarantee to the extent of 50% of the amount awarded in favour of the respondents.

5. This application has been vehemently resisted on behalf of the respondents on the premise that the applicants were financially sound having an annual turnover of ₹200.00 crores and that they could easily satisfy the awarded amount in the respondents' favour. The respondents could also seek recourse to Section 174 of the Motor Vehicles Act, 1988 and recover the amount due under the award as arrears of land

revenue. In any event there has been no precedent of the award of the Court being stayed by furnishing a Bank Guarantee. The respondents therefore pressed for the disposal of the application with exemplary costs.

6. In **Sihor Nagar Palika Bureau** (supra), the Hon'ble Apex Court considered the predicates of Order XLI Rule 1(3) CPC which provides for a deposit or security for an order of stay by the Appellate Court and observed that a bare reading of the provisions showed the discretion having been conferred on the Appellate Court to direct either deposit of the amount disputed in the appeal or to permit such security in respect thereof being furnished as the Appellate Court may think fit. Needless to say that the discretion was to be exercised judicially and not arbitrarily depending on the facts and circumstances of the given case.

7. **Jagdish Singh & Ors.** (supra), was an appeal directed against the order of the Punjab and Haryana High Court refusing to grant stay while the appeal filed by the insurer was pending before it. The Motor Vehicles Claims Tribunal had awarded compensation and the insurer had filed

the appeal contending that they were not liable. The question which arose for consideration before the Apex Court was whether at the stage when the appeal was pending the insurer could be called upon to pay the entire amount awarded or a part of it. Admittedly, under the statute, a sum of ₹25,000.00 was payable for no fault liability and there was no justification for the insurer not to pay the said amount. Their Lordships held that there was no justification for the insurer not to pay the said amount and in that context and taking the statutory provisions into consideration modified the impugned interim order of the High Court and directed the appellant insurer to pay a sum of ₹25,000.00 to the claimants within four weeks and on such payment being made, the balance amount would remain stayed till the disposal of the appeal by the High Court. In other words, the Apex Court in this case had permitted the insurer to deposit only the statutory sum of ₹25,000.00 towards no fault liability and stayed the operation of the award regarding the balance amount till the disposal of the appeal.

8. Shri Y.V. Nadkarni, learned Advocate for the applicants had also relied upon the order passed by the then

Hon'ble Chief Justice in **National Insurance Co. Ltd. V/s. Mrs. Salouni Subhashchandra Nagzarkar & Ors. (First Appeal No.28/2008)** but which in any event does not substantiate his contention either on the point of making partial deposit or on the pertinent point of furnishing security. **Bhusawal Municipal Council** (supra) were appeals challenging the order passed by the Bombay High Court which had granted interim relief to the extent of payment of 50% of the enhanced amount of compensation as awarded by the Reference Court in the execution proceedings. The land in dispute was acquired in terms of the Maharashtra Regional and Town Planning Act and Land Acquisition Act followed by the award made on 10/05/2000. The appellant took possession of the land after making the payment of the awarded compensation and following by a reference under Section 18 of the Act. The Reference Court by its award enhanced the compensation to ₹3,11,90,634 giving rise to the appeal at the instance of the Municipal Council. The respondents in the meantime filed an execution application against which the appellant preferred a civil application and by the impugned order the High Court directed the appellant Council to pay 50% of the enhanced amount of compensation within 10 weeks as a condition precedent for stay of the further execution proceedings.

9. In **Bhusawal Municipal Council** (supra), the appellant however did not pay the amount within the stipulated period and the respondents moved the application for vacating the interim order which was disposed off observing that the earlier order was self explanatory. As the proceedings regarding the enforcement of the award were not abated, the Executing Court continued with the proceedings and the appellant again approached the High Court in a Writ Petition to stay the freezing of its bank account which was rejected giving rise to the appeals. It was further contended on behalf of the appellant Council that they did not have the sufficient funds to pay the enhanced compensation and even though the High Court had directed to pay only 50% of the enhanced amount awarded under Section 18, as an interim measure the appellants were not in a position to meet even the said requirement and therefore this Court must grant the stay of the payment of the enhanced amount of compensation. The appeals were vehemently opposed by the respondents on the premise that the payment of the initial

compensation awarded under Section 11 of the Act could not be sufficient security to serve the purpose of the respondents. The facts and circumstances of the case did not warrant any interference and the appeals were liable to be rejected. The Hon'ble Apex Court at para 16 observed as under:

> "16. The judicial process of the court cannot subvert justice for the reason that the court exercises its jurisdiction only in furtherance of justice. The State/authority often drags poor uprooted claimants even for payment of a paltry amount up to this Court, wasting the public money in such luxury litigation without realising that the poor citizens cannot afford the exorbitant costs of litigation and, unfortunately, no superior officer of the State is accountable for such unreasonable conduct."

The Apex Court further held at para 20 as :

> "20. We do not see any justification in the appellant approaching this Court with an object to get an interim order so as not to make any payment of enhanced amount of compensation. Such attitude not only amounts to high-handedness and arbitrariness on its part, rather it may cause serious prejudice to the respondents. The excuse that the appellant Council has paucity of fund cannot be accepted

> as a justified cause to entertain the petition. If the land is to be acquired, law requires prompt payment of compensation. In case the party by whom or for whom the land is acquired is not in a position to make the payment of compensation, the person aggrieved becomes entitled to get the land restored. Payment of compensation as per award under Section 11 of the 1894 Act, cannot be sufficient security to serve the interest of the person interested pending adjudication of appeal against the Reference Court's award."

In that view of the matter the appeals were found devoid of any merit and dismissed with direction to the appellant to make the payment of the enhanced amount of compensation within a period of 10 weeks failing which they were to restore the possession of the suit land to the persons aggrieved.

10. Coming back to the facts of the case, the applicants has set out the change circumstances in view of its financial condition being grossly affected thereby preventing them from making the deposit as ordered by this Court and within the extended time, time and again. No doubt Shri

Afonso learned Advocate for the respondents may be justified in his apprehension that the respondents are being denied the compensation due to them under the award, nonetheless, the intention of the applicants too cannot be ignored inasmuch as although they had not made the deposit within the extended time, they have now shown their willingness and bonafides to make the deposit in the nature of furnishing a Bank Guarantee to the satisfaction of this Court. Moreover, in terms of the Bombay Amendment Order XLI Rule 3 CPC, furnishing security in lieu of a deposit is contemplated and in view thereof it cannot be heard on behalf of the respondents that security in the nature of a Bank Guarantee cannot be accepted. Ultimately the interest of the respondents who have succeeded in the petition is required to be protected and therefore the applicants in the circumstances are directed to furnish a Bank Guarantee in the amount representing 75% of the amount awarded against them by the learned MACT and depositing the balance 25% in Court within 15 days. In these terms, the application stands disposed off.

NUTAN D. SARDESSAI, J.

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