IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 541 OF 2017

M/s Clinirx Research Pvt Ltd ..Petitioner.

Vs

Bilcare Limited and Ors .. Respondents

Mr.Vijay Thorat, Senior Advocate i/b Deepnarayan Mishra , Advocate for Petitioner.

Mr.Astad Randeria i/b M/s Kanga & Co., Advocates for Respondent no.1.

CORAM : R.G.KETKAR,J.
DATE : 20/02/2017

PC:

1. Heard Mr.Vijay Thorat, learned senior counsel for the petitioner and Mr.Astad Randeria, learned counsel for respondent no.1 at length. Rule. Mr.Randeria waives service for respondent no.1. Leave to delete rest of the respondents is granted, as respondent no.1 being the original plaintiff is the only contesting respondent. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as judgment debtor, has challenged the Judgment and order dated 2.1.2017 passed by the learned Jt. Civil Judge, Senior Division, Khed-Rajgurunagar in Civil Misc. Application No. 5 of 2016. By that order, the learned trial Judge allowed the application made by respondent no.1

hereinafter referred to as 'decree holder', made under Section 39 read with Order XXI, Rule 5 of C.P.C., and transferred the decree passed in Spl. Civil Suit No.2 of 2016 to the District and Sessions Court, Delhi, New Delhi for executing the same. The learned trial Judge also directed to issue certificate under Order XXI, Rule 6 to the transferee court.

3. Matter was heard at length from time to time. The parties have arrived at consensus arrangement. It is submitted that without recording reasons, by upholding the impugned order the petition may be disposed of.

4. Mr. Randeria has tendered statement in writing on behalf of the decree holder. The same is taken on record and marked 'X' for identification. Decree holder states that it will not take any steps to pursue the execution of the decree dated 28.7.2016 before the executing court in Delhi for a period of 4 (four) weeks from 23.2.2017, i.e. until 23rd March, 2017. The said statement is made without prejudice to all rights and contentions that are available to the decree holder in any proceedings. Further, this statement by itself shall not constitute ground to stay the execution of the decree or to extend the said statement.

5. Mr. Thorat submitted that judgment debtor no.1 had filed application under Order IX, Rule 13 of C.P.C. for setting aside decree dated 28.7.2016. Judgment debtor no.1 has also taken out application for condonation of delay and for stay of execution

of the decree. He submitted that the learned trial Judge may be directed to dispose of application for condonation of delay and thereafter application for stay in a time abound manner. Mr. Randeria has no objection for adopting this course.

6. Learned counsel appearing for the parties agree that they will appear before the trial Court on 23.2.2017 and for that purpose no fresh notice be issued to them. They also assure that they will extend full co-operation for disposal of the applications in a time bound manner. In view thereof, Writ Petition is disposed of in the following terms.:

(i) Impugned order dated 2.1.2017 passed by the learned trial Judge is upheld.

(ii) Parties shall appear before the trial Court on 23.2.2017 and for that purpose no fresh notice be issued to them.

(iii) Learned trial Judge is requested to decide the application for condonation of delay within one week from the date of appearance of the parties on 23.2.2017. Learned trial Judge is further requested to decide the application for stay within two weeks from today. All contention of the parties in that regard are expressly kept open.

(iv) Decree holder shall not take any steps to pursue the execution of the decree dated 28.7.2016 before the executing court in Delhi for a period of four weeks from 23.2.2017 till 23.3.2017.

(v) Rule is made absolute in the aforesaid terms with no order as to costs.

(vi) All parties including the trial Court to act on the authenticated copy of this order.

(R.G.KETKAR, J.)