

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO. 135 OF 2016**

Avcon Controls Pvt Ltd

..Petitioner.

Vs

Syndicate Bank and Ors

.. Respondents

Mr. H. Kumar Vaidyanathan, Advocate for Petitioner.

Ms. Sandhya Nanavare i/b Mr. M. Janardhanan, Advocate for Respondents no.1 and 2.

Mr. Girish R. Agrawal, Advocate for Respondents no.3 and 4.

CORAM : R.G.KETKAR,J.

DATE : 16/02/2017

PC:

1. Heard Mr. H.Kumar Vaidyanathan, learned counsel for the petitioner, Ms.Sandhya Nanavare, learned counsel for respondents no.1 and 2 and Mr.Girish Agrawal, learned counsel for respondents no. 3 and 4 at length.

2. This Contempt Petition is filed alleging breach of the order dated 23.11.2015 passed by the learned Judge, City Civil Court, Dindoshi in SU No. 3159 of 2015. The petitioner, hereinafter after referred to as 'plaintiff', has instituted suit against the respondents, hereinafter referred to as 'defendants', inter alia praying for declaration that Performance Bank Guarantee (PBG) Nos.21 and 31 of 2015, do not confer any absolute right on defendant no.1-Jindal Drugs Limited in terms of the binding agreements between the plaintiff and defendant no.1; for perpetual injunction restraining defendant no.2, Syndicate Bank

from debiting the plaintiff's bank account maintained by them in defendant no.2 with Rs. 2,48,000/- or any other amount and crediting the same to the account of defendant no.1 with the HDFC Bank Ltd or any other Bank. During the pendency of the suit, the plaintiff took out draft Notice of Motion praying, inter-alia, for following reliefs:

(a) That pending the hearing and final disposal of the suit, this Hon'ble Court be pleased to restrain defendants no.1 and 2 from invoking PBG Nos 21/2013 and 33/2013;

(b) For interim and ad-interim reliefs in terms of prayer clause (a) above;

3. By order dated 23.11.2015, the learned trial Judge granted ad-interim relief in terms of prayers clause (a) and (b). The grievance of the plaintiff herein is that notwithstanding passing of the order on 23.11.2015 and communication thereof, defendant no.2-Syndicate Bank has invoked bank guarantee and debited amount of Rs. 2,48,000/- and credited to the account of defendant no.1. The plaintiff has, therefore, filed this contempt petition alleging breach of order dated 23.11.2015.

4. On behalf of defendant no.1, affidavit is made by Sanjay Mahadev Kokate, authorized representative of defendant no.1. Reliance is placed on communication dated 29.10.2015 addressed on behalf of defendant no.1 to Manager of defendant no.2 setting out therein that the plaintiffs have failed to give

satisfactory performance, as a result thereof they have suffered substantial loss. Defendant no.1, therefore, invoked PBG No.21 of 2013 and called upon defendant no.2 to pay amount of Rs. 1,36,000/-. Similar letter was addressed on 29.10.2015 for invoking PBG no.33 of 2013 and requesting defendant no.2 to pay amount of Rs.1,12,000/-. In paragraph 5E, it is averred that defendant no.1 was not aware of exparte ad-interim order dated 23.11.2015 and came to know about the same on 26.11.2015 after receipt of notice of the plaintiff's advocate.

5. Defendant no.2 has filed affidavit of Shankar Dass Negi, Chief Manager. In paragraph 6, it is asserted that on 21.11.2015 defendant no.2 received letter dated 20.11.2015 informing that suit may be listed either on 23rd or 24th November, 2015. 22nd November, 2015 was Sunday and notice given by the plaintiff's Advocate was too short for appointing advocate. As no specific date was mentioned in the letter, defendant no.2 could not depute authorized person to represent the Bank. In paragraph 7, it is averred that though the plaintiff obtained ad-interim exparte order on 23.11.2015, Bank had no knowledge about passing such order and the plaintiff did not serve copy of said order.

6. Ms. Vaidyanathan submitted that defendants no.1 and 2 are clearly guilty of order dated 23.11.2015 passed by the learned trial Judge and therefore they deserve to be dealt with

under the Contempt of Courts Act, 1971. Perusal of record shows that the plaintiff has not filed any reply contesting claim made in the replies filed by defendant no.1 or defendant no.2. Perusal of the replies filed by defendant no.1 and defendant no.2 shows that they were not communicated the order dated 23.11.2015 passed by the learned trial judge. In view thereof, this is not a fit case for initiating any proceedings against the defendants. Hence, Petition is dismissed with direction to the learned trial Judge to dispose of the Notice of Motion within four weeks from production of authenticated copy of the order. Order accordingly.

(R.G.KETKAR, J.)