

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.397 OF 2017
IN
FIRST APPEAL NO.77 OF 2017**

**Cargotec India Private Limited
Through its Authorized Signatory
Mr. Jagabandhu Ganguly**

: Applicant/Plaintiff

Versus

**Subhash Gaikwad – HUF
Through its Karta
Subhash Gaikwad**

: Respondent/Defendant

Mr. Kevic Setalvad, Senior Advocate a/w Ms. Rajalakshmy Mohandas, Ms. Rima Desai and Mr. O Mohandas for the Applicant.

Mr. A Y Sakhare, Senior Advocate i/by Mr. S R Karpe for the Respondent.

**CORAM : R. M. SAVANT &
SANDEEP K SHINDE, JJ.**

DATE : 19th December 2017

P.C.

1 The above Civil Application has been filed for stay of the decree passed by the Trial Court pending the above First Appeal.

2 The above Appeal has been admitted on 16/02/2017. The Appeal is directed against the part of the Judgment and Order which decrees the Counter Claim filed by the Respondent herein i.e. the original Defendant. The decree is in the sum of Rs.3.96 crores along with 16% interest out of which Rs.60 lakhs, to which the Applicant / original Plaintiff is entitled to in terms of the decreeing of the suit filed by the Applicant/Appellant, is to be deducted

then the remainder of the amount is Rs.3.36 crores along with 16% interest.

3 The principal contention of the learned Senior Counsel appearing on behalf of the Applicant/Appellant is that the impugned Judgment and Order is self-contradictory inasmuch as it decrees the suit filed by the Applicant / Original Plaintiff and directs the refund of Rs.60 lakhs which was given by the Defendant as security deposit whereas at the same time it also decrees the Counter Claim filed on behalf of the Respondent / original Defendant claiming payment of monthly compensation for the lock-in period of 36 months.

4 Prima facie We find substance in the contention of the learned Senior Counsel appearing on behalf of the Applicant/Appellant but considering the fact that the decree in question is a money decree in favour of the Respondent / original Defendant, the order relating to deposit would accordingly have to be moulded keeping the said fact in mind whilst balancing the equities.

5 The learned Senior Counsel for the parties i.e. Shri Kevic Setalvad for the Applicant/Appellant and Shri A Y Sakhare for the Respondent on instructions are agreeable to the following interim arrangement.

i] There would be interim relief in terms of prayer clause (d) of the

Civil Application subject to the following :-

- ii] The Applicant/Appellant would deposit a sum of Rs.1.50 crores in the Trial Court within 8 weeks from date.
- iii] In respect of the balance of the decretal amount inclusive of interest, the Applicant/Appellant to furnish a Bank Guarantee of a Nationalized Bank to the satisfaction of the Trial Court within 8 weeks from date. The decretal amount to be calculated as at the end of 8 weeks period.
- iv] The Applicant/Appellant is agreeable to the Respondent/Defendant being permitted to withdraw the amount of Rs.1.50 crores on its deposit on furnishing security to the satisfaction of the Trial Court.
- v] The Bank Guarantee to be kept alive pending the hearing and final disposal of the above First Appeal.
- vi] The Applicant/Appellant to file an undertaking in this Court of a responsible representative of the Applicant/Appellant that the Applicant/Appellant would abide by such final order as regards

the payment of interest that would be passed by this Court.

vii] In the light of the aforesaid the above Civil Application to stand disposed of.

[SANDEEP K SHINDE, J]

[R.M.SAVANT, J]