

DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2892 OF 2017

WITH

CRIMINAL WRIT PETITION NO. 2893 OF 2017

WITH

CRIMINAL WRIT PETITION NO. 2894 OF 2017

WITH

CRIMINAL WRIT PETITION NO. 2895 OF 2017

WITH

CRIMINAL WRIT PETITION NO. 2896 OF 2017

Jain Granites and Projects India Ltd. & Ors. ...Petitioners

Vs.

Patel Engineering Limited & Anr. ...Respondents

.....

Mr. J. Shekhar i/by J. Shekhar & Co., for the Petitioners in all Petitions.

Mr. Chaintanya Pendse with Mr. Chaitanya Malgaonkar, Mr.Dharmesh Shah and Mr. Akshay Gosavi i/by GMG Legal, for Respondent No.1 in all Petitions.

Mr. H.J. Dedhia, APP for State in all Petitions.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 29, 2017.

P.C. :

The petitioners in all these petitions are the original accused who are convicted for offence punishable under Section 138

of the Negotiable Instruments Act in the complaints filed by Respondent No.1. The petitioners have challenged the judgment and order of conviction by preferring Appeals before the Sessions Court. The said appeals against the conviction are admitted by the Sessions Court. The petitioners had preferred Applications for suspension of sentence and bail.

2. The applications for suspension of sentence were allowed by the Appellate Court vide order dated 27th June, 2017. The Appellate Court had suspended the sentence vide order dated 24th May, 2017 passed by the trial Court subject to depositing 30% of the amount of compensation in respective complaints, till disposal of the said Appeals. The Appellate Court further directed the petitioners to deposit the said amount within a period of one month.

3. The petitioners have challenged the aforesaid order passed by the Appellate Court directing the petitioners to deposit 30% amount of compensation. It is submitted that in the facts of the present case the Appellate Court ought not to have directed the petitioners to deposit the said amount. It is submitted that the transaction is of commercial nature and the petitioners have disputed

the claims of the complainant. It is further submitted that a Summary Suit was filed by the complainant. This Court had granted unconditional leave to the petitioners to defend the suit. The Court observed that the defendants therein (petitioners) has raised several triable issues indicating that it has a fair and reasonable defence. The petitioners have also highlighted the evidence recorded by trial Court pertaining to acceptance of delivery steel material. It is submitted that considering the defence of the petitioners before the trial Court, the appellate Court ought to have waived the deposit of compensation amount pending appeal. The case of petitioners is that there was no liability against the complainant. It is further submitted that the amount of compensation is unreasonable and on account of financial constraints it would not be possible to the petitioners to deposit the amount as directed by the Appellate Court. It is further submitted that in the alternative the Appellate Court can be directed to hear the appeals expeditiously by granting stay to the order of deposit of the compensation. Reliance was placed upon the decision of Supreme Court in the case of *Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd. And another* (2007) 6 SCC 528 and decision of this Court in the case of *Video City India vs. State of Maharashtra* (2007 ALL MR (CRI) 470.

4. Learned Counsel for Respondent No.1 vehemently opposed the submissions advanced by the Counsel for the petitioners. He submitted that the trial Court had convicted the petitioners and appeals are pending in the Appellate Court. He submitted that the Appellate Court has directed the petitioners to deposit 30% amount of compensation which is a reasonable amount. It is further submitted that no ground for reducing the amount or for waiver of deposit of compensation is made out by the petitioners either before the Appellate Court or before this Court. It is submitted that the observations made by the trial Court while convicting the petitioners are the subject matter of the Appeals which are yet to be decided.

5. I have considered the submissions advanced by both the parties. Perused the orders passed by the Sessions Court. The petitioners are convicted by the trial Court for the offence punishable under Section 138 of the Negotiable Instruments Act. The amount involved in the transaction is huge. The defence of the petitioners was not accepted by the trial Court and they were convicted. The Appellate Court is seized with the appeals which are yet to be decided. At this stage, this Court cannot go into the merits of the

matter whether the petitioners are liable to make the payment to the Respondent/complainant. In **Dilip Dahanukar's** case, it was observed by the Apex Court that the amount of compensation not only must be reasonable one, the conditions for suspending the sentence should also be reasonable. In the present case, the Appellate Court has directed the petitioners to deposit 30% amount of compensation in each appeal. It is pertinent to note that the Appellate Court is yet to decide the appeals. It is not possible to waive the deposit of compensation in entirety during pendency of appeal. However, in the light of in **Dilip Dahanukar's** case, the condition to deposit compensation could be reasonable.

6. The submissions advanced by the Counsel for the petitioners for waiver of payment of compensation cannot be accepted for the reasons stated above. The pendency of the civil proceedings is no ground for granting waiver of payment of compensation. In view of the above, I am not inclined to grant the relief as prayed by the petitioners that the order of the Appellate Court directing the petitioners to pay 30% amount should be set aside. However considering the circumstances as stated above, I pass the following order.

ORDER

(i) The reliefs sought by the petitioners to set aside the order passed by the Appellate Court directing to deposit the compensation to the extent of 30% is rejected.

(ii) However, the order of Appellate Court directing to deposit the compensation awarded by the Appellate Court is modified to the extent that the petitioners are directed to deposit 20% of the compensation amount.

(iii) The Appellate Court is directed to hear and decide the Appeals preferred by the petitioners expeditiously, preferably within a period of six months.

(iv) Criminal Writ Petitions are disposed off.

(PRAKASH D. NAIK, J.)