IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 144 OF 2017
WITH
CIVIL APPLICATION NO. 188 OF 2017
IN
APPEAL FROM ORDER NO. 144 OF 2017

Mr. Pravin Vandravandas Vora (H.U.F.)
Thr. its Karta Pravin V. Vora ... Appellant
Vs.
M/s. Sudama Construction Company,
Partnership Firm and Ors. ... Respondents
….
Mr. Sandesh Patil i/b Mr. Chintan Shah for the Appellant.
Mr. Mayuresh Lagu for the Respondent No. 9.
Ms. Prabha Badadare for the Respondent No. 6.
…
CORAM : A.A. SAYED, J.
DATE : 4 APRIL 2017

P.C.:

1 The challenge in this Appeal is to the interlocutory order dated 20 September 2016 passed by the Civil Judge, Senior Division, Thane, whereby, the Application (Exhibits 5, 28 & 34) of the Appellant/Original Plaintiff came to be rejected.

2 The operative part of the impugned order reads as follows:

ORDER

> 1 Defendants no. 1,2,3 and 6 are directed to deposit Rs. 1 crore, the entitlement of the plaintiff admitted by defendants aforementioned vis-a-vis plaintiffs dues after accounts being allegedly settled by the aforesaid defendants on account of the plaintiff's alleged retirement from the partnership firm, within a period of one month from today.

> 2 On such deposit, the plaintiff to value the suit assuming the amount of Rs. 1 crore as the base figure against his entitlement valuation and carry out necessary amendment subject to and without abrogating his rights in respect of his entitlement to his share in the partnership firm, if any which he assumes, and to pay the requisite court fees against such valuation within a period of 15 days thereafter. Needless to say that the deficit court fees is recoverable in the event the plaintiff succeeds in establishing his stake higher than the base figure.
>
> 3 After due compliance of all the directions on behalf of the either of the parties, in the event the plaintiffs comes with a plea of withdrawal of the entitled sum as divulged by the contesting defendants, the same shall be attended to in accordance with the merits involved in it and after due consideration of the pros and cons of the plea.
>
> 4 The rest of the prayers are declined. The applications Exh. 5, 28 and 34 are disposed of as aforesaid.
>
> 5 Costs to follow the event.

3 By the Application (Exh. 5), the Appellant had sought for temporary injunction to restrain the Respondents/original Defendants from acting upon the Deed of Conveyance dated 26 May 2014 and also to restrain the Respondents from creating third party interest in respect of the suit properties. As observed by the Trial Court Exhibit 28 & 34 are on the same lines and in tandem with Exhibit 5 Application.

4 The suit is essential filed for a declaration that the Deed of Retirement dated 13 December 2013 executed by and between the Appellant as the retiring partner and Respondent Nos. 2 to 5 as the continuing partners, stands cancelled and ineffective and the Deed of Partnership dated 15 December 2004 is valid and subsisting. The Plaintiff has also sought a declaration that the Plaintiff be declared to have 20% share in the suit properties. A declaration is also sought that the Plaintiff is having 20% share in the suit properties purchased by Defendant No. 1 firm vide Deed of Conveyance dated 26 May 2014.

5 It is thus an admitted position that the Appellant/original Plaintiff had entered into a Deed of Retirement dated 13 December 2013 wherein Appellant/original Plaintiff is shown as retiring partner and the Respondent Nos. 2 to 5 are shown as continuing partners.

6 In the Plaint in para 8 the Appellant/original Plaintiff has averred as follows:

> "8. The Plaintiff respectfully submits that the statement of accounts as on 31/03/2014 was prepared and as per the accounts the capital account of the Plaintiff is calculated at Rs. 20,32,682/- and the defendant No. 1 to 5 are required to pay said amount to the Plaintiff and till said amount is not paid the right of the Plaintiff in the defendant No. 1 continued.

7 It is the case of the Appellant that the Respondent Nos. 2 to 5 have failed, neglected and avoided to discharge their liabilities, and the said Deed of Retirement is ineffective and the right of the Appellant in the partnership Firm i.e. Respondent No. 1, alongwith other partners continues. The Appellant has averred that there is non-compliance of terms and conditions of the Deed of Retirement dated 13 December 2013.

8 The Defendants in the Written Statement have stated that after the retirement of the Plaintiff, the Defendant No. 1 firm has been reconstituted twice i.e. on 8 May 2014 and on 12 May 2014. The Conveyance Deed dated 26 May 2014 has also been executed after retirement of the Appellant. Pertinently, It is averred by the Appellant in the Memo of Appeal is ground (aa) that “the Trial Court is right in directing the Defendants to deposit an amount. However according to the Appellant the trial Court ought to have directed the deposit equivalent to the value of the suit properties”. In the impugned order, the Trial Court has observed that the Defendant Nos. 1 to 3 and 6 have conceded the share of the Appellant/original Plaintiff to the tune of Rs.1 crore. The Court is informed that the amount is accordingly deposited by the Respondent Nos. 1 to 5 in the trial Court. The trial Court has left it open for the Appellant to apply for withdrawal of the amount

deposited, after depositing the requisite Court fees. In these circumstances, in my view, no case for interference with the impugned order is made out by the Appellant. The Appellant/original Plaintiff is essentially concerned with satisfaction of his share as per the accounts in the Defendant No. 1 firm upon the execution of the Deed of Retirement dated 13 December 2013.

9 In the case of **Wander Ltd. & Anr. vs. Antox India P. Ltd. 1990 (Supp) Supreme Court Cases 727,** it has been held by the Supreme Court in para 13 and 14 as under:

> *"13. On a consideration of the matter, we are afraid, the Appellate Bench fell into error on two important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the Appellate Court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocinations as to the quality of Antox's alleged user of the trademark on which the passing-off action is founded. We shall deal with these two separately.*
>
> *14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant*

or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possibly on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Josheph:

"... These principles are well established, but as has been observed by Viscourt Simon in ***Charles Osenton & Co. v. Jhanaton*** *'… the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in a individual case'."*

The appellate judgment does not seem to defer to this principle."

10 The Retirement Deed was executed on 13 December 2013 and the suit is filed on 24 August 2016. As indicated earlier, after the

execution of the Retirement Deed, the Defendant firm has been reconstituted twice and the Conveyance Deed has been executed on 26 May 2014. Having regard to the facts and circumstances of the case, I do not find that the discretion exercised by the learned Trial Judge in passing the impugned order refusing to grant interim relief to restrain the Defendant from carrying out constructions, warrants any interference by this Court. The trial Court has directed deposit of Rs. 1 Crore and permitted the Appellant/original Plaintiff to apply for withdrawal of the amount. The trial Court has decided the injunction Application Exhibit 5 within the framework of law and the discretion exercised by the trial Court cannot be said to be arbitrary or perverse.

11 The Appeal from Order is dismissed. No order as to costs.

12 The Civil Application does not survive and to stand disposed of.

(A.A. SAYED, J.)