

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL APPEAL NO.129 OF 2017
IN
CHAMBER SUMMONS NO.817 OF 2013
IN
EXECUTION APPLICATION (L) NO.1060 OF 2013
IN
COMMERCIAL ARBITRATION NO. NO.1355 OF 2012

Apex Encon Projects Pvt. Ltd. and another ... Appellants
Vs.
L and T Finance Limited ... Respondent

Mr. Gaurav Jangle i/b. I. V. Merchant and Company for Appellants.
Ms S. I. Joshi i/b. S. I. Joshi & Co. for Respondent.
Dr. M. S. Deshpande, Court Receiver.

**CORAM : NARESH H. PATIL &
R. G. KETKAR, JJ.**
DATE : NOVEMBER 10, 2017

P.C. :

The Counsel appearing for the respondent has taken a preliminary objection that the Appeal is not maintainable as the company is wound up and a liquidator is appointed.

2. The Counsel appearing for the appellants has drawn our attention to paragraph 7 of the impugned order passed by the learned Single Judge on 17.02.2017, which reads as under:

“7. The amount paid to the Petitioner by the Respondent since 14th February 2017 will be refunded by the Petitioner at the Petitioner's earliest possible convenience.”

3. He submitted that inspite of the order passed by the learned Single Judge, respondent has not refunded the amount deposited by the third party in the accounts of the respondent by R.T.G.S. The amount was to the tune of Rs.2,21,50,000/- (Two Crores Twenty One Lakhs Fifty Thousand only). The Counsel appearing for the respondent, on instructions, submits that respondent was and is ready and willing to refund the said amount to the third party subject to the appellants' furnishing necessary particulars including the Account Number and other details of the third party to deposit the amount. The Counsel submits that the subject machinery was sold by the respondent to a purchaser other than the third party therefore, as transaction is complete, respondent has no reason to withhold the said amount.

4. We have perused the record placed before us and the impugned order. In view of the statement made by the learned Counsel appearing for the respondent in respect of the refund of amount on furnishing necessary particulars by the appellants, we dispose of the appeal in the following terms:

- (a) The appellants shall furnish the necessary particulars within a week's time;
- (b) On receipt of such information / particulars from the appellants, respondent undertakes to refund the said amount directly to the third party within a further week's time;
- (c) Appeal is disposed of accordingly;
- (d) Pending Applications / Motions, if any, stand disposed of in view of the disposal of the Appeal.

(R. G. KETKAR, J.)

(NARESH H. PATIL, J.)