

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

**APPEAL FROM ORDER ST. NO.2837 OF 2018
with
CIVIL APPLICATION ST. NO.2838 OF 2018**

M/s.Adhirath Trading Pvt. Ltd.

... Appellant

Vs.

1. The Managing Director
The Maharashtra State Farming
Corporation Ltd. & anr.

... Respondents

Mr.A.S. Chotelal with Helaskar Akansha for the Appellant
Mr.S.P. Thorat for Respondents

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JANUARY 30, 2018**

P.C. :

1. In this appeal, the order dated 3.1.2018 passed below exhibit 5 in Special Civil Suit No.1619 of 2017 thereby rejecting the prayer for interim injunction is challenged.

2. The appellant/plaintiff filed the suit for mandatory injunction that the defendants shall not create any third party interest by issuing a fresh tender and by making a fresh allotment in respect of agricultural farms admeasuring 3739 acres and 25 gunthas situate at Shripur, Taluka Malshiras, District Solapur and also

temporarily be restrained from giving effect to the notice dated 16.9.2016 by which the allotment to the appellant was cancelled by respondent No.1 of the agricultural suit land. In the suit, the appellant has asked for temporary injunction for calling a fresh tender and allotment in respect of the suit land to other persons. The learned Counsel for the appellant has submitted that the defendants and the appellant have entered into a joint venture in respect of joint cultivation scheme of the agricultural land. However, the defendants did not provide water supply, electricity and did not remove encroachment on the suit land of the third party. Then, there was an issue of employment. The learned Counsel submitted that the tenders are called upto 5.2.2018 and thereafter, the tenders will be opened and, therefore, he prays that the process of tendering is to be stopped as cancellation of agreements is challenged.

3. The learned Counsel for the defendants has submitted that the plaintiff/appellant has deposited the amount of Rs.5,60,94,000/- towards the security deposit and also an amount of Rs.1,15,00,000/- towards part amount of the first year share and that is not to be forfeited. He submitted that the learned Counsel

for the defendants has supported the order passed by the learned Judge of the trial Court thereby refusing to grant interim injunction. He has submitted that it was necessary on the part of the plaintiff to pay towards the share in income for the year 2015-2016. The cheques of Rs.4,81,20,100/- were dishonoured for want of sufficient funds. The amount as agreed was not paid by the plaintiff. He has committed breach of agreement and, therefore, the agreement was terminated by notice dated 16.9.2016. It is further submitted that the defendants were not bound to provide water and electricity to the plaintiff but the plaintiff himself has to obtain electricity and water. It was argued that defendant No.1 has complied with the terms and conditions of the agreement and it is the plaintiff who has failed to make due payment. It was also submitted that there is also delay in filing this appeal.

4. Heard submissions. Perused the order passed by the learned Judge of the trial Court. The learned Judge has passed an elaborate, well reasoned order, which in fact does not need any interference. The agreement of joint venture farming is not disputed. The amount of approximately Rs.5 crore is deposited with the defendants. It is a fact that there were some cheques

issued by the plaintiff, which were dishonoured. The payment was not made as per the time schedule. The notice dated 16.9.2016 was issued by the defendants by which the agreement dated 9.7.2015 was terminated and by the said notice, the amount of Rs.5,60,94,600/- also forfeited as per the terms and conditions agreed in the impugned agreement. The learned Judge has prima facie rightly taken into account merits and demerits of the case of the plaintiff and the defendants. The notice of termination was given in September, 2016 and the suit for mandatory injunction was filed by the plaintiff after one year i.e., in December, 2012. This shows that the appellant was not vigilant in taking quick steps in respect of termination of the contract. The tender process was initiated in the month of December by the defendants and now, the last date of acceptance of tender is fixed on 5.2.2018. It is the Government land that is to be given for cultivation. Moreover, it is pointed out by the learned Counsel for the respondents that the condition of contract is violated by the appellant/plaintiff by subletting the land and putting other parties in possession of the land. Therefore, for the reasons mentioned in the order passed by the trial Court and for the reasons mentioned herein, I am of the view that the appellant could not make out a prima facie case. So

also, the balance of convenience does not lie in favour of the appellant. It appears from the submissions that the appellant is more concerned about the forfeiture of the deposit of Rs.5,60,94,000/-. This issue of forfeiture of the said amount can be considered and decided by the trial Court. If the issue is specifically raised by the appellant / plaintiff before the trial Court, the trial Court may weight the conditions and circumstances and pass appropriate order or may find out any via media including payment of partial amount, so that the dispute can be settled.

5. With this, the appeal is dismissed. Civil Application also stands dismissed.

(MRIDULA BHATKAR, J.)