

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.173 OF 2018

Dabur India Limited formerly known as
Balsara Hygiene Products ... Applicant
Vs.
Kewal Krishna Nohria and others ... Respondents

Mr. Ravi Kadam, Senior Advocate a/w. Dr. Birendra Saraf,
Mr. Durgaprasad Poojari i/b. PDS Legal for Applicant.
Mr. Mustafa Doctor, Senior Advocate a/w. Mr. Ashish Kamat, Mr. Murtuza
Federal, Ms Aanchal Rohira i/b. M/s. Federal & Rashmikan for
Respondents No.1 and 3.

CORAM : R. G. KETKAR, J.
DATE : APRIL 24, 2018

P.C. :

Heard Mr. Kadam, learned Senior Counsel for the applicant and
Mr. Doctor, learned Senior Counsel for the respondents No.1 and 3 at
length. Leave to delete rest of the respondents is granted as it is common
ground between the parties that respondents No.1 and 3 are the only
contesting respondents. Amendment shall be carried out forthwith.

2. By this Application under Section 115 of the Code of Civil
Procedure, 1908 (for short 'C.P.C.'), the applicant, hereinafter referred to
as 'defendant', have challenged the judgment and order dated 03.08.2017
passed by the learned Judge, Court Room No.23 of the Court of Small
Causes at Mumbai below exhibit-26 in T.E.Suit No.05/07 of 2014 as
also the judgment and order dated 05.12.2017 passed by the Appellate
Bench of the Small Causes Court in Revision Petition No.257 of 2017.
By these orders, the Courts below dismissed the application exhibit-26
taken out by the defendant for staying proceedings of T.E.Suit No.05/07
of 2014 on the ground of pendency of Suit No.320 of 2014 filed by the

defendant on the Original Side of this Court.

3. After arguing the Application for quite some time, on instructions, Mr. Kadam seeks permission to withdraw application exhibit-26 and submits that defendant, who are plaintiff in Suit No.320 of 2014, will press Motion dated 05.06.2014 taken out in that Suit.

4. Mr. Doctor has strenuously opposed withdrawal of application exhibit-26 on the ground that defendant have filed that application notwithstanding pendency of Motion taken out by them in the pending Suit and after having invited the orders from the Courts below, they cannot turn around and simply withdraw application exhibit-26. He submitted that defendant having taken chance by filing application exhibit-26, they should not be permitted to withdraw the application. In any event, he submitted that if the Court is inclined to permit defendant to withdraw the application, it may be clarified that this Court has not stayed proceedings of Suit pending in the Small Causes Court.

5. I have considered the submissions advanced by the learned Senior Counsel appearing for the parties. I have also perused the material on record. As noted earlier, defendant has taken out application exhibit-26 for stay of further proceedings of T.E.Suit No.05/07 of 2014 on the ground of pendency of Suit on the Original Side of this Court. It is also not in dispute and is rather matter of record that defendant have filed Suit on the Original Side of this Court. In that Suit, they have taken out Motion on 05.06.2014. Prayer clause (b) of that Motion reads thus,

“(b) Alternatively, pending the hearing and final disposal of the above suit, this Hon'ble Court be pleased to stay the proceedings of T.E.Suit No.05/07 of 2014 filed by the Defendants and pending before the Court of Small Causes at Mumbai or the Defendants be restrained by an order and injunction of this Hon'ble Court from proceeding with the

hearing of the Suit T.E.Suit No.05/07 of 2014 pending in the Bombay Small Causes Court at Mumbai.”

6. A perusal of this prayer shows that defendant have prayed for stay of further proceedings of Suit pending in the Small Causes Court or in the alternative, have prayed for injunction restraining defendant (plaintiff in the Small Causes Court) from proceeding with the Suit pending in the Small Causes Court. Thus, for identical relief, defendant were prosecuting two remedies simultaneously. As now defendant have exercised option of withdrawing application exhibit-26, they are permitted to withdraw that application so that they can prosecute prayers in the Motion. The impugned orders, therefore, stand dissolved. By way of abundant caution, it is clarified that Court has not stayed proceedings of T.E.Suit No.05/07 of 2014 in this proceeding. Civil Revision Application is disposed of accordingly.

(R. G. KETKAR, J.)

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