

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

CRIMINAL WRIT PETITION NO. 1240 OF 2017

Sanjivani Motels & Hotels Private Limited ... Petitioner
Vs.
State of Maharashtra & Ors. ... Respondents

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Mr. Hemant Prabhulkar for the Petitioner.
Mrs. N.S.Jain, APP for the Respondent-State.
Mr. Niranjan Mundargi a/w Mr. Amol Bavare, Deepak Kanakphile
I/by Prapya Legal for the Respondent Nos. 2 and 3.

...

**CORAM : PRAKASH D. NAIK, J.
DATE : 31st JULY, 2018.**

P.C.

1. The petitioner is the original complainant. The complaint was filed for an offence punishable under Section 138 of Negotiable Instruments Act. The learned Magistrate issued process for the said offence. The order of process was challenged by the respondents by preferring Criminal Revision Application No. 66 of 2016 for stay of the proceeding before the Sessions Court. Learned Sessions Judge by order dated 3rd February, 2017 granted stay to the proceedings pending before the trial Court till the decision of arbitration proceedings pending before the arbitrator.

2. It is submitted by the learned counsel for the petitioner that cheque which is subject matter of the complaint was issued in discharge of liability and order passed by the Sessions Court granting stay for the reasons stated therein is erroneous. It is submitted that merely on the ground of pendency of arbitration proceedings, the Sessions Court ought not to have stayed the proceeding till the decision of arbitration proceedings. The complainant would adduce evidence before the trial Court to prove the liability in respect of the cheque dishonoured. It is submitted that the interim order passed by the Sessions Court is in the nature of final order and for an indefinite period till the decision in the arbitration proceedings, the Court has granted stay to the proceedings before the trial Court. It is submitted that the Sessions Court has erred in considering that arbitration is a remedy affording reliefs to the party affected by breach of agreement but the arbitrator cannot conduct trial of any act which amount to an offence. It is submitted that irrespective of wrongful termination of the Conducting Agreement, the complainant is entitled to business conducting fees for the entire period of 60 months. It was error to hold that it is open for the petitioner to deduct the cheque amount of Rs.5,44,500/- from the security

deposit of Rs.75,00,000/- deposited by the Respondent No.2 and 3 instead of filing complaint under Section 138 of Negotiable Instrument Act. It is submitted that proceedings under Section 138 of Negotiable Instrument Act and the Arbitration Proceedings are distinct in nature and the Arbitrator cannot look into the aspects of Criminal law while determining the arbitration proceedings. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of Trisuns Chemical Industry -Vrs- Rajesh Agarwal and others¹. It is therefore, prayed that the order granting interim relief passed by the Sessions Court may be set aside.

3. Learned advocate for the respondents supported the order granting interim relief passed by the Sessions Court. It is submitted that in view of relevant clause of conduct agreement which were considered by the Sessions Court while granting interim relief, there is no infirmity in the said order. As per one of the clause of conduct the agreement, conductor shall keep an interest free Security Deposit of a sum of Rs.75,00,000/- which shall be refunded to the conductor by the owner at the time of the expiry of this agreement, at the time of handing over vacant and

¹(1999) 8 Supreme Court Cases 686

peaceful possession of the premises by the conductor to the owner. The clause further states that, in case of failure on part of the Conductor to pay the conducting fee, repair charges etc. in respect to the said premises the same shall be deducted from the security deposit and only the balance amount shall be due and payable by the owner to the conductor. It is submitted that in view of the said clause of the agreement and since the arbitration proceedings which were initiated by the complainant were pending before the Arbitrator, the learned Sessions Judge thought it fit to grant stay to the proceedings before the trial Court till the decision of arbitration proceedings. It is further submitted that the revisional Court may be directed to decide the revision application expeditiously, instead of setting aside the interim order.

4. Having heard both the sides and on perusal of the documents on record, it is crystal clear that the complaint was filed by the petitioner on account of dishonour of cheque which is pending before the trial Court. It is the case of the complainant that the cheque was issued in discharge of liability and on compliance of mandatory procedure the proceedings under Section 138 of Negotiable Instruments Act were initiated. Learned Magistrate after going through the documents has issued the

process. Apparently, it is the defence of the respondents that arbitration proceedings are pending and the relevant clause of the conducting agreement permits the complainant to adjust the amount deposited by the respondents by way of interest plus security deposit. While passing the interim order, learned Sessions Judge as good as decided the application finally by relying upon the conducting agreement and the factum of pendency of arbitration proceedings and stayed the proceeding till decision in arbitration proceedings. The learned Sessions Judge has observed that it was necessary for the respondent No.2 (petitioner) to wait till passing of the award by the arbitrator as the decision of the Arbitrator shall be final and binding on the parties to the dispute as per their own agreement. It was further observed that, the arbitrator has not yet passed any order and hence it is necessary to stay the proceedings till the decision in arbitration proceedings. It was also observed that security amount of Rs.75,00,000/- of the revision petitioner is still lying with the respondent No.2 complainant.

5. It is submitted by the learned counsel for the petitioner that the grounds for stay adjudicated before the Sessions Court were

the probable defence of the accused and the Sessions Court quite not have granted such relief. In the decision of *Trisuns Chemicals Industry Vs. Rajesh Agarwal* (supra) relied by the petitioner, the Hon'ble Supreme Court has observed that the provisions incorporated in an agreement for referring the dispute to arbitration is not an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence.

6. In the light of the observations made by the Apex Court in the aforesaid decision and also considering the nature of the interim order passed by the Sessions Court, I find there is substance in the submissions advanced by the counsel for the petitioner, the proceedings under the Negotiable Instruments Act and the Arbitration Proceedings are distinct in nature. Since revision application for the respondent is still pending before the Session Court, I do not wish to make any further observation on the merits of the case. However, taking into consideration the reasons and grounds on which the impugned order was passed,

the same is required to be set aside. Hence, I pass the following order.

ORDER

- (i) Criminal Writ Petition No. 1240 of 2017 is allowed;
- (ii) Impugned order dated 3rd February, 2017 passed in Criminal Revision Application No.66 of 2016 is set aside;
- (iii) Sessions Court is directed to decide the Criminal Revision Application of the Respondent within four weeks from the order.

Sachidanand
Kuttan Nair

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by Sachidanand
Kuttan Nair
Date:
2018.08.10
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(PRAKASH D. NAIK, J.)