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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.234 OF 2018

Lina Y. Maneklal ...Appellant
vs.
Ashutosh Y. Maneklal ...Respondent

Mr.Prateek Seksaria I/b Ms Veena Advani for the
Appellant
Mr.P.K.Dhakephalkar, Senior Counsel and Mr.Karl
Tamboly a/w Dhaval Vussonji & Associates for the
respondent No.1
Ms Heena Ahmedabadwala I/b Vima Dalal & Co. for the
respondent No.2
Mr.H.C.Pimple for the respondent No.2

CORAM : A.S.OKA, &
M.S.SONAK, JJ.
DATE : SEPTEMBER 26, 2018

P.C.:

1 Heard the learned counsel for the appellant.
The appellant is the Defendant No.1 in the suit
filed by the first respondent-plaintiff. For the
sake of convenience, we are referring the parties
with reference to their status before the learned
Single Judge. The impugned order has been passed by
the learned Single Judge on Notice of Motion No.608
of 2018 taken out by the Defendant No.1-appellant.

2 We may note here that there is one more pending
proceedings between the parties. There is a suit
in the City Civil Court at Mumbai filed by the

plaintiff in the present suit. A Notice of Motion was taken out for injunction in the said suit. A limited ad-interim relief was granted by the learned Judge of the City Civil Court. Being aggrieved by the refusal to grant of ad-interim relief as prayed for, the plaintiff preferred an Appeal from Order No.1375 of 2013. The learned Single Judge disposed of the Appeal from Order by the order dated 20th December 2013. Paragraphs 5,6 and 7 of the said order read thus:

“5 The action of disqualification of two Directors on a foundation that they have no qualifying shares, therefore, in my view, for above reason, need to be tested and so also the consequential effect of the same. The appointment of additional Director and disqualification of these two Directors including the Plaintiff will certain change the scenario of the management of the company/Defendant No.4. Even if the subsequent resolutions whereby Defendants ½, have been authorized to do the needful which may include even the apprehension so expressed, therefore, in my view, at this stage, till the trial Court hears the Notice of Motion finally, there will be an ad-interim order in terms of prayers (I) of Civil Application No.1638/2013 and instead of (f)(ii), I am inclined to direct the Defendants not to alter the fixed deposits/investments of the Company.

6 The Appeal from Order is accordingly disposed of in the above terms, so also the Civil Application. It is made clear that all the parties to cooperate in hearing of Notice of Motion which is already expedited and fixed on 23.12.2013. The learned Judge to dispose of the matter as early as possible.

7 No costs.”

(underline supplied)

3 The prayers in Civil Application No.1638 of 2013 taken out by the plaintiff in the said Appeal from Order No.1375 of 2013 read thus:

“(f) pending the hearing and final disposal of the present appeal, Respondent No.s1 and 2 be restrained by an order and injunction of this Hon'ble Court from acting by themselves and/or through their servants, agents and/or representative, in manner directly or indirectly:

I In any manner altering the shareholding pattern and Board of Directors of Respondent No.4.

II Signing any cheques and/or authorizing any withdrawals in the course of business or otherwise in respect of Respondent No.4 without the joint signature of the Applicant.

(g) for interim and ad-interim reliefs in terms of prayer clauses (a) to (g) above:

(h) for costs;

((i) for such other and further reliefs as this Hon'ble Court deems fit and proper in the nature and circumstances of the present case. “

4 In the suit filed in the City Civil Court, as well as suit subject matter of this Appeal, the Defendant Nos.1 and 4 (respondent Nos.1 and 4 herein) are the same. The aforesaid order dated 20th December 2013 in A.O.St.No.7375 of 2013 restrains the defendants in the suit filed in the City Civil Court from altering the Fixed Deposits and the investments of the defendant No.4-company. As the Notice of Motion taken out in the City Civil Court suit is pending, the order dated 20th December 2013 continues to operates as an ad-interim order in the

said Notice of Motion. The said order requires that the Fixed Deposits standing in the name of the Defendant No.4-company should not be altered and that the Fixed Deposits will have to be maintained as it is. An application was made by the first appellant being Civil Application No.278 of 2017 for clarification of the order dated 20th December 2013. In the said Civil Application, various facts were pleaded including a demand made by the Mumbai Municipal Corporation for the property tax and repair cess of Rs.52,71,997/- for the year 2016-2017. It was pointed out that the demand for property tax/repair cess was in respect of the building owned by the Defendant No.4-company. A reference is made in the said application to the fact that in view of the order dated 20th December 2013, the Fixed Deposits/investments of the defendant No.4 cannot be used, as a result of which, the property of the Defendant No.4-company can be attached. Reliance was placed on the order dated 16th October 2012 passed by the learned Single Judge of this Court in the suit subject matter of this Appeal by which it was directed that the parties shall be entitled to carry out business and incur expenses in normal course. The prayer in the Civil Application was that the order dated 20th December 2013 should be clarified to the effect that the same does not come in the way of the defendant No.4-company from making payment in respect of the statutory dues. There was a specific prayer made in the alternative that the order dated 20th December

2013 be modified to the extent of permitting the defendant No.4-company to make payments of dues by liquidating the Fixed Deposits/investments of the said defendant-company to the Mumbai Municipal Corporation. The said Civil Application was placed before the same learned Judge who has passed the order dated 20th December 2013. By order dated 11th April 2017, the prayer for clarification/modification of the order was rejected by the learned Judge. However, a liberty was granted to the defendant No.1 (appellant herein) and other parties to take out appropriate application if so advised. Thus, as a result of refusal of the learned Judge to modify the order dated 20th December 2013, the Fixed Deposits/investments of the defendant No.4-company cannot be used for making payment of dues to the Mumbai Municipal Corporation and other parties.

5 At this stage, we must also make a reference to the order dated 24th March 2017 passed by the learned Single Judge in the present suit. In the said order, the learned Single Judge has referred to the demand of Rs.52,71,997/- made by the Municipal Corporation. By the said order, the learned Judge permitted the defendant No.4 to make payment of property taxes and repair cess either out of funds that it has for its disposal, if necessary, by liquidating funds but only to the extent necessary any investments it holds to effect the payment to the Mumbai Municipal Corporation. This order was

passed in Notice of Motion No.1551 of 2016. The said order was challenged by preferring an Appeal No.118 of 2017 by the original plaintiff. On 31st March 2017, a Division Bench of this Court passed an order recording a statement of the Defendant No.1's counsel as well as the respondent No.2 in the said Appeal that the Fixed Deposits/investments standing in the name of the Defendant No.4 will not be liquidated. The said order records that the statement of the learned counsel for the Defendant No.1 that the clarification of the order dated 20th December 2013 in Appeal from Order No.1375 of 2013 will be sought. That is how the aforesaid Civil Application No.278 of 2017 was filed and rejected. Appeal (L) No.118 of 2017 was disposed of by order dated 18th July 2017 by setting aside the aforesaid order dated 24th March 2017 by directing that the Notice of Motion No.1551 of 2016 should be heard afresh.

6 Thus, as per the order dated 20th December 2013 passed in the Appeal from Order No.1375 of 2017, there is a restraint order which prevents the parties from touching the Fixed Deposits held by the Defendant No.4-company for payment of dues of the Mumbai Municipal Corporation. The order dated 24th March 2017 passed by the learned Single Judge in the subject suit permitted liquidation of the Fixed Deposits for payment of dues of the Mumbai Municipal Corporation. Now, that order stands set aside by the order dated 18th July 2017 passed by the Division

Bench of this Court.

7 The aforesaid factual background is necessary to be noted for understanding the controversy in the appeal. The present Notice of Motion was taken out by the Defendant No.1 (appellant herein) with a specific prayer to direct that the Fixed Deposits of the defendant No.4 with Bank of Baroda be permitted to be used by the Defendant No.4 for payment of statutory liabilities to the Mumbai Municipal Corporation. Prayer (b) was for directing the plaintiff to hand over to the Defendant No.4 bonds in the sum of Rs.25,00,000/- issued by the National Highway Authority of India. The said bonds were issued in the name of the Defendant No.4-company. The third prayer in the Notice of Motion was in respect of the property of the Defendant No.4 essentially for restraining the Mumbai Municipal Corporation from taking any coercive steps in respect of the property. Thus, a specific prayer was made in relation to the Fixed Deposits held in the name of the Defendant No.4-company. It is not in dispute that to the said Fixed Deposits, the order dated 20th December 2013 is applicable. In fact, as noted earlier, the said order is applicable to all the Fixed Deposits and investments of the Defendant No.4 including bonds which are subject matter of the Notice of Motion.

8 At this stage, the learned counsel for the Defendant No.1 states that it is nobody's case that

the bonds of National Highway Authority of India were subject matter of the said order. However, on plain reading of the order dated 20th December 2013, the same is applicable to all investments in the name of the Defendant No.4 whether matured or not.

9 By the impugned order, the learned Single Judge dismissed the Notice of Motion. As far as bonds of National Highway Authority of India which matured in the year 2013 are concerned, a direction was issued to the plaintiff to deliver the bonds to an Officer of this Court Mr.Ketan Trivedi, the Commissioner for Taking Accounts. A direction was also issued that the amount of bonds with interest be invested in any nationalized bank. Thus, the present appeal is preferred to the extent to which the first direction in the Notice of Motion permitting encashment of the Fixed Deposits in the name of the Defendant No.4 was rejected.

10 The learned counsel for the Defendant No.1 submitted that the order dated 20th December 2013 will not operate as *res judicata*. In any event, he submitted that while deciding Civil Application No.278 of 2017, a liberty has been granted to the parties including the Defendant No.1 to take out appropriate application. He submitted that the learned Single Judge as well as the parties to the suit proceeded on the footing that by making out a case of existence of subsequent events, notwithstanding the order dated 20th December 2013,

the learned Single Judge can pass an order permitting encashment of the Fixed Deposits. Inviting our attention to the various findings recorded by the learned Single Judge, his submission is that apart from the fact that the findings are factually erroneous, to ensure that the property of the Defendant No.4 is protected, an order ought to have been made permitting encashment of the Fixed Deposits for discharge of liabilities. He submitted that the suits filed by the plaintiff in the City Civil Court and in this Court are in different capacity. The plaintiff in the suit subject matter of this Appeal is claiming in the capacity of the Legal Representative as the suit in this Court is filed for administration and the suit filed in the City Civil Court is in the capacity of a Director of the company. He relied upon a decision of the Apex Court in the case of Arjun Singh vs. Mohindra Kumar and others¹. He submitted that as principles of *res judicata* are not applicable to the order dated 20th December 2013, the learned Single Judge could have modified the order. He did not dispute that the order dated 20th December 2013 will continue to operate till the disposal of the pending Notice of Motion in the City Civil Court suit. He submitted that the observations made in this order will come in the way of the Defendant No.1.

11 We have considered the submissions. We are dealing with the prayer for grant of interim relief

1 AIR 1964 SC 993

pending the final disposal of the suit for administration filed by the plaintiff (first respondent herein). The Defendant No.1 was seeking discretionary and equitable relief from the learned Single Judge. As stated earlier, as far as Fixed Deposits subject matter of the prayer made before the learned Single Judge are concerned, there is already a restraint order dated 20th December 2013. The restraint order is in Appeal preferred by the plaintiff herein to which the appellant-Defendant No.1 is the respondent No.1. It is not in dispute that by virtue of the said order, Fixed Deposits which are subject matter of the prayer in the Notice of Motion on which impugned order has been passed cannot be encashed and the amounts cannot be used for making payment for the discharge of liabilities of the Defendant No.4-company. As noted earlier, on 24th March 2017, an order was passed by the learned Single Judge permitting utilization of the Fixed Deposits for discharge of the liabilities of the Defendant No.4. That order was set aside in Appeal No.186 of 2017 by consent of the parties to the suit before the learned Single Judge and Notice of Motion in which the order dated 24th March 2017 was passed was remanded for fresh consideration. The present Notice of Motion (L) No.608 of 2018 was filed on 15th March 2018 during the pendency of the Appeal No.186 of 2017. We fail to understand how the issue of *res-judicata* arises. The present Defendant No.1-appellant was bound by the order dated 20th December 2013 in Appeal from Order. Moreover, the relevant

parties were bound by the said order which prevented encashment of the Fixed Deposits subject matter of Notice of Motion (L) No.608 of 2018. As observed earlier, an attempt made by the Defendant No.1-appellant to seek modification/ clarification of the said order by filing Civil Application No.278 of 2017 failed as the said request was specifically rejected by the order dated 11th April 2017. As noted earlier, the order dated 20th December 2013 will operate till the disposal of the Notice of Motion pending in the City Civil Court suit. It is an ad-interim order which will operate till the disposal of the Notice of Motion. Liberty granted on 11th April 2018 will be obviously available in the suit in which ad-interim order is operating.

12 The question was whether the learned Single Judge could have passed an interim order which will run completely contrary to the order dated 20th December 2013 passed by another Single Judge of this Court in Appeal arising out of a different suit which is pending in the City Civil Court. The learned Single Judge was dealing with the grant of prayer for interim relief which is discretionary and equitable in nature. In our view, when an attempt by the Defendant No.1-appellant to seek modification of the order dated 20th December 2013 failed, there was no occasion for the learned Single Judge to even consider the prayer which will have the effect of the modification of the order dated 20th December 2013 and that also when the learned Judge who passed

the order dated 20th December 2013 declined to modify or clarify the said order the way present appellant wanted. We are surprised to note that the appellant did not move the City Civil Court for immediately taking up the Notice of Motion in which ad-interim order was operating. Instead of adopting such a legitimate remedy, the appellant pressed for grant of interim relief, which if granted, would have run completely contrary to the binding order dated 20th December 2013.

13 The issue of *res-judicata* at highest would have arisen at the time of final hearing of the suit. In the present case, we are dealing with an issue of grant of equitable interim relief.

14 By prosecuting the Notice of Motion containing prayer clause (a) which was completely misconceived and which was nothing but an attempt to get rid of the order dated 20th December 2013 passed by another learned Single Judge which was binding on the appellant, the present appellant invited the findings which are prima facie findings. We are shocked to note the observations made in paragraph 1 of the impugned order wherein the learned Single Judge has noted that the Notice of Motion was argued for several hours and the learned Judge was forced to go through the compilation running into 220 pages. The learned counsel for the appellant submitted that even the learned Single Judge accepted an argument of the appellant that he had

jurisdiction to modify the order dated 20th December 2013. We do not agree with the said interpretation put by the learned counsel for the appellant to the observations made by the learned Single Judge. Even otherwise, on the first principles, the learned Single Judge could not have modified the order dated 20th December 2013 passed in an independent proceedings, by passing an interim order in the present suit and that also after an unsuccessful attempt was made by the present appellant to get the order dated 20th December 2013 modified and the order rejecting prayer for modification or clarification had attained finality. We are not recording any findings as regards grant of prayer clause (b) as that part of the order is not challenged by any party.

15 At this stage, the learned counsel for the appellant also submits that in this appeal, the appellant has challenged that part of the order by the amount realized from bonds was ordered to be deposited in the Court and invested. In our view, to this investment, the order dated 20th December 2013 is squarely applicable and therefore, even the said investment could not have been altered. Therefore, the learned Single Judge was fully justified in passing the order directing deposit of amount in this Court and investment thereof.

16 Perhaps the only remedy available to the appellant-Defendant No.1 was to move the City Civil Court and pray for early hearing of the pending

Notice of Motion or for vacating the ad-interim relief on the basis of the subsequent events, if any. We are constrained to observe that the remedy adopted is completely misconceived. In any event, the order impugned is purely a discretionary and equitable order. For the reasons which we have recorded, there was every justification for rejecting the prayers made in the Notice of Motion as regards Fixed Deposits and investments. We, therefore, find no merit in the appeal and the same is accordingly dismissed. We, however, make it clear that the observations made by the learned Single Judge in the impugned order as well as the observations made in this order are prima facie observations made only for the purposes of dealing with the prayer for grant of interim relief in the Notice of Motion (L) No.608 of 2018. We also make it clear that the order of the learned Single Judge and this Court shall not be construed as the order dealing with the merits of the pending suit in the City Civil Court.

17 At this stage, the learned counsel for the appellant seeks continuation of ad-interim relief granted on 25th May 2018. Ad-interim relief is confined to disconnection of water supply.

18 We accordingly, direct that ad-interim relief granted earlier shall continue to operate for a period of four weeks from the date on which this order is uploaded. We, however, make it clear that

notwithstanding continuation of ad-interim relief,
it will be open Mumbai Municipal Corporation to
disconnect the water supply if the water charges are
not paid.

(M.S.SONAK,J.)

(A.S.OKA,J.)