

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO. 400 OF 2010

Lakhvinder Atmasingh Randhawa .. Petitioner
Vs.
M/s. Vaidehi Akash Housing Pvt. Ltd. .. Respondent

Mr.Vinod K. Sharma for petitioner.

None for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 9TH AUGUST 2018**

P.C.

1 This petition was filed for claiming a sum of Rs.50 lakhs plus interest thereon at 18% per annum. According to petitioner, the company had acknowledged its liability and also issued cheques and the cheques were dishonoured because payment was stopped by the drawer.

2 On 8th February 2012, this Court was pleased to pass the following order :-

“Heard the learned Advocates for the parties. Following order is passed by consent of the parties:

(i) Learned Advocate for the Respondent company on instructions of Mr.G.S.Phondekar, Director of Respondent Co. agrees to deposit an amount of Rs.50 lacs with the Prothonotary and Senior Master of this Court within 12 weeks from the date of this order.

(ii) Upon deposit of the said amount, the Respondent Company shall forthwith inform the Petitioner as well as his Advocate that the said amount has been deposited with the Prothonotary and Senior Master of this Court.

(iii) Within two weeks from the date of deposit of the said amount of Rs.50 lacs by the Respondent Company, the Petitioner shall file a suit before this Court pertaining to the subject matter of this petition. The Petitioner shall also forthwith inform the Advocate for the Respondent Company and forward a complete copy of the plaint in the suit to the Respondent Company.

(iv) Upon filing of the said suit, the Prothonotary & Senior Master shall transfer the said amount of Rs.50 lacs to the suit account and shall invest the said amount in a Nationalized Bank for a period of one year at a time. However, the direction to invest the said amount would be subject to any adinterim/interim orders passed by this Court in the suit filed by the Petitioner.

(v) The Petitioner shall be at liberty to take out appropriate proceedings seeking adinterim/interim reliefs in the said suit which will be decided on its own merits.

(vi) All contentions of the parties are kept open.

(vii) In the event of the Respondent Company failing to deposit an amount of Rs.50 lacs within 12 weeks from today, the Company Petition shall revive, without reference to this Court. The entire amount claimed by the Petitioner shall become due and payable to the Petitioner by the Respondent Company. The Company Petition shall stand admitted, made returnable within six weeks from the date of default and advertised in two local news papers i.e. Free Press Journal (English) and Maharashtra Times (Marathi) and in Maharashtra Government Gazette.

(viii) Upon such default, the Petitioner shall, within one week from the date of default, deposit with the Prothonotary and Senior Master, a sum of Rs.10,000/- towards publication charges, failing which the Company Petition shall stand dismissed for want of prosecution.

(ix) The Company Petition is accordingly disposed of with no order as to costs.”

3 As these amounts were not paid, by an order dated 10th May 2012, petition was admitted and was directed to be advertised but at the same time to deposit the amount of Rs.50 lakhs was extended. Order of 10th May 2012 reads as under :-

“1. By an order dated 8th February 2012, the Company was directed to deposit an amount of Rs.50 lacs within 12 weeks from the date of the order. However, the company has failed to deposit the said amount. In view thereof, the Company Petition was admitted and made returnable within six weeks from the date of default and was also directed to be advertised in two local news papers. However, the learned Senior Advocate for the Company informs the Court that irrespective of the fact that the Petitioner will proceed to advertise the admission of the petition as per the order of this Court, the Company wants to deposit the said amount of Rs.50 lacs, if some time is given to the Company. In view thereof, following order is passed:-

I) The Company shall deposit an amount of Rs.50 lacs with the Prothonotary and Senior Master of this Court as follows :

- a) Rs.12.50 lacs on or before 15th May 2012.*
- b) Rs.12.50 lacs on or before 31st May 2012.*
- c) Rs.25.00 lacs on or before 15th June 2012.*

ii) This order shall in no way preclude the Petitioner from advertising the admission of the above company petition as directed by this Court by its order dated 8th February 2012.

iii) This order shall in no way prejudice the rights and contentions of the parties.”

4 In fact the company, after making the statement to the Court had filed an Appeal being Appeal No. 511 of 2015 which came to be dismissed by an order dated 4th January 2016.

5 Shri Sharma, however, states that the company, in fact deposited the amount of Rs.50 lakhs but he is unable to state when that amount was deposited. Shri Sharma states that the company filed a praecipe to this Court for extension of time to deposit the amount of Rs.50 lakhs and based on leave granted by this Court, the amount of Rs.50 lakhs was deposited.

6 Since the company has, in petitioner's own words, deposited the amount claimed in the petition with the Prothonotary and Senior Master, High Court, Bombay, *albeit* late, by virtue of leave granted by this Court, in my view, nothing remains in the petition. I cannot, based on these facts and circumstances, come to a conclusion that the company is unable to discharge its debt, is commercially insolvent and requires to be wound up.

7 Petition, therefore, stands dismissed.

8 Shri Sharma is not certain whether plaintiff has filed a Civil Suit. Shri Sharma states that if for any reason, his instructions are, that the Civil Suit has not been filed, petitioner will file the suit within one month from today.

9 I have to note that petitioner has diligently and bona-fide prosecuted this petition. There was another petition being Company Petition No.629 of 2014 in which the company was ordered to be wound up by an order dated

27th November 2014. Relying on that order, the present petition also came to be disposed by an order dated 27th November 2014.

10 The order of winding up in Company Petition No.629 of 2014 was recalled by an order dated 5th March 2015. Thereafter, this petition came to be restored and was directed to be listed for final hearing on 15th September 2015. The matter has been getting listed subsequently but only today was taken up for final hearing. Petitioner cannot be blamed for the delay in disposal of this petition.

11 In view of above, I am of the view that petitioner has prosecuted this petition and the other Appeal in dispute between the parties diligently and bona-fide and therefore, the time taken in the suit proceedings needs to be excluded. Relying upon the judgement of a Division Bench of this Court in *The Maharashtra State Farming Corporation Ltd. Vs. Belapur Sugar & Allied Industries Ltd.*¹ for excluding the time spent in prosecuting this petition and appeal under Section 14 of the Limitation Act, 1963, petitioner is granted one month time to file a suit for recovery of the due amount against the company. The time taken by petitioner in prosecuting this winding up petition, i.e., from the date of lodging the petition until today, shall be excluded under Section 14 of the Limitation Act, 1963.

1 2004 (3) Bom.CR 480 & in 2004 (3) Mh.LJ. 414

13 Within six weeks from today, petitioner shall send a communication to the Prothonotary and Senior Master, High Court, Bombay, giving details of the suit filed. The Prothonotary and Senior Master shall thereafter transfer the amount of Rs.50 lakhs together with accumulated interest to the credit of the suit to be filed.

14 If the suit has already been filed by petitioner against the company, then within two weeks from today, petitioner will give details of the suit to the Prothonotary and Senior Master who shall then transfer the amount of Rs.50 lakhs together with accumulated interest to the credit of the said suit.

(K.R. SHRIRAM, J.)

Shraddha
Kamlesh
Talekar

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Shraddha Kamlesh
Talekar
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