

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

APPEAL NO. 684 OF 2016

IN

NOTICE OF MOTION NO. 2110 OF 2009

Mohideen Mohammed Sheik Dawood ... Appellant.

V/s.

Russian Federation

(Government of Russia) and ors.

... Respondents.

Mr. Rushabh M. Sheth a/w. Ms Neha M. Shah I/b M.S. Bodhanwalla and
Co. for the Appellant.

Mr. G.S. Godbole a/w. Mr. Ashok Jain for Respondent No.1.

CORAM : A.S. OKA AND M.S. SONAK, JJ.

DATE : 3rd SEPTEMBER 2018.

P.C.:

1] Heard the learned counsel for the appellant.

2] We have perused the impugned order dated 1st September 2016 passed by the learned Single Judge. The impugned order is passed on Notice of Motion No. 2110 of 2009 taken out by the 1st respondent (original plaintiff) for appointment of the Court Receiver. Paragraph 14 of the impugned order disposes of the said prayer by appointing the Court Receiver, High Court Bombay as the Receiver of the properties described in Schedule I, II and III to the Plaint. The Court Receiver was directed to invite bids for appointing either the 1st respondent or the appellant who is the 3rd defendant as the agent of the Court Receiver, depending upon who offers the best terms and higher compensation. In subsequent part of the impugned order and in particular in paragraphs 18 and 19, the learned Single Judge has referred to Notice of Motion (L) No. 2591 of 2016

praying for rejection of the plaint in exercise of powers under Rule 11 of Order VII of the Code of Civil Procedure, 1908 (for short “CPC”). In paragraph 19 of the impugned order, the learned Single Judge has observed that though the notice of motion is not on board and the same is taken on board with the consent of parties. Thereafter, the learned Single Judge has observed that the issue raised in the Notice of Motion has to be decided at the time of trial.

3] The learned counsel appearing for the appellant invited our attention to the order dated 23rd April 2018 passed in this Appeal. As regards what is directed in paragraph 14, the Division Bench observed that the learned Single Judge adopted a reasonable view in the facts and circumstances of the case which will not cause any prejudice to either of the parties and therefore, the Division Bench declined to grant stay of the operation of that part of the order. The Division Bench observed that the appellant will have a liberty to move the learned Single Judge in case he desires that the issue in the Notice of Motion invoking Rule 11 of Order VII of the CPC be specifically and independently dealt with by the learned Single Judge. The Division Bench directed the Court Receiver to take necessary steps.

4] The learned counsel appearing for the appellant has placed on record the order dated 18th May 2018 passed by the Apex Court in a Petition for Special Leave to Appeal (Civil) No. 13407-13408 of 2018 preferred by the appellant against the said order dated 23rd April 2018. By the said order dated 18th May 2018, the Special Leave Petition was

disposed of by setting aside that part of the order of the learned Single Judge, by which, the learned Single Judge declined to grant the prayer made in the Notice of Motion invoking Rule 11 of Order VII of the CPC. The order of the Apex Court reads thus:

“No case for interference is made out, the Special Leave Petitions are disposed of accordingly.

However, a Receiver has been appointed for the suit property. At the same time, the application under Order VII, Rule 11 Code of Civil Procedure, 1908 shall be decided as expeditiously as possible. The Trial Court in our opinion has not decided the matter properly with respect to Order VII, Rule 11. This part is set aside.

Let the Trial Court consider it whether there is pure question of law or a mixed question of law infact and let application under Order VII, Rule 11 CPC be decided afresh by a reasoned order in accordance with law.

Pending application (s), if any, also stands disposed of.”

5] The learned counsel appearing for the appellant submits that as far as paragraph 14 of the impugned order is concerned, the appeal has become infructuous inasmuch as in terms of the directions issued by the Division Bench under the order dated 23rd April 2018, the Court Receiver has conducted a bidding process and a Report has been filed before the learned Single Judge. He submits that as regards the other challenge, the order of the Apex Court holds the field under which the Notice of Motion taken out by the appellant under Rule 11 of Order VII of the CPC will have to be heard and decided by a reasoned order by the learned Single Judge.

6] The learned counsel appearing for the 1st respondent submits that the order dated 18th May 2018 passed by the Apex Court is an *ex parte* order and therefore, the 1st respondent desires to take appropriate

proceedings in respect of the said order.

7] As stated earlier, the learned counsel appearing for the appellant himself states that in view of the fact that the bidding process is already held by the Court Receiver and in view of the order dated 18th May 2008 of the Apex Court, the present appeal does not survive.

8] As of today, the order dated 18th May 2018 passed by the Apex Court stands. Therefore, we are inclined to accept the statement made by the learned counsel for the appellant that the appeal does not survive. Accordingly the appeal is disposed of.

(M. S. SONAK, J.)

(A.S.OKA, J.)

Dinesh
Sadanand
Sherla

Digitally signed
by Dinesh
Sadanand Sherla
Date:
2018.09.25
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