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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CONT.APP.(C) 4/2017 & CM 31133/2017 & CM 35178/2017

D.A. PINGLE Appellant

Through Ms. Shradha Aggarwal,
Advocate

versus

UNION OF INDIA Respondent

Through Mr. Ruchir Mishra, Mr. Mukesh
Kumar Tiwari & Mr. Abhishek
Rana, Advocates
Mr. R.K. Kayest & Mr.
A.K.Chatterjee, Consultant,
DGMAP

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

ORDER

22.11.2018

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1. In this appeal, on 26th September, 2017 the following order was passed.

“CM NO.35179/201 7 (Exemption)

Exemption allowed, subject to just exceptions.

The application stands disposed of.

CM No.35178/2017 (for suspension of sentence)

1. The appellant is aggrieved by the judgment dated 29.05.2017 passed by the learned Single Judge in Cont. Case (C) No.353/2015 filed by the respondent/Union of India alleging wilful disobedience of the order dated 26.11.2010 passed by a Division Bench of this Court in Cont. Case No. 946/2009, arising out of FAO(OS) No. 436/2009.

2. A glance at the order dated 26.11.2010, reveals that it was a consent order passed by the Division Bench in terms of the settlement arrived at between the parties. One of the terms and conditions recorded in the consent order was that the appellant herein shall keep bank guarantees worth Rs.7 crores alive till the arbitral Award is pronounced and further, the respondent/Union of India shall not invoke the Bank Guarantees in that duration. By the impugned judgment, the appellant has been held guilty of wilful disobedience of the order dated 26.11.2010 (erroneously typed as '26.12.2010' in para 29 of the said judgment).

3. Subsequently, an order of sentence was passed on 13.09.2017, whereby the learned Single Judge has sentenced the appellant to undergo civil imprisonment for a period of one month and pay fine of Rs.5,000/-. Aggrieved by the impugned judgment dated 29.05.2017, the present appeal was filed by the appellant on 22.08.2017. Vide order dated 28.08.2017 passed in the present proceedings, the matter was adjourned to 12.10.2017 while making it clear that the Single Judge would be at liberty to proceed with the sentencing, regardless of the pendency of the present appeal.

4. We may note that on the said date, learned counsel for the appellant had stated that the appellant had approached the Provisional Liquidator appointed by the learned Company Judge, Bombay High Court for release of a sum of Rs. 11,62,21,891/-.

5. In the meantime, the order of sentence was pronounced by the Single Judge on 13.09.2017. A copy of the said order has been filed along with CM No.35178/2017. Learned counsel for the appellant seeks suspension of the sentence during the pendency of the present appeal. On enquiring from her as to whether any amount has been released by the Provisional Liquidator appointed by the

learned Company Judge, Bombay High Court, learned counsel states, on instructions, that no amount has been released so far.

6. We have next enquired from learned counsel as to how does the appellant propose to secure the interest of the respondent, for us to consider ordering suspension of sentence. She states, on instructions from the appellant, that he is the sole owner of an office space measuring 2250 square feet situated at premises no. F-1/5 Zilla Parishad Complex, M.G. Marg, Nashik-422001, valuing Rs.5 crores. The said premises is stated to be unencumbered and in the possession of the appellant. The appellant is willing to submit the title deeds in the present proceedings.

7. In view of the submissions made hereinabove, the appellant is granted time up to 12.10.2017 i.e. the next date of hearing, to produce the title deeds of the subject premises along with a Valuation Report. He shall also file an affidavit stating inter alia that the said premises is unencumbered and undertaking therein not to sell, transfer, alienate or encumber the same, in any manner, during the pendency of the present appeal.

8. Subject to the appellant filing the aforesaid affidavit and producing the title deeds with the Valuation Report by the next date of hearing, the operation of the order of sentence dated 13.09.2017, shall remain stayed till the next date of hearing.

9. List on 12.10.2017, the date already fixed.

10. The appellant shall remain present on the next date of hearing.

11. Dasti.”

2. Thereafter on 12th October, 2017 the Court passed the following

order.

“1. On the first call, a request for pass over was made by the proxy counsel appearing for the counsel for the appellant on the ground that the arguing counsel was not available and the appellant was getting his pass made at the reception.

2. On the second call, counsel for the appellant appears and states that the valuation report could not be filed as steps had been taken to approach a Government approved Valuer to prepare a report and the said formalities will take another week. She explains that after the last date of hearing i.e., 26.09.2017, the offices of the Registrar of Assurances in Maharashtra were closed on some days due to the Dushehara festival.

3. Though we are not satisfied with the excuse offered to explain noncompliance of the last order, only in the interest of justice, no adverse orders are passed today. Compliances of the order passed on the last date be made well before the next date.

4. List on 31.10.2017.

5. Interim orders to continue till the next date of hearing.

6. The appellant shall remain present on the next date.”

3. Thereafter on 19th December, 2017 the following order was passed.

“Request for adjournment is made on behalf of the appellant.

2. Counsel for the respondent states that they have yet to verify and ascertain the valuation as the copy of the document relating to the property has not been furnished to them.

3. Copy of the document has been furnished by the counsel for the appellant to the counsel for the respondent today in Court.

4. D.A. Pingle, who is present in the Court, states that the original document is not available and the same has not been mortgaged or encumbered.

5. D.A. Pingle will take out an advertisement in two prominent newspapers in the area where the land is situated and where he is residing to the effect that the said property is being offered as security in these proceedings and has not been encumbered.

6. D.A. Pingle is also put to notice that the Court would be examining the question whether he should be made personally liable for the bank guarantees, which were supposed to be renewed in terms of the order dated 26th November, 2010 passed in FAO (OS) 436/2009.

7. Counsel for the respondent has stated that arbitration proceedings have concluded and in terms of the Award, an amount of Rs. 11,62,21,891/- is to be paid by the appellant. The appellant, who is present in person, states that as per the Awards, an amount of Rs.6,00,000,00/- is payable along with interest. He, however, submits that the bank guarantees subject matter of the two Awards which are in his favour should not be clubbed.

8. The appellant will appear in person on the next date of hearing also. Copy of the advertisement to be published and the response, if any, will be filed along with an affidavit by the appellant.

9. List for final hearing and disposal on 6th March, 2018.

10. Interim order to continue till the next date of hearing.”

4. On the next date i.e. 6th March, 2018 the Appellant did not appear and costs of Rs. 25,000/- were imposed on him requiring him to remain present on the following day i.e. 1st May, 2018.

5. On 1st May, 2018 the Court was shown a copy of the advertisement published pursuant to the previous order. Costs had yet not been paid. It was directed to be paid within seven days. The Court listed the appeal for final hearing on 23rd July, 2018. On that day, however, the matter could not be taken up. When the appeal was again heard on 24th September, 2018, the Court was informed that since the Appellant had been taken into custody by the Delhi Police in some other case in Pune he shall not appear. Today when the appeal was called out, learned counsel for the Appellant stated that she has no instructions. The Appellant is also not present in person.

6. The Court is of the view that the Appellant cannot be repeatedly indulged and sees no reason why the present appeal should be kept pending awaiting his appearance. Nevertheless considering that the Appellant owes the Respondent, pursuant to the award in question, a sum of Rs. 11,62,21,891, the Court permits the Respondent to proceed to realise whatever amount it can by bringing the attached property to sale. Counsel for the Respondent on instructions informs the Court that the valuation of the property attached is only around Rs.1 crore and not Rs.5 crore as claimed by the Appellant.

7. The appeal and the pending applications are dismissed in the above terms.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 22, 2018
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