

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3857 OF 2018
WITH
APPEAL FROM ORDER NO.30 OF 2018
WITH
CIVIL APPLICATION NO.4904 OF 2018
IN AO/30/2018

M/S CHAITANYA MAGASVARGIYA AUDYOGIC SAHAKARI SANSTHA
THROUGH CHAIRMAN C J KAMBLE

VERSUS

M/S ACC LIMITED THROUGH MANAGING DIRECTOR AND OTHERS

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Advocate for the Petitioner : Shri Palodkar Devdatt P.

Advocate for Respondents 1 to 5 : Shri A.R.Vaidya h/f Shri Bhavar Nitin R.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th April, 2019

Per Court:

1 The Petitioner is the original Plaintiff before the Trial Court in Special Civil Suit No.241/2017, which is now converted into a commercial suit and registered as Regular Civil Suit No.9/2019 and has been specifically allotted to the District Judge in-charge of the commercial suits under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.

2 The Petitioner is aggrieved by the order dated 05.03.2018 passed by the Trial Court, which is impugned in the Appeal from Order.

The Trial Court had directed the Defendant Company to handover the Ready Mix Concrete Plant along with all machines and vehicles to the Plaintiff within 15 days in concluding "मालमत्तेसहित कंपनी प्लॅण्टचा यंत्रसामग्रीसहित चांगल्या स्थितीत". There is no dispute that the language used by the Trial Court would ordinarily mean that the plant and machinery should be in good and working condition.

3 In the Writ Petition, the Petitioner is aggrieved by the order dated 21.03.2018 passed by the Trial Court permitting the Defendant Company to deposit only Rs.21,08,750/- and allowing the Petitioner/ Plaintiff to withdraw the said amount and take possession of the plant and machines.

4 It is informed that the Petitioner has already withdrawn the said amount of Rs.21,08,750/- though he has not taken the possession of the plant and machines.

5 This matter was heard for sometime.

6 The learned Advocate for the Petitioner/ Appellant submits that he would file a fresh application before the Trial Court along with the report of the Agency, which has assessed the working condition of the plant and machines and seek a clarification as to whether, the words used by the Trial Court, reproduced above in Marathi, would mean good and working condition.

7 In view of the above, the Writ Petition as well as the Appeal

from Order stand disposed of with liberty to the Petitioner/ Appellant to put forth a request as recorded above. Needless to state, the Trial Court would consider the said application on its merits after considering the rival contentions of the parties.

8 The pending Civil Application does not survive and stands disposed off.

kps

(RAVINDRA V. GHUGE, J.)