IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST) No. 22911 OF 2019
WITH
CIVIL APPLICATION (ST) No. 23204 OF 2019
IN
APPEAL FROM ORDER (ST) No. 22911 OF 2019

Isha Plast Impex Private Limited ...Appellant/Applicant
Vs.
Eesha Packaging and Ors. ...Respondents

WITH
APPEAL FROM ORDER (ST) No. 22914 OF 2019
WITH
CIVIL APPLICATION (ST) No. 23202 OF 2019
IN
APPEAL FROM ORDER (ST) No. 22914 OF 2019

Nexus Petrochyem Private Limited ...Appellant/Applicant
Vs.
Vijay Plasto Industries And Ors. ...Respondents

Dr. Birendra Saraf a/w. Mr. Nikhil Rajani a/w. Ms. Jyoti Sanap I/b. V. Deshpande & Co. for Intervenors for DCB Bank

Mr. Sunil Chaturvedi a/w. Mr. Arshil Shah I/b. Chiyarajawala & Co. for Appellants/ Applicants

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CORAM : S.C. GUPTE, J.

DATE : AUGUST 30, 2019

P.C.:

1. Heard learned counsel for the parties.

2. These two Appeals from Order challenge identical orders passed by the City Civil Court at Dindoshi in two separate Commercial Suits.

The Appellants herein are Plaintiffs in those suits. The suits are for recovery of price of goods sold and delivered by the Plaintiffs to the respective Respondents (original Defendants). The Plaintiffs applied for interim reliefs on draft notices of motion. The reliefs were in the nature of an attachment before judgment. It was claimed that the Defendants were likely to dispose of their properties with a view to defeat the eventual decrees that would be passed in the two suits. The Court did not find any prima facie case under Order XXXVIII Rule 5 and, accordingly, rejected the ad-interim applications. Those orders are the subject matter of challenge in the present appeals.

3. The original Defendants, who are Respondents No.1 in the respective Appeals from order, do not remain present or show cause. The Appeals are contested by a third party, who is a vendor of the Defendants. It has a claim in the sum of Rs.42 Crores against the Defendants and claims to be a mortgagee by deposit of title deeds of the properties for which interim reliefs in the nature of attachments before judgment are sought by the Appellants herein.

4. Dr. Saraf, learned counsel appearing for the third party, M/s. DCB Bank, submits that his client has moved Notices of Motion in both Commercial Suits filed by the Appellants herein, seeking protection against grant of any reliefs vis-a-vis the properties of the Defendants mortgaged to it. Learned counsel submits that his claims reflected in those Notices of Motion have been duly considered by the Court, whilst rejecting ad-interim reliefs to the Appellants.

5. It may be seen from the pleadings of the Appellants in the Commercial Suits and the documents relied upon by them in support of the same that there is no case made out of any likelihood of the

Defendants disposing of the suit properties with a view to defeat any decree that may be passed against them in the two Commercial Suits. As indicated by Dr. Saraf, there is ample evidence on record that DCB Bank is a mortgagee in respect of the suit properties; the mortgage has been created by deposit of title deeds. The relevant documents including the Memorandum of Mortgage by deposit of title deeds are produced before the Court. Learned Counsel for the Appellants submits that one suit property, viz. Flat at Altamount Road, has been mortgaged merely to secure a debt of Rs.1.40 crores as mentioned by the Bank itself in its affidavit in support of the Chamber Summons filed before the Trial Court. That is not quite correct. The mortgage is for securing the entire bundle of credit facilities extended to the Defendants. The documents in support of the Bank's case make that abundantly clear. The documents show that the mortgage was created to secure facilities of about Rs.42 Crores by DCB Bank in favour of the Defendants. Dr. Saraf submits that presently the Bank's claim aggregates to over Rs.42 Crores. This is of course disputed by the Appellants. But be that as it may, the point here is that the title deeds are with the Bank; the Defendants can sell the properties only with the consent of the Bank; and the Bank is not expected to give its consent of except for recovery from its dues from out of the sale proceeds. Learned counsel submits that in case any excess amount, that is to say, any amount in excess in the Bank's dues, is recovered in the proposed sale, DCB Bank undertakes to deposit such excess amount into this Court in the pending commercial suits as may be commensurate with the Appellants' claims in the suits.

6. In view of this statement, practically nothing survives in the Appellants' case for attachment before judgment. A case of attachment before judgment is essentially on the footing that the defendant is likely to dispose of his properties with a view to defeat a decree that is likely to

be passed in favour of the plaintiff. If, on the other hand, the property is being sold with a view to repay a secured creditor, the property itself forming the security of such creditor, that is the very antithesis of a case of sale of property with a view to defeat the claim or decretal dues of other creditors; there is no case then for restraining such sale on the ground that it defeats the rights of other creditors.

7. Accordingly, there is no infirmity to be found in the impugned orders passed by the Trial Court. Appeals from order are, accordingly, dismissed.

8. In view of the disposal of the Appeals from order, the civil applications taken out therein do not survive and are also disposed of.

[S.C. GUPTE, J.]

V.A. Tikam+