

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL CONTEMPT PETITION (L) NO.27 OF 2018
WITH
COMMERCIAL NOTICE OF MOTION NO.1462 OF 2018
IN
COMMERCIAL SUIT NO.687 OF 2017**

City and Industrial Development
Corporation of Maharashtra LimitedPetitioner

Vs.

Sanjose Mahavir Supreme Consortium and Ors.Respondents

**WITH
COMMERCIAL CONTEMPT PETITION NO.12 OF 2019
WITH
COMMERCIAL NOTICE OF MOTION NO.1462 OF 2018
IN
COMMERCIAL SUIT NO.687 OF 2017**

Mr. Gopal Krishna Shivaram Hegde for petitioner in CPCDL/27/2018 and for respondent in CPCD/12/2019.

Mr. Nikhil Karnavat a/w. Mr. Viraj Maniar and Ms. Hiral Vora I/b. Maniar Srivastava Associates for respondent in CPCDL/27/2018 and for petitioner in CPCD/12/2019.

**CORAM : K.R.SHRIRAM, J.
DATE : 8th MARCH 2019**

P.C.:

1 Heard the counsel in both petitions. Admittedly, the underlying dispute has been referred to arbitration and the arbitral proceedings are in progress. These two petitions are for contempt alleged to have been committed prior to parties being referred to arbitration. Both parties are alleging contempt against each other.

2 The origin of these two petitions is the order dated 6th October 2017. Paragraphs 2 and 3 of the said order read as under :

2. Learned Counsel appearing for Defendant No.1 states that his client has no intention of selling the equipment or materials. Learned Counsel also states that Defendant No.1 has presently appointed a new contractor in place and stead of the Plaintiff and proposes to carry out the construction of the project through this new contractor. Learned Counsel submits that the contract permits Defendant No.1, in case of its termination, to make use of the contractor's equipment and materials for completion of the project. Learned Counsel submits that at this stage, Defendant No.1 is in the process of ascertaining what equipment and materials belonging to the Plaintiff and lying at the site need to be used by the new contractor for the purpose of completing the project. Learned Counsel states that this exercise may take some time and in the meantime, his client shall not make any use of the equipment or materials. Learned Counsel states that in the meantime, his client shall also file a reply opposing the notice of motion.

3. In the premises, the following order may meet the ends of justice, and it is accordingly ordered as and by way of an ad-interim relief as follows:

(I) M/s.Shetgiri & Associates, who is a surveyor and valuer on the panel of the Court Receiver, High Court, Bombay, is appointed as a Court Commissioner to carry out an inventory of all materials and equipment lying at site or any other place used for the project work. The Court Commissioner, whilst making this inventory and preparing his report, shall also consider the question of ownership or hiring status of the materials and equipment lying at site. The Commissioner shall also particularly note the condition of the materials and equipment. The inventory work shall be carried out in the joint presence of both the parties. The Commissioner shall complete the inventory work and make a report thereof to the court within a period of two weeks from today. The costs of the inventory work shall be borne by the Plaintiff;

(II) Both parties shall cooperate with each order and facilitate the joint inspection and inventory ordered as above. This commitment shall extend to all the equipment and materials whether lying at site or at any other place used for the project work and irrespective of who is in control of the site or place.

(III) Till this exercise is completed and the inventory is presented to this court, neither Defendant No.1 or any person claiming through it shall sell or make use of or deploy any materials or equipment lying at the site or any other place referred to above for the project work or in any other manner;

(IV) During this period, the new contractor appointed by Defendant No.1 shall be entitled to inspect the equipment and materials so as to enable him to consider their usability for the project.

3 Thereafter, an order came to be passed on 15th November 2017.

Paragraphs 2 and 8 of the said order read as under :

2. Mr.Purohit, learned counsel for the plaintiff, on instructions, states that some labourers are already provided by the plaintiff to the learned surveyor and is ready and willing to provide additional labourers and equipments, as may be indicated by the learned surveyor expeditiously. Statement is accepted.

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8. It is made clear that the learned surveyor shall furnish a copy of the inventory to both the parties and shall carry out directions issued by this Court on 6th October 2017 expeditiously with co-operation of both the parties. It is made clear that if according to the learned surveyor, preparation of the inventory and valuation can be done side by side expeditiously, it is left to the discretion of the learned surveyor to complete the process accordingly. It is made clear that in addition to the payment required to be made by the plaintiff pursuant to the order dated 6th October 2017 for the purpose of submitting an inventory report, the plaintiff would also have to bear separate charges for valuation of the items to the learned surveyor if demanded. The said payment shall be made within two weeks from the date of receipt of professional bills from the learned surveyor. Learned surveyor shall make an endeavour to submit a report, in so far as preparation of inventory report is concerned, within four weeks from today. Upon such submission of inventory report, if it is possible to segregate the items in respect of the items for which CIDCO claims exclusive ownership, parties shall make efforts jointly to segregate those items.

4 Both counsel state that their respective clients will co-operate to complete the exercise as contemplated in the order dated 6th October 2017 as expeditiously as possible and in any event, within six weeks from today.

5 Mr. Karnavat states that apart from CIDCO, respondent nos.2 and 5 in contempt petition no.12 of 2019 also have to co-operate and their participation is vital.

6 In the circumstances, the following order is passed :

(a) M/s. Shetgiri and Associates shall continue from the stage which they have reached to complete the exercise contemplated in the order dated 6th October 2017;

(b) petitioner in contempt petition no.12 of 2019 shall strictly comply with the statement recorded in the order dated 15th November 2017;

(c) at the time fixed by M/s. Shetgiri and Associates, representatives of Sanjose Mahavir Supreme (Consortium), CIDCO, Louis Berger Inc. and Prakash Constrowell Limited shall remain present. When I say representatives, it would mean persons who can take decisions on the spot and not somebody who will have to revert to the office for taking decisions. I would expect atleast one person of Director level present at the time the exercise is undertaken.

7 Mr. Karnavat, on instructions assures that required number of labourers and equipments as indicated by M/s. Shetgiri and Associates will be deployed within the time provided by M/s. Shetgiri and Associates and M/s. Shetgiri and Associates will provide the time keeping in mind the fact that this whole exercise has to be completed within six weeks from today.

8 If there is any shortfall in the materials, it will be open to both the parties to raise further claims before the Arbitrator and the Arbitrator will consider the same in accordance with law.

9 Mr. Karnavat, on instructions states that if there are any invoices raised by M/s. Shetgiri and Associates those invoices will be paid within two weeks from today to the extent it is outstanding and the final bill

will be paid within two weeks of receiving the invoice. This is taken as an undertaking to this Court and M/s. Shetgiri and Associates may apply to the Court for orders if their bills are not paid.

10 Both petitions accordingly stand disposed.

11 Mr. Hegde and Mr. Karnavat state that the parties are bound by the orders passed by this Court and the order dated 6th October 2017 and order dated 15th November 2017 shall continue until parties make their interim applications before the Arbitral Tribunal and Arbitral Tribunal decides the same. Statements accepted.

(K.R. SHRIRAM, J.)