

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

Amk

COMMERCIAL APPEAL NO. 279 OF 2019
IN
COMMERCIAL NOTICE OF MOTION NO. 468 OF 2017
IN
COMMERCIAL SUIT NO. 584 OF 2017

Twenty First Century Finance Ltd.

& Anr.

.. Appellants

Vs.

Moorgate Industries India Pvt. Ltd.

(Erstwhile Stemcor India Pvt. Ltd.) & Ors.

.. Respondents

Mr. Chirag Mody a/w. Ms. Prachi Garg and Mr. Virag Gami i/b DSK
Legal for the Appellants.

Mr. S. U. Kamdar, Sr. Advocate a/w. Mr. Purav Shah i/b Cyril
Amarchand Mangaldas for the Respondent.

CORAM : PRADEEP NANDRAJOG, C.J. &
N. M. JAMDAR, J.

DATE : 7th JUNE, 2019.

P. C. :

1. Heard learned Counsel for the parties.
2. The foundation of the suit filed by the appellants is an agreement dated 05.08.2010. The prayer made in the suit is to declare the Plaintiffs as owners of 2,00,400 and 1,35,87,100 shares of Respondent No.3-Company, which shares stand registered in the name of the 1st

Defendant. A declaration with respect to the agreement dated 05.08.2010 of being illegal and void is also prayed for. Alternatively claim is for damages.

3. A Notice of Motion was taken out seeking appointment of a Court Receiver to exercise powers of the share holders concerning the shares in question.

4. Belated steps were taken by the Plaintiffs to effect service of the Notice of Motion and in that view of the matter, vide impugned order dated 19.03.2019, the learned Single Judge has refused to deal with the merits of the claim for appointment of Receiver. The Notice of Motion has been dispatched in a summary manner. The grievance in the appeal is to the merits of the matter pertaining to appointment of Receiver not being concerned. The objection of the learned Counsel for the Respondents is that the Plaintiffs cannot litigate at their leisure and pleasure. It was obligation of the Plaintiffs' Counsel to ensure that the Defendants were served with Notice of Motion as expeditiously as possible.

5. Suffice it to record that a delay in prosecuting an interim relief needs to be taken note of while deciding the Notice of Motion. A Notice of Motion cannot be dismissed as does not survive on the

ground of delay in prosecuting the claim. We note at that stage that the Defendants have filed a Notice of Motion seeking rejection of the Plaint invoking Order 7 Rule 11 of the Code of Civil Procedure.

6. With consent of learned counsel for the parties the Appeal is disposed of setting aside the impugned order dated 19.03.2019 in so far it rejects the Notice of Motion taken out by the Appellant seeking appointment of Receiver. The said Notice of Motion is restored with direction that before said Notice of Motion filed by the Plaintiffs is decided, Defendants' Notice of Motion for rejection of plaint invoking Order 7 Rule 11 of the Code of Civil Procedure shall be decided.

[N. M. JAMDAR, J.]

[CHIEF JUSTICE]