

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

**COMMERCIAL APPEAL (L) NO.358 OF 2019
IN
NOTICE OF MOTION NO.310 OF 2017
IN
COMMERCIAL SUIT NO.22 OF 2008
WITH
NOTICE OF MOTION (L) NO.735 OF 2019**

Maharashtra State Electricity Distribution
Company Ltd. ..Appellant

Versus

Sai Ram Infosys Network Pvt. Ltd. And another ..Respondents

Mr. Anil Sakhre a/w Mr. Chandra Prakash, Mr. Rahul Sinha I/by Lex
Global Consultants, Advocates for the Appellant.

Mr. Birendra Saraf a/w Mr. Rohan Savant I/by V. A. Bhagat, Advocate
for the Respondents.

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

DATE : 29th JULY, 2019

P.C.

1] Heard learned counsel for the parties.

2] The Appellant is the Defendant. The 1st Respondent is
the Plaintiff. Suit filed is for recovery of damages alleging
infringement of the copyright claimed by the Plaintiff in the software
used by the Defendant. The Defendant denies infringement of the

copyright and claims inhouse software produced.

3] The Plaintiff concluded evidence. The Defendant did not file affidavit by way of evidence of it's witnesses.

4] Notice of Motion No.21 of 2013 filed by the plaintiff remained undecided till when the order dated 04.06.2019 was passed by the learned Single Judge. Prayer made in the said Notice of Motion was to appoint a Court Receiver with a direction that after visiting the premises of the Defendant and inspecting the hard disks, if infringing software was found loaded, the same should be seized.

5] The said Notice of Motion was disposed of vide order dated 04.06.2019 declining relief as prayed for. In the said order, noting that the Defendant had taken no steps to lead evidence, it is recorded that the evidence of the Defendant is closed.

6] Hearing was deferred for 5th July 2019, on which date, at the asking of the Defendant hearing was deferred imposing cost in the sum of ₹.50,000/- but recording that the time gap cannot be utilized by the Defendant to move an application seeking recall of the order dated 04.06.2019 i.e. to pray to the Court that the Defendant be permitted to examine an expert.

7] The Appellant desires that it be permitted to lead evidence of an expert by way of rebuttal.

8] Being a Commercial Suit the Appeal would be maintainable only if it can be shown that any of the two orders referred to herein-above fall within a clause of Rule 1 of Order XLIII of the Code of Civil Procedure.

9] Learned counsel for the Appellant contends that the order dated 04.06.2019 disposes of an application seeking appointment of a Receiver and thus would be maintainable under clause (s) of Rule 1 of Order XLIII of the Code of Civil Procedure.

10] The argument is noted and rejected for the reason right of a party to challenge an order passed under Order XL Rule 4 would be dependent upon the injury caused.

11] In the instant case request for appointment of a Receiver being denied the grievance could be by the Plaintiff and not by the Defendant.

12] Thus, merely because the order dated 04.06.2019 disposed of Notice of Motion No.21 of 2013 filed by the Plaintiff would not mean that the Defendant gets a right to challenge the said order.

13] The real grievance of the Appellant is to paragraph 5 of the order closing the evidence of the Defendant. The further grievance is when granting an adjournment on 05.07.2019, in

paragraph 2 of the order, the learned Single Judge denuded the Defendant a right to use the time to take out an application seeking recall of the order dated 04.06.2019.

14] Even said order would not be an appealable order because the order has been passed in a Commercial Suit.

15] Holding that the appeal is not maintainable, we would simply noted that law frowns upon peremptory orders passed by the Court which have the effect of denuding the Court's power to decide an application filed in the futuro. Reason is obvious. Situations not be in the contemplation of parties may arise warranting judicial intervention. This is the jurisprudence behind the norms that peremptory orders denuding Court's jurisdiction to decide issues should never be passed.

16] We are given to understand that the Defendant has already taken out a Notice of Motion praying to the Court that it be permitted to lead evidence in rebuttal highlighting that sans a defence a decree in the sum of ₹ 3000 crores stares the Defendant in it's face.

17] It is expected that the learned Single Judge shall decide the said Notice of Motion as per law.

18] In view of the order passed above in the Appeal, Notice of Motion seeking stay does not survive and is disposed of as infructuous.

19] Needless to state we have not expressed any opinion on the merits of the matter concerning facts as well as the law.

N. M. JAMDAR, J

CHIEF JUSTICE