

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

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APPEAL (L) NO. 398 OF 2019
WITH
NOTICE OF MOTION NO. 933 OF 2019
IN
APPEAL (L) NO. 398 OF 2019
WITH
APPEAL (L) NO. 400 OF 2019
WITH
NOTICE OF MOTION NO. 936 OF 2019
IN
APPEAL (L) NO. 400 OF 2019

Emerald Lifestyle (India) Pvt. Ltd. & Ors. .. Appellants

Vs.

Complete Systems and Management Services
Pvt. Ltd. .. Respondent

Mr. Aloukik Pai a/w. Mr. Nikhil Waje, Mr. Shantanu Kadam i/b Thodur
Law Associates for the Appellants.

Mr. A. S. Khandeparkar a/w. Preprak Sharma for the Respondent.

**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

DATE : 13th NOVEMBER, 2019.

P. C. :

1. The two Appeals lay the challenge to the singular order dated 13.04.2018 disposing of Arbitration Petition No. 409 of 2017 along with Arbitration Application No. 102 of 2017 and Contempt Petition (L) No. 28 of 2018 in Arbitration Petition No. 409 of 2017. The impugned order has been passed on the parties tendering Consent

Minutes for the order in question. The consent recorded is that Leave and License Agreement dated 15.02.2018 between the parties be terminated; the Appellant to pay the amounts referred to in paragraph 3 of the minute of the consent; further undertaking concerning Service Tax/GST in paragraphs 5 and 7; the Court Receiver appointed who had taken over possession of the said property on 15.02.2018 to be discharged; and the possession to be retained by the Respondent.

2. In the Appeal, the consent order has been challenged on the ground that the subject matter of the lis concerning the Leave and Licence Agreement had to be decided by the Judge, Small Causes Court.

3. The impugned order passed by consent, was preceded by a consent order dated 12.01.2018 recording the Appellant's undertaking to pay ₹ 21 lakhs to the Respondent on the two dates recorded in the order by consent. The consent recorded that if there was default and same was not removed within two days, the Court Receiver shall take possession of the property. The said order passed by consent was challenged in Appeal (L) No. 46 of 2018 which was disposed of by the Division Bench on 29.01.2018 noting that the issue of jurisdiction have to be decided before the learned Single Judge in view of the Full Bench decision of this Court pronounced on 16.12.2009, because in Appeal the jurisdiction of the learned Single Judge was questioned to pass an order under Section 9 of the Arbitration and Conciliation Act, 1996.

4. On the same day i.e. 29.01.2018 when the Appeal was disposed of challenging the consent order dated 12.01.2018, the Arbitration Petition No. 409 of 2017 was listed before the learned Single Judge in which an interim measure under Section 9 of the Arbitration and Conciliation

Act was prayed for in view of the fact the Leave and License Agreement between the parties having an arbitration clause. On 29.01.2018 the learned Single Judge recorded that no application was filed withdrawing the consent. The learned Single Judge recorded that interim orders passed by consent had to be complied with. The learned Single Judge directed the Receiver to take possession of the subject property and submit his report to the Court on 16.02.2018. Thereafter, on 13.04.2018 once again on consent filed in writing under caption Minutes of Order, the impugned order dated 13.04.2018 has been passed.

5. The Consent Terms have been signed by the parties and their Counsel.

6. Aforesaid facts show that the order dated 12.01.2018 which was passed by consent was challenged in Appeal on the ground that the consent was given under the wrong impression of law. Jurisdiction would be of Small Causes Court. The Appeal was withdrawn to raise the issue of jurisdiction before the learned Single Judge and not only the Appellants did not withdraw the consent but further consented to the jurisdiction leading the Court to pass the impugned order dated 13.04.2018 once again by consent. Thus, the Appellants are estopped from raising the issue of jurisdiction of the learned Single Judge in Appeal. The reason is obvious. The consent to the order dated 12.01.2018 was not withdrawn. Towards implementation of the said order, the second order dated 29.01.2018 was passed. Thereafter the impugned order dated 13.04.2018 has been passed.

7. There is a delay of 467 days in preferring the Appeals and the

sufficient cause pleaded for the delay to be condoned is that the Counsel gave wrong advice.

8. The question of wrong advice misleading the Appellants does not arise qua the passing of the impugned order by consent for the reason pleading of the Appellant in Appeal (L) No. 46 of 2018 shows that the Appellants were made aware that they could possibly question the jurisdiction of the learned Single Judge on the plea that the subject matter jurisdiction was vested in the Court of the Judge, Small Causes. Thus, when the impugned order was passed, legal position was clearly in the knowledge of the Appellants.

9. Thus, we do not condone the delay in filing the Appeals for the reason a non meritorious cause is sought to be projected in the Appeals. The Notices of Motion are dismissed.

10. The Notices of Motion seeking delay to be condoned being dismissed, the Appeals are dismissed.

[SMT. BHARATI DANGRE, J.]

[CHIEF JUSTICE]

Arjun
M.
Kadam

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by Arjun M.
Kadam
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