IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9928 OF 2016

M/s Sanjay V. Deshmukh,
Partnership Firm …PETITIONER

VERSUS

The Maharashtra State Farming
Corporation Ltd. & another … RESPONDENTS

....

Shri Shyam C. Arora, Advocate for petitioner
Shri V.R. Dhorde, Advocate for respondents

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CORAM : R. G. AVACHAT, J.

DATED: 3rd March, 2021

O R D E R :

The challenge in this Writ Petition is to the order passed by Civil Judge, Senior Division, Vaijapur on 3/2/2016, below application Exh.5 in Special Civil Suit (Spl.C.S.) No.31/2015 and the order passed by Ad-hoc District Judge, Vaijapur on 29/8/2016 in Misc. Civil Appeal No.4/2016. The petitioner – partnership firm is the original plaintiff in Spl.C.S. No.31/2015. The respondents are defendants in the said suit.

2. The respondent No.1 – Maharashtra State Farming

Corporation Ltd. (MSFC Ltd.) invited tenders for putting their agricultural lands admeasuring 835 acres, situated at Gangapur, District Aurangabad under joint cultivation scheme. The petitioner firm being the highest bidder, its offer came to be accepted. An agreement came to be executed between the petitioner firm and the MSFC Ltd. on 27/12/2013, The period of agreement was for ten years, commencing from 5/11/2013 to 30/6/2023. As per the terms of the agreement, the petitioner firm paid the MSFC Ltd. Rs.75,15,500/- towards security deposit. Equal amount was paid towards first year's share in the income amount. The petitioner firm agreed to pay the MSFC Ltd. Rs.9000/- per acre plus 10% more thereof every year towards its income in joint cultivation of the land. The period of agreement later on came to be re-scheduled for a period of ten years commencing from 1/7/2014 to 30/7/2014.

3. According to the petitioner firm, it could not cultivate the land as there were encroachments on major portion of the land. The MSFC Ltd. did not clear water bill and electricity charges. The petitioner firm, therefore, could not avail water from the lift irrigation scheme meant for the land under the agreement. The petitioner firm, therefore, could not pay the MSFC Ltd. its share in the income as agreed to be

paid for the year 2014-2015. The MSFC Ltd., therefore, issued a notice bearing No.597, dated 7/7/2015 calling upon the petitioner firm to pay a sum of Rs.82,64,050/-. It was also informed to the petitioner firm that if it failed to pay the amount under the demand notice, the MSFC Ltd. would be constrained to take appropriate action as per clause 5 of the agreement. The petitioner firm, therefore, filed Spl.C.S. No.31/2015 for relief of declaration and injunction. The relief of declaration was to the effect that the demand notice Reference No.597, dated 7/7/2015 is null, void and not binding on the petitioner firm. Interim relief of injunction was sought for restraining the MSFC Ltd. from taking any coercive action pursuant to the impugned notice.

4. The learned Civil Judge, Senior Division, Vaijapur, by order dated 3/2/2016, was pleased to allow the application Exh.5 restraining the MSFC Ltd. from taking any coercive action against the petitioner firm pursuant to the demand notice dated 7/7/2015 on condition of payment of Rs.82,64,050/- towards share in the income that was due for the period 1/7/2014 to 30/7/2015 and also share in the income amount that may become due in future until final disposal of the suit. In case of failure of the petitioner firm to

comply with the order, the temporary injunction granted was to cease to operate.

5. The petitioner firm, therefore, preferred appeal (Misc. Civil Appeal No.4/2016) against the order directing it to pay the share in the income that was to fall due every year as per the terms of the agreement. The appellate Court partly allowed the appeal, modifying the order dated 3/2/2016, passed by the Civil Judge, Senior Division, Vaijapur. Clause (a) of the order passed in Misc. Civil Appeal No.4/2016 reads thus :-

> "(a) defendants or any persons on their behalf are hereby temporarily restrained from taking any coercive action against the plaintiff with regard to demand notice dated 7/7/2015 subject to deposit of the alleged share in income amount of Rs.82,67,050/- within 30 days from the date of the order and further such amount due for the period of next year and also for future period. The amount to be deposited was directed to be kept in fixed deposit in any Nationalised Bank until final disposal of the suit before the Trial Court."

6. The petitioner firm is, therefore, before this Court, urging for setting aside the impugned order to the extent of directing the petitioner firm to pay/ deposit share in the income amount that is due for the period from 1/7/2014 and

that may become due in future.

7. Shri Shyam C. Arora, learned counsel for the petitioner firm took me through the relevant clauses of the agreement. According to him, the MSFC Ltd. had agreed to provide the petitioner firm the water supply of its lift irrigation scheme. Due to failure of the MSFC Ltd. to clear outstanding electricity bill and water charges, the petitioner firm could not cultivate the lands. As such, it suffered loss. It, therefore, could not pay the MSFC Ltd. its share in income as has been agreed to be paid in terms of the agreement. The learned counsel also invited my attention to documents on record to ultimately submit that it was the MSFC Ltd., on whose failure to pay the water and electricity bill the land could not be cultivated. According to learned counsel, the conditions imposed by both the courts below are onerous and, therefore, liable to be set aside.

8. Shri V.R. Dhorde, learned counsel for respondent MSFC Ltd. would, on the other hand, submit that, as per clause 5 of the agreement, the petitioner firm was under obligation to pay Rs.82,64,050/- for the second year i.e. for the period from 1/7/2011 to 30/7/2016 and was to continue

to pay the said amount along with 10% thereof every year until the period of agreement was to over. If the said amount is not paid, on or before 31st July each year, then the MSFC Ltd. was authorised to recover the amount with interest @ 18% p.a.. The MSFC Ltd. was also authorised to terminate the contract in such an eventuality. The learned counsel relied on rule of caveat emptor. He denied the MSFC Ltd. to have been in arrears of water and electricity bill. He also denied the MSFC Ltd. to have ever agreed to provide the petitioner firm water for cultivation of the land. Learned counsel supported the impugned orders.

9. The agreement came to be executed between the petitioner firm and MSFC Ltd. on 27/12/2013. Under the agreement, the MSFC Ltd. provided its 835 acres of land for joint cultivation by the petitioner firm and the MSFC Ltd. itself. The period of agreement is for 10 years commencing from 5/11/2013. The period of agreement came to be rescheduled as stated in paragraph No.2 above. The petitioner firm paid MSFC ltd. Rs.75,15,500/- as a security deposit. The petitioner firm agreed to pay the MSFC ltd. Rs.9000/- per acre per year towards MSFC Ltd.'s income for the first year of the agreement and further agreed to pay 10% more thereof each

year until the period of agreement is over.

10. As per clause 5(a) of the agreement, the petitioner firm agreed to pay every year’s income to the MSFC Ltd. by the end of June each year. In case of failure to pay the same latest by 30th June each year, it agreed to pay 18% interest on the amount that would be due by the end of 31st July. In the event of failure to pay the amount latest by the end of 31st July, it was agreed that the agreement shall be deemed to have come to an end, the MSFC Ltd. shall have claim over the standing crop. The petitioner firm shall not have right to jointly cultivate (jointly) the land.

11. The petitioner firm agreed to pay the MSFC Ltd. Rs.9000/- per acre for first year and 10% more therein each year even if the petitioner firm could not cultivate the land for one or the other reason. The learned counsel for MSFC Ltd. brought to my notice a term in the agreement, wherein the petitioner firm agreed to bear all the expenses that were required to bring the land under cultivation and raise crops therein. It may, therefore, appear that it was the responsibility of the petitioner firm to pay the MSFC Ltd. every year its agreed share in the income in joint cultivation, even if

the land could not be cultivated. It, however, further appears that, the petitioner firm was allowed to make use of machinery and lift irrigation scheme of the MSFC Ltd. There are documents on record to indicate that there was lift irrigation scheme named after “Mukteshwar”. The MSFC Ltd. was one of the partners (Sah-Bhagidar) of the said scheme. The respondent No.2, Real Estate Manager of MSFC Ltd., vide his letter dated 2/3/2015, had requested the Assistant Registrar, Co-operative Societies to appoint an Administrator for Mukteshwar Lift Irrigation Scheme of Co-operative Society. It had informed the Assistant Registrar that the water of the scheme was required for cultivation of its 835 acres of land from the year 2014, since the land was to be brought under joint cultivation. It also appears from the documents on record that, MSFC Ltd. was in arrears of the electricity bill of the electricity supply for lift irrigation scheme.

12. It is, however, not that the petitioner firm could not cultivate even one guntha of land. There is on record document to indicate the petitioner firm to have availed crop insurance benefit.

13. The hearing of the suit has commenced. It would,

therefore, not be desirable to make any observations as regards merits of the matter/ material on record. Suffice it to say that, the cause for action of the suit was issuance of the impugned notice, whereby the MSFC Ltd. demanded from the petitioner firm a sum of Rs.82,64,050/- due towards its share in the income for the year 2015-2016 only. In the given circumstances, both the courts below ought not to have imposed the condition directing the petitioner firm to pay each year's income in joint cultivation as agreed to be paid every year. Needless to mention, in case of breach by the petitioner to abide by the terms of the agreement, the MSFC Ltd. has every right to take action in terms of clause 5(a) of the agreement. It is not known as to why the MSFC Ltd. did not resort to the said clause beyond making a demand of Rs.82,64,050/-. Be that as it may, since both the courts below have put a condition directing the petitioner firm to pay every year MSFC Ltd. its share in the income in joint cultivation and the same being beyond the scope of subject matter of the suit, I am inclined to set aside the impugned condition.

14. The writ petition, therefore, succeeds. The order directing the petitioner firm to deposit the amount that may

be due for the period of next year and also for the further period and deposit the same in any Nationalised Bank until final disposal of the pending suit is hereby set aside. The order containing clause 2(b) of the order dated 29/8/2016 is also set aside.

The Writ Petition is allowed accordingly.

(R. G. AVACHAT)
JUDGE

fmp/-