

Sneha N.
Chavan

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 927 OF 2017

Sachin Earthmovers .. Petitioner
V/s.

Capt. Daljit Singh Anand ..Respondent

Mr. Kezer Kharawala i/b Lex Juris for the Petitioner.

Mr. Rishi Soni i/b N.R. Gandhi for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 4th JANUARY, 2021

P.C.

1. Rule. Rule made returnable forthwith. The learned counsel for the respondent waives service. Heard finally by consent of parties.

2. The challenge in this petition is to the part of the impugned order dated 25.10.2016 passed by the learned City Civil Court at Greater Bombay in Notice of Motion No. 4106 of 2016 in Suit No. 6396 of 2006 (H.C. Suit No. 1449 of 2006), by which the learned Trial Court while setting aside an ex-parte judgment and decree dated 21.08.2015 has directed the petitioner (original defendant) to deposit the entire decretal amount of Rs.21,14,165/-. According to

the petitioner, the condition imposed is onerous and could not have been imposed in the facts and circumstances of the case.

3. I have heard the learned counsel for the petitioner and the learned counsel for the respondent. Perused record.

4. The learned counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of *Tea Auction Limited v/s Grace Hill Tea Industry and another*¹, in order to submit that while allowing the application for setting aside an ex-parte decree, the Court cannot impose a condition which is onerous.

5. The learned counsel for the respondent has pointed out paragraphs 7 and 8 of the impugned order. It is submitted that the Trial Court had infact found on the basis of an affidavit of service filed by the bailiff from the office of the Sheriff of Bombay that writ of summons was indeed served on the petitioner. He, therefore, submits that inspite of this, the Trial Court has granted indulgence in favour of the petitioner on condition of deposit of decretal amount, which is just and proper.

1 (2006)12 SCC 104

6. I have considered the rival circumstances and submissions made. The Supreme Court in the Case of Tea Auction Ltd.(supra) has held that under Order IX Rule 13 of the Code of Civil Procedure, 1908, the Court can impose costs as well as direct the payment of part or full decretal amount in Court. However, this would depend upon the facts and circumstances of each case.

7. Coming to the present case, the respondent has filed the suit in the year 2006 for recovery of an amount of Rs.21,14,165/- alongwith interest, which suit came to be decreed ex-parte on 21.08.2015. The Trial Court exercised its discretion and has granted application for setting aside decree filed by the petitioner. The only question is whether the imposition of the condition about the deposit of entire decretal amount is just and proper. It appears that the learned Trial Court has not chosen to impose any costs as such.

8. In my considered view, taking an over all view of the matter, it is appropriate, if the petitioner is directed to deposit costs of Rs.50,000/- (Rs. Fifty thousand only) and to deposit Rs.10,00,000/- (Rs. Ten Lakhs only) towards the decretal amount or furnish any security to the extent of Rs.10,00,000/- to the satisfaction of the

learned Trial Court. This in my considered view would meet the ends of justice. It is in the interest of both the parties that the suit which relates to the year 2006 is decided at the earliest.

9. In that view of the matter, the following order is passed:

ORDER

- i) The petition is partly allowed.
- ii) The impugned condition No. 1(i) of the order dated 25.10.2016, is hereby modified.
- iii) The order relating to the setting aside of the ex-parte decree shall be subject to the condition of petitioner depositing costs of Rs.50,000/- (Rs. Fifty thousand only) payable to the respondent within four weeks from today.
- iv) This shall be further subject to the condition that the petitioner deposits an amount of Rs.10,00,000/- (Rs. Ten Lakhs only) or furnishes any security to the extent of Rs.10,00,000/-, to the satisfaction of the learned Trial Court, within four weeks from today.
- v) The petition is deposed of in the aforesaid terms.

C.V. BHADANG, J.