



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.07.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

O.S.A.(CAD) Nos.5, 6 and 7 of 2021

1. Bharat Petroleum Corporation Limited,
Having its registered office at Bharath Bhavan,
No.4 and 6, Currimbhoy Road,
Bellard Estate, Mumbai - 400 028
rep. by its Senior Manager - Legal (South),
No.1, Rangamohan Gardens,
115, Main Road, Anna Nagar,
Chennai - 600 040.
2. Bharat Petroleum Corporation Limited,
rep. By its Territory Manager (Retail),
No.35, Vaidyanathan Street,
Tondiarpet, Chennai - 600 081. .. Appellants in all OSA

Vs.

ATM Constructions Limited,
rep. by its Director Faiz Mohammed,
No.288, Lloyds Road, Royapettah,
Chennai - 600 014. .. Respondent in all OSA

Prayer: Appeals under Order 13(1) of the Commercial Courts Act, 2015 against the order dated 19.4.2021 passed in A.Nos.650 and 651 of 2020 and 668 of 2021 in C.S.(Comm) No.62 of 2020.

Prayer in A.No.650/2020 : Application is filed under order XIV and Rule 8 of Original Side Rules and read with order XXXVIII Rule 2 r/w section 151 of C.P.C. to direct the respondent/defendant to deposit on or before 5th of every succeeding calender month a sum of Rs.30,50,000/- (Rupees Thirty Lakhs and fifty thousand only) as future damages payable from 01.01.2020 in the credit of main Suit before this Hon'ble High Court.

Prayer in A.No.651/2020 : Application is filed under order XIV and Rule 8 of Original Side rules and read with order XXXVIII Rule 5 r/w section 151 of C.P.C to pass interim order directing



the respondents/defendants to furnish security to the satisfaction of the claim of liquidated damages of Rs.128,98,00,000.00 (Rupees one hundred and twenty eight crores and ninety lakhs only) as prayed for in the Suit either by way of bank guarantee or deposit of title deeds pertaining to any immovable properties of the respondents/defendants equivalent to the Suit claim before this Hon'ble Court.

Prayer in A.No.668 of 2021 : Application is filed under Order XIV and Rule 8 of Original Side Rules read with Order VIII Rule 1 and Section 151 of the Code of Civil Procedure, 1908 and Section 16 of the Commercial Courts Act, 2015. To condone the delay of 187 days in filing the Written Statement in C.S.(Comm). No.62 of 2020.

C.S.(Comm) No.62 of 2020 Prayer : Plaint under order IV rule of Original side rules read with order VII Rule 1 of C.P.C and Section 2(1)(c)(vii) of the Commercial Courts Act 2015 the plaintiff therefore prays that this Hon'ble Court may be pleased pass a judgment and decree against the Defendants.

(a) directing the defendants to pay a total liquidated damages of Rs.128,90,00,000/- along with interest at the rate of 12% per annum from 01.01.2020 till the date of realization of the same by the plaintiff.

(b) directing the defendants to pay before damages of at the rate of Rs.30,50,000/- per month from 01.01.2020 till the date of handing over vacant possession of the Suit schedule property by the defendants to the plaintiff.

(c) order cost of the Suit

(d) Grant such other judgment and decree as this Hon'ble High Court may deem fit and proper in the circumstances of the case.

For Appellants	: Ms.Geethi Ara
in all appeals	for M/s.S.Ramasubramaniam and Associates

For Respondent	: Mr.R.Balachandran
in all appeals	

COMMON JUDGMENT
(Delivered by the Hon'ble Chief Justice)

The three appeals are directed against a common judgment and order of April 19, 2021 passed in a commercial suit.



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2. Three applications were before the trial court: Application Nos.650 and 651 of 2020 were filed by the plaintiff for fixing interim damages and for a direction on the defendant to furnish security in respect of the claim, respectively. Application No.668 of 2021 was taken out by the defendant for filing its written statement beyond time.

3. On the application for extension of time to file written statement, the trial court condoned the delay with costs assessed at Rs.1 lakh to be paid by the defendant, but observed that the defendant really did not make out a case for enlargement of the time.

4. Since the suit is a commercial suit, in view of Section 13(1A) of the Commercial Courts Act, 2015, no appeal lies against an order enlarging the time to file the written statement or refusing to do so.

5. Accordingly, the relevant appeal O.S.A.(CAD) No.7 of 2021 is dismissed as not maintainable.

6. The other two appeals are clearly maintainable, in as much as interim damages have been fixed by the trial court and substantial security has been directed to be furnished.

7. As to the assessment of interim damages, the trial court noticed that the suit was for recovery of a sum in excess of Rs.128 crore. The trial court noticed the plaintiff's claim of Rs.30.50 lakh per month towards damages for the occupation of the relevant premises by the defendant. The trial court recorded that the quantum of liquidated damages could be accurately ascertained only after witness action and after receiving evidence. However, based on the State guideline values, the trial court assessed the value of the property to be Rs.12,730 per square foot as on June 9, 2017. On such basis, the trial court tentatively fixed the ground rent at Rs.50/- per square foot per month, which was around five per cent of the guideline value. The trial court held that the monthly occupation charges payable by the defendant to the plaintiff would be Rs.6 lakh.

8. On the basis of the material before the trial court, it appears that the interim adjudication as to the occupation charges has been made on a conservative basis at roughly five per cent of the guideline value of the property. Indeed, the plaintiff asserts that the plaintiff is aggrieved by such part of the order, though no appeal has been preferred by the plaintiff.



9. Since the interim assessment of the occupation charges has resulted in only a nominal part of the plaintiff's claim to be allowed, subject to the outcome at the end of the trial and the figure is based on the guideline value of the property, such part of the order does not call for any interference. Accordingly, O.S.A.(CAD) No.5 of 2021 is disposed of without interfering with the quantum of occupation charges assessed at the interim stage.

10. The last of the appeals is against the direction to furnish security in the sum of Rs.60 crore within 45 days from the date of the order.

11. The only basis for such direction is found at paragraph 34 of the impugned judgment and order.

12. The trial court merely recorded that the plaintiff had alleged that the defendant company was negotiating with third parties to sell off the company. The plaintiff now seeks to rely on certain other material to suggest that serious steps are being taken by the Union Government to privatise the defendant company or, in effect, sell the Union's shareholding therein to private parties.

13. If the liability fastens to the defendant, the perceived change in the ownership of the defendant can scarcely be a relevant consideration in assessing whether security ought to be directed to be furnished. Further, a high order in the nature of attachment before judgment requires two conditions to be met: the unimpeachable character of a substantial part of the claim; and, the acceptance by the court that unless the security is furnished, there would be no assets left to satisfy the decree which is almost certain to be passed.

14. Though in the present days, the high tests that were earlier required to be discharged to obtain an order in the nature of attachment before judgment may no longer be relevant, particularly in view of civil suits languishing in courts for years without end, there has to be some modicum of a case made out that the defendant may not be able to satisfy the decree that is almost sure to be passed.

15. There is no doubt that even going by the interim assessment of the occupation charges as made by the trial court, a substantial amount remains due and owing from the defendant to the plaintiff for occupying the prime property. The impecuniosity of the defendant does not appear to have been made out to warrant a high order in the nature of attachment before judgment. Indeed, the Court merely relied on the plaintiff's allegation that the defendant company may be privatised, but did



not embark on any process to verify the same. An order in the nature of attachment before judgment is a high order and cannot be passed for the mere asking. After all, the defendant is considered as a Maharatna and as of now, the defendant is controlled by the Union and debts of the defendant would naturally be required to be met by the Union till such time that the Union exercises control over the defendant.

16. Notwithstanding the dilution of the high tests for obtaining an order in the nature of attachment before judgment, such an order may not be passed for the mere asking or without a serious inquiry into the relevant aspect by the Court. The order impugned almost reveals that there was no application of the independent mind to the matters in issue qua an order in the nature of attachment before judgment and the trial court proceeded to pass the order only because there was a huge sum that was perceived to be due from the defendant to the plaintiff.

17. As a consequence, the order directing security to be furnished cannot be sustained, as there is no satisfaction recorded in the order impugned as to the veracity of the allegations levelled by the plaintiff or regarding the impecuniosity of the defendant. Therefore, O.S.A.(CAD) No.6 of 2021 is allowed by setting aside the order impugned dated April 19, 2021 in so far as it directs the defendant to furnish security.

18. O.S.A.(CAD) Nos.5, 6 and 7 of 2021 stand disposed of on the basis of the above.

There will be no order as to costs. Consequently, C.M.P.Nos.9791, 9793 and 9794 of 2021 are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Sub Assistant Registrar
Original Side
High Court, Madras.

+1CC to M/s.Ramasubramaniam & Associates, Sr.No.34250

O.S.A.(CAD) Nos.5, 6 and 7 of 2021

SR-II (CO)

K.RK. (05.08.2021)