IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.8721 OF 2021
IN
REVIEW APPLICATION [STAMP] NO.21508 OF 2021
IN
WRIT PETITION NO.9928 OF 2016

M/s. Sanjay V. Deshmukh,
Partnership Firm,
Through its Managing Partner,
Sanjay s/o. Vithalrao Deshmukh,
Age:45 years, Occ. Business,
R/o.Near Maruti Temple,
At Post. Kadegaon, Tq. Kadegaon,
Dist. Sangli ..Applicant

Vs.

1. The Maharashtra State Farming Corporation Ltd., having its office at 270, Sheti Mahamandal Bhavan, Senapati Bapat Marg, Pune – 411 016 Through its Managing Director - U.K.Agrawal, Age : Major, Occ. Service

2. The Estate Manager, The Maharashtra State Farming Corporation Ltd., at Gangapur, Tq. Gangapur, Dist. Aurangabad ..Respondents

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Mr.S.C.Arora, Advocate for applicant
Mr.V.R.Dhorde, Advocate for respondents

CORAM : R.G. AVACHAT, J.
DATE : JUNE 22, 2022

ORDER :-

Heard learned counsel for the parties.

2. Civil Application No.8721 of 2021 for condonation of delay stands allowed. Delay in filing the Review Application is condoned.

3. The Review Application is taken up for hearing with the consent of learned counsel for the parties thereto.

4. The application has been moved on 02.08.2021 for review of the main order passed way back on 05.07.2019 which was slightly modified on 03.03.2021.

5. The order sought to be reviewed dated 05.07.2019 reads as under:-

> (i) The applicants are permitted to withdraw 50% of the deposited amount on submitting an undertaking to the satisfaction of Registrar (Judicial) of this Court and the balance 50% amount on furnishing a solvent surety in the like amount.
>
> (ii) The civil application stands allowed and disposed of.
>
> (iii) The request made in prayer clause (B) of the application can be considered along with the writ petition.

The modification made with the aforesaid order is as under:-

> " ……… The order is therefore, modified and it may be read as "on furnishing an undertaking to the satisfaction of the Superintendent of the Court of Civil Judge, Senior Division, Vaijapur."

6. The facts necessary to decide the present application are as follows:-

There is an agreement between the applicant and the respondent - Maharashtra State Farming Corporation Ltd. ("M.S.F.C.", for short) regarding joint cultivation of the land belonging to M.S.F.C. Said agreement was executed on 27.12.2013, whereunder the land admeasuring 835 acres was agreed to be cultivated jointly by the applicant and the respondent – M.S.F.C. The agreement was for a period of ten years. As per the terms of the agreement, the applicant agreed to pay the respondent – M.S.F.C. a sum of Rs.9,000/- per acre for each year with increase of 10% therein. The applicant paid the respondent – M.S.F.C. an amount of Rs.75,15,500/- towards security deposit. It is also said to have paid some more amount under other heads. The applicant claims to have spent a huge amount towards payment of electricity bills, etc.

7. As per the terms of the agreement, in case of default in payment of yearly amount, the respondent – M.S.F.C. was to charge 18% interest for the delayed period. Since the applicant defaulted yearly payment, the respondent – M.S.F.C. issued him notice. As such, the terms of the agreement would indicate that in any case, the applicant was to make payment of the amount, as has been agreed upon. Since he defaulted in making payment for the year 2014-15, the respondent – M.S.F.C. issued him notice dated 07.07.2015, calling upon him to pay a sum Rs.82,64,050/- due for that year. The applicant was informed that if he would fail to pay the amount, the M.S.F.C. would be constrained to take appropriate action as per clause 5 of the agremeent. The applicant, therefore, preferred Special Civil Suit No.31 of 2015 for the relief of declaration and injunction.

8. The trial Court was pleased to allow the application (Exh.5) for interim relief of injunction, restraining M.S.F.C. from taking any coercive action pursuant to the demand notice dated 07.07.2015. The trial Court, however, put a condition that the amount of Rs.82,64,050/- shall be paid by the applicant and it shall continue to pay the amount that may fall due following years. The

applicant, therefore, challenged the said order in Civil Misc. Appeal No.4 of 2016. Learned District Judge modified the order passed by the trial Court in the following terms:-

> (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 07.07.2015 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."

The applicant, therefore, filed Writ Petition No.9928 of 2016 in this Court. This Court, vide order dated 27.09.2016, stayed the order impugned therein, subject to condition of deposit of Rs.45 Lakhs.

9. Thereafter, this Court, vide its judgment and order dated 03.03.2021, allowed the Writ Petition with the following order:-

> 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 applicant, therefore, preferred present Review Application.

10. Heard learned counsel appearing for the parties.

11. According to learned counsel for the applicant - Firm, this Court, while allowing the Writ Petition, has held that the conditions imposed by both the Courts below regarding making payment to M.S.F.C., are beyond the the scope of the suit and the same are, therefore, set aside. It is, therefore, contended by learned counsel that the amount in deposit with the trial Court shall not be permitted to be withdrawn. The order in this regard may be reviewed. The amount, as of now, has not been withdrawn. The applicant has already deposit a sum of Rs.1.5 Crore with M.S.F.C. including the security deposit towards first year's share in the income. The applicant has also spent over Rs.60 Lakhs for carrying out miscellaneous work over agricultural farm. The applicant, in spite of having made a huge investment, has not received any income. Pending the

Writ Petition, over Rs.14 Lakhs has been paid towards electricity dues. Trial in the suit is in progress. The suit is likely to be decided on its own merits in the near future. Learned counsel has also placed on record a communication dated 18.12.2020 to suggest that some major portion of the land to be jointly cultivated was under encroachment. The other land could not be brought under cultivation for one or the other reason. Learned counsel also placed reliance on the decision of the Apex Court in the case of **Food Corporation of India and anr. Vs. Seil Ltd. ors., (2008)3 SCC 440**.

12. Learned counsel for the respondents – M.S.F.C. reiterated the submissions made by him during hearing of the Writ Petition.

13. Considered the submissions advanced. Over 835 acres of land has been agreed to be jointly cultivated by the applicant. The land belongs to the respondent – M.S.F.C. True, some portion of the land was under encroachment. Water facility for irrigated land was also required to be made. The

applicant appears to have paid electricity bills. He has also paid a sum of Rs.1.5 Crore inclusive of security deposit to M.S.F.C. On appreciating the entire factual matrix and the points agitated in the Writ Petition, this Court allowed the same, holding the directions given by the trial Court to the applicant to go on depositing each year's amount agreed to be paid by him under agreement entered into between the two, beyond the scope of subject matter of the suit. Admittedly, the amount that has been deposited pursuant to the order of this Court, pertains to year which is subject matter of the suit. For recovery of the amount due for that year, demand notice was issued.

14. This Court, in so many words, has only set aside the order directing the applicant to deposit the amount for the following years. It seems that the amount deposited by the applicant pertains to the year which is subject of the suit. Close reading of the agreement would indicate, whether the applicant jointly cultivates the land or not or get any profit therein, is not of consideration or condition of his undertaking

to pay M.S.F.C. a sum of Rs.9,000/- per acre every year with 10% addition thereto every year. Meaning thereby the applicant undertaken to pay M.S.F.C. the amount not less than Rs.83 Lakhs every year. The record indicates that he had availed crop insurance. Had the applicant really not been benefited, he would have given up his right to jointly cultivate the land and would have asked for refund of the amount. This Court had already expressed a surprise, as to why M.S.F.C. kept quite till date not to exercise the option to terminate the agreement. Be that as it may.

15. It is reiterated that the applicant agreed to pay M.S.F.C. Rs.9,000/- per acre every year. He has still been jointly cultivating the land. The M.S.F.C. is not a private person to observe that if anything is found due from it to the applicant, it would be unable to pay back to the applicant. It is reiterated that the order was passed way back on 05.07.2019. There was no stay operating to the said order. It is not known as to why M.S.F.C. did not withdraw the amount in terms of the order dated 05.07.2019. Since the applicant owe M.S.F.C. the

amount agreed in terms of the agreement dated 27.12.2013, There is no reason to review the orders dated 05.07.2019 and 03.03.2021 in Civil Application no.15245 of 2017.

16. The judgment in the case **Food Corporation of India** (supra) is quite distinguishable on facts.

17. In view of this Court, the Review Application has been moved without any justification. This Court is of the view that the same has caused wastage of judicial time. It is, therefore, a fit case to impose costs of Rs.10,000/- on the applicant.

18. Hence, the following order:-

(i) The Review Application is rejected.

(ii) The applicant shall deposit a sum of Rs.10,000/- (Rupees Ten Thousand) as costs, within two months from today.

(iii) If the applicant fails to comply with this order, learned Registrar (Judicial) of this Court is requested to take appropriate steps for recovery of the amount of costs.

(iv) The amount of cost, on deposit/recovery, be credited to the State Exchequer.

[**R.G. AVACHAT, J.**]

KBP