

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

110 COMMERCIAL APPEAL NO. 2 OF 2022
WITH CA/12387/2022 IN COMAP/2/2022

REL RURAL WAREHOUSING LIMITED, PUBLIC LIMITED
COMPANY THR AUTHORIZED REPRESENTATIVE
PRASAD BHAIHAVNATH SHINDOLKAR
VERSUS
SAHAKAR MAHARASHI SHANKARAO KOLHE SAHAKARI
SAKHAR KARKHANA LTD AND OTHERS

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Advocate for Appellant : Mr. Shrey Fatteperkar a/w Ms. Anisha
Nair h/f Mr. Akshay Radikar
Advocate for Respondent No.1 : Mr. V. D. Hon, Senior Advocate
i/by Mr. A. V. Hon.

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**CORAM : RAVINDRA V. GHUGE AND
ARUN R. PEDNEKER, JJ.**

DATED : 05 SEPTEMBER 2022

PER COURT :-

1. This matter is taken up, out of turn on the request of the learned Advocate for the appellant. We are informed that the learned District Judge-2, Kopergaon, which is the Commercial Court in Commercial Suit No. 1 of 2022, has posted the matter on 07.09.2022 for a hearing on the application for interim relief.

2. The grievance of the appellant is that interim protection has not been granted by the trial court. 7295 metric ton raw sugar would be handed over by the defendant no.1 in breach of the covenant between the said defendant and the present appellant and third party rights would be created.

3. The learned senior counsel representing defendant no.1 submits that the said defendant will have to file an affidavit-in-reply in these proceedings. In the event the appellant is agreeable for a hearing on the prayer for ad-interim relief on 07.09.2022, the said defendant would ensure that the submissions on its behalf would be completed in the first session before the trial court.

4. The suit before the trial court is for specific performance. The trial court has passed an order on 20.08.2022 holding that defendant no.1 should file its written statement so as to complete the pleadings and the trial court would then consider the request for ad-interim protection. It is informed that the written statement has been filed by defendant no.1 and the matter can be heard by the trial court on 07.09.2022

5. The learned Advocate for the appellant submits that the raw sugar i.e. 7295 metric ton would be exported by defendant no.1 and the suit would become infructuous. The learned Senior Advocate submits that on account of the lapse on the part of the appellant, the said sugar has already been sold to another entity and the same has already been exported.

6. We find that in the peculiar facts as recorded above and in the light of the submissions that 7295 metric ton of raw sugar has already been handed over to a third party, it would be appropriate to let the trial court hear the submissions of the litigating parties in the first session on 07.09.2022 and pass an order latest by 08.09.2022.

7. The learned Senior Advocate submits that defendant no.1 would not seek adjournment and would render cooperation to the trial court.

8. In view of the above, by consent of the parties, this appeal is disposed off. The parties shall address the trial court at Kopargaon in the first session on 07.09.2022 and we expect the learned court to deliver it's order on application Exhibit 5 by the end of 08.09.2022. Needless to state, all the contentions of the parties, inasmuch as, the rights of the parties with regard to the creation of third party interest in the 7295 metric ton of raw sugar, are kept open.

9. The trial court shall note that this Court has not expressed any opinion on the rival contentions of the parties.

[ARUN R. PEDNEKER, J.]

[RAVINDRA V. GHUGE, J.]