

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

APPEAL FROM ORDER NO. 503 OF 2022

Jaylon Impex India Private Limited & Anr. ...Appellants
V/s.

The Board of Directors Oriental Bank of
Commerce (Now Punjab National Bank)
through Chief Managing Director and Ors. ...Respondents

Mr. Mathew Nedumpara a/w. Ms. Hemali Kurne a/w. Ms. Shameem Fayiz, for the Appellants.

Mr. Ravikumar Varanasi, for the Respondent Nos.1 to 3.

Ms. Prachi Kolambekar i/e. Thodur Law Associates, for the Respondent No.5.

Mr. Harsh Sheth i/b. MDP & Partners, for the Respondent No.6.

CORAM : C.V. BHADANG, J.

DATE : 23 AUGUST 2022

P.C.

1. The challenge in this appeal, is to the order dated 25 March 2022, passed by the learned City Civil Court at Mumbai, in Notice of Motion No.1136/2022 in Suit No.830/2021. By the impugned order, the learned City Civil Court has refused to grant ad-interim relief in favour of the Appellants – original Plaintiffs.

2. I have heard the learned counsel for the parties for some time.

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3. The record discloses that this Court (Milind N. Jadhav, J.) by an order dated 10 May 2022 had directed that no coercive steps shall be taken against the Appellants. At the same time, the Appellants were restrained from transferring or disposing of any of their movable and immovable properties. The said order is in operation since then.

4. The learned counsel for the Appellants submitted that in the circumstances, the interim relief could not have been refused by the City Civil Court.

5. The learned counsel appearing for the contesting Respondent Nos.1, 2, 3, 5 and 6 have strenuously urged that the suit as framed and filed is not maintainable in view of the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (2002 Act, for short). It is submitted that thus the notice of motion in a suit which is incompetent by its very nature and being barred by the provisions of 2002 Act was not maintainable. It is submitted that there are substantial dues against the Appellants and in order to evade the payment of the same, the suit is filed without approaching the Debt Recovery Tribunal (DRT). It is therefore submitted that the ad-interim relief has rightly been refused.

6. I have considered the submissions made.

7. A perusal of the impugned order shows that the City Civil Court has primarily gone on the provisions of Section 80(1) and (2) of the Code of Civil Procedure and has noted that the suit is registered subject to such objections. By the impugned order, the City Civil Court has observed that *ex facie* no case is made out and the balance of convenience does not lie in favour of the Appellants / Plaintiffs. In that view of the matter, by the impugned order which is passed below *roznama*, *ad-interim* relief is refused. I find that the City Civil Court while considering the prayer for grant of *ad-interim* relief had no occasion or opportunity to consider the rival contentions both on merits, law points and the facts which are now sought to be urged by the learned counsel for the parties. As noticed earlier, the interim relief granted by this Court is operating for a period of more than three months now. At the same time, the interest of the Respondents has also been taken care of by restraining the Appellants from transferring or disposing of any of their movable and immovable properties.

8. Considering the fact that notice of motion is still pending before the City Civil Court, I find it appropriate that the hearing and disposal of the notice of motion is expedited.

9. The learned counsel for the contesting Respondents have opposed the continuation of the interim relief.

10. However, the fact remains that the interim relief is operating for more than three months now. In that view of the matter, the appeal is disposed of. The learned City Civil Court shall proceed to hear and decide the notice of motion as expeditiously as possible and in any event, within a period of six weeks' from the receipt hereof. Parties to cooperate for the time bound disposal of the notice of motion.

11. Ad-interim relief, granted by this Court on 10 May 2022 shall continue to operate during the pendency of the notice of motion. In the circumstances, there shall be no order as to costs. Needless to mention that this Court has not expressed any opinion on rival contentions of the parties, which are left open.

C.V. BHADANG, J.