

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.460 OF 2022
ALONG WITH
INTERIM APPLICATION NO.3006 OF 2022

C And M Farming Limited] ... Appellant

Vs.

Omkara Assets Reconstruction] ... Respondent

...

Mr. Rahul Narichania, senior counsel with Mr. T.N. Tripathi and Ms. Kalyani Wagle i/b T.N. Tripathi & Co. for the appellant.

Mr. Nikhil Sakhardande, senior counsel with Mr. Ashish Venugopal, Ms. Rubina Khan, Mr. Rohit Gupta i/b Ms. Rubina Khan for respondent No.1.

Ms. Dimple P. Tejani i/b Mr. Nikhil Salvi for respondent No.2.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 02ND MAY, 2022.

P.C. :-

1. Not on board. On the urgency being expressed, taken on production board.

AJN

2. The present appeal is required to be filed by the appellant on account of non-continuation of an order of status-quo granted in favour of the appellant on 31/03/2022 by the Civil Judge, Senior Division, Nashik on an application filed, below Exh.-5, and on an apprehension being expressed on behalf of the plaintiff, that the defendants are likely to sell out various properties, with the help of two assignment deeds executed in their favour. It is submitted that on expressing willingness to pay the amount for which two assignment deeds are executed in favour of defendant No.1, the learned Judge applied his mind to the facts pleaded before him and formed his opinion about the *prima facie* case in favour of the plaintiff. Recording that on the basis of the assignment deeds, executed in favour of defendant No.1, if he creates any third party interest on it, it would create multiplicity of proceedings, he deemed it fit to direct the parties to maintain *status-quo* in respect of the assignment deed executed in favour of defendant No.1 in order to protect the subject matter of the suit. Necessarily, he passed a speaking order, which reads as under:

“1] The defendant No.1 is hereby directed to maintain status-quo in respect of two assignment deeds executed in its favour dated 05/12/2020 and 21/12/2021, till their appearance and filing of say to this application with show-cause notice as to why the temporary injunction as prayed by the plaintiffs should not be granted returnable on 13/04/2022.

2] *The plaintiffs to comply mandate of Order 39, Rule 3 of the Civil Procedure Code.*”

3. The defendants, being served, filed their written statement on appearance and on 20/04/2022, taking the written statement on record and time being sought, the learned Judge passed the following order:

“In such circumstances, though the Defendant No.1 has objected this Application extended the status-quo, in view of undertaking given by him and to decide the matter on merit, the ad-interim order passed below Exh.-5 dated 31/03/2022 needs to be extended till next date with direction to both the parties to argue on Exh.-5. Next date is fixed as per the convenience of both sides.”

4. Worth to mention that along with the application, Exh.-5, an application for amendment was also moved, which came up for for hearing on 27/04/2022. On 27/04/2022, the parties argued the application for amendment and also expressed their willingness to argue Exh.-5. Therefore, on 27/04/2022, an interim order passed on 31/03/2022, below Exh.-5, came to be extended till the next date. The said application was placed for orders on 29/04/2022.

5. Surprisingly, on 30/04/2022, the learned Judge records that the plaintiff, who has sought extension of ad-interim *status-quo* order granted below Exh.-5 and the same was strongly objected to by the defendants and he presumed that it had come to an end,

since no extension was sought.

It is also recorded that on 27/04/2022, the said *status-quo* order seems to have extended until next date, which was scheduled on 29/04/2022 and on that day, no application was filed, seeking extension of the *status-quo* order and, therefore, there is no ad-interim order in existence.

6. The learned Judge has in real sense misdirected himself, since he himself, on an earlier date i.e. on 27/04/2022 had extended the order, passed below Exh.-5, till the next date of hearing and what was scheduled on 29/04/2022 was the application for amendment.

In any case, the confusion created on the part of the learned Judge can be rectified in a simple way.

7. The respective senior counsel representing the parties do not dispute that the order dated 31/03/2022 directing *status-quo* to be maintained was an ex-parte order and now the hearing of Exh.-5 is scheduled on 04/05/2022 on merits.

By declaring that the order dated 31/03/2022 shall remain in force till 04/05/2022, when the learned Judge shall hear both the parties on Exh.-5 on merits and would, by a speaking order whatsoever brief it may, either continue the *status-quo* order or if he is not inclined to continue, he shall specifically record the reasons for not continuing so.

8. This would serve the purpose of both the parties and, in case if the proceedings are not concluded on 04/05/2022, the learned Judge is at liberty to proceed to pass appropriate orders to protect the subject matter of the suit properties, which power he has already exercised on 31/03/2022.

9. My attention is also invited to another important aspect being an application filed by the defendants under Order VII Rule 13 of the Civil Procedure Code for rejection of plaint. Parties are at consensus that they shall argue this application also.

10. I must clarify that I have not touched the merits of the matter and have limited myself to the enigma created by the learned Judge, in respect of the interim *status-quo* order. With the above clarification, the appeal is disposed off.

11. In view of the dismissal of the appeal, the interim application does not survive and stands disposed off.

[SMT. BHARATI DANGRE, J.]