IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC.CIVIL APPLICATION 246 OF 2022

Rupesh Tahilram Dhirwani & Anr. …Applicants
vs.
Maharashtra Industrial Development Corporation
& Anr. ...Respondents

Mr.G.C. Bajaj with Raunak Bajaj i/b. V.V. Krishnan for Applicants.
Mr.A.V. Anturkar, Senior Advocate i/b. Amol A. Shinde for Respondent 2.

CORAM : ROHIT B. DEO, J.

DATED : 11 JULY 2022

<u>P.C.</u> :

1. Applicants are the plaintiffs in Regular Civil Suit 823/2019 which is instituted seeking a declaration that the demarcation dated 26 August 2019 is illegal and void and a restraint order against the defendants from disturbing the use and occupation including possession and live electricity supply from the transformer yard to plot 68/4. Respondent 1 – Maharashtra Industrial Development Corporation (MIDC) is the defendant 1 and Respondent 2 - M/s. Neelraj Works Pvt.Ltd. is the defendant 2 in the suit.

2. Considering the grounds on which the plaintiffs are seeking transfer of the suit instituted by them, to this Court, it would be necessary to broadly, albeit, briefly note the plaint averments.

3. The plaintiffs have described the suit property as plot 68 situated in the Nashik Industrial area admeasuring 11970 sq.mtrs. (the

plaint refers to the said property as plot 1) and plot 68/4 situated in the said industrial area admeasuring 2937 sq.mtrs. (referred to in the plaint as plot 2).

4. The plaintiffs aver that MIDC leased out plot 68 admeasuring 20780 sq.mtrs. to M/s. Asian Electronics Ltd. by agreement dated 1.1.1971. The plaintiffs further aver that plot 68 was divided into five plots at the request of M/s.Asian Electronics Ltd. The plaintiffs contend that M/s.Asian Electronics Ltd. surrendered area admeasuring 1746 sq.mtrs. for the access road, from the first sub-divided plot 68 admeasuring 11970 sq.mtrs. and the installation of the Electricity Yard. The plaintiffs state that the sale deed in favour of defendant 2 does not cover area admeasuring 1746 sq.mtrs. which is surrendered.

5. The plaintiffs then aver that the officials of the MIDC had modified the demarcation to extend undue benefits to defendant 2 and that the sale deed is in gross violation of the provisions of the Companies Act, 2013 (Act of 2013) and the Insolvency and Bankruptcy Code, 2016.

6. The plaintiffs claim that in sale certificate dated 30.3.2019, it is categorically mentioned that the joint mortgage by deposit of title deeds created by Asian Electronics Ltd. excludes area covered by the Electricity Yard. On such premise, the plaintiffs claim that defendant 2 Neelraj Engineering Works Pvt.Ltd. do not have title to the area covered by the Electricity Yard.

7. The plaintiffs claim that after purchasing plot 68, defendant 2 applied for new HT connection with Maharashtra State Electricity

Distribution Company which would suggest that defendant 2 was well aware that the Electricity Yard was not the subject of the auction sale. The plaintiffs claim that notice was issued to the MIDC to revoke the change in demarcation of plot 68, which went unheeded, which is the cause of action.

8. The plaintiffs preferred an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure seeking the following reliefs :

> "a) The demarcation dated 26/08/2019 be declared as illegal and void prepared in violation of prescribed rules and regulation.
>
> b) The defendants either themselves, through agents or any third party be permanently restrain from disturbing the use and occupation including possession and live electricity supply from the transformer yard to plot no.68/4.
>
> c) any other just and equitable relief in the interest of justice may kindly be passed."

9. The learned trial Judge granted exparte injunctive relief vide order dated 27.11.2019, the operative part of which reads thus :

> "1. Ad-interim injunction as to prayer clause-B is granted, the parties to maintain status-quo till the appearance of defendant No.2 in particular.
>
> 2. The plaintiff to comply the mandate of Order 39, Rule 3 of C.P.C.
>
> 3. The case is fixed on 02/12/2019 for compliance of above condition and for the appearance of the defendants."

10. The learned Senior Counsel for the defendant, Mr.A.V. Anturkar, would submit that the submissions on the application under

Order 39 Rules 1 and 2 have been addressed by the parties and the order is reserved. Mr.Anturkar would submit that without serving notice or intimation to the advocate on record, the plaintiffs mentioned the Miscellaneous civil application for production on 6 July 2022 and this Court stayed the proceedings in Regular Civil Suit 823/2019 till the next date of hearing. While the notice issued was made returnable on 27 July 2022, on 8 July 2022, the learned Counsel for the non-Applicant – defendant 2 sought urgent circulation since this Court had stayed the proceedings. This Court directed that the Miscellaneous civil application be listed on 11 July 2022. Mr.Anil Anturkar would submit that immediately after obtaining the circulation, the learned Counsel for the non-Applicant Mr.Raunak Bajaj was served with copy of the notice and the interim application at 2.30 p.m. on 9 July 2022.

11. I must further record that when the matter was called out, the learned Counsel Mr.Bajaj did seek an adjournment, which request this Court declined in view of the submission of the learned Senior Counsel Mr.Anil Anturkar that the exparte interim stay granted by this Court was preventing the civil court from passing the final order. In view of the rejection of the request for adjournment, Mr.Bajaj has addressed the Court on the merit of the matter.

12. Having taken a resume of the averments in the suit plaint, the grounds on which withdrawal and transfer of the pending suit to this Court, may now be noted.

13. The plaintiffs contend that Asian Electronics Ltd. is in liquidation and that the suit property is a property under a liquidation

proceeding. The said company was the lessee of the entire land and the building situated on undivided Plot 68. Plot 68/4 which is the subject matter of the suit was used by Asian Electronics Ltd. for its manufacturing activities. The plaintiffs then refer to the agreement executed between Asian Electronics Ltd. and the plaintiffs (the plaintiffs are referred in the said agreement as “the conductor”) whereunder the conductor is entitled to hold and enjoy peaceful possession of the permitted portion of the factory land and building and the machineries therein for the period of 14 years subject to the terms and conditions set out in the agreement. The plaintiffs then reproduce Clause 6.4 of the written agreement which reads thus :

> “6.4.1 The Owner has instructed and authorized the Conductor to pay the sum of Rs. 2,50,00,000/- (Rupees One Crore Sixty-four lacs only) being the monetary consideration/Security Deposit hereunder directly towards the liabilities towards employees and workmen/utility liabilities of the Owner in payment and discharge as per the following break-up : (I) For payment of Gratuity : Rs.68.08 lacs (ii) For payment of Leave Encashment : Rs.17.98 lacs (iii) For payment of Provident Fund Dues : Rs.66.21 lacs being the discharge of the entire liability to the employees/workmen for payment of Provident Fund dues (iv) For payment of arrears of electricity charges : Rs.11.00 lacs (v) the balance as a deposit lying with the Owner to meet the liabilities of the factory land and building to be borne and paid by the Owner as provided herein.”

In conclusion, the plaintiffs aver that the recovery of possession of plot 68/4 from the conductor or restraining the conductor from using the factory land and the plot would be impermissible unless the amount paid by the conductor to Asian Electronics Ltd. under the agreement is refunded along with damages and compensation. Grounds (xiii) of the application reads thus :

> “xiii The written agreement provided for the term of the manufacturing rights for a period of fourteen years

> commencing from May 14, 2013, and ending on June 30, 2027, during which entire period the Conductor was entitled to peaceably hold and enjoy quiet possession of the permitted portion of the factory land and building and the machineries therein for the entire period of fourteen years."

14. I have already reproduced the substratum of the suit plaint in Regular Civil Suit 823/2019. Asian Electronics Ltd. company, represented by the Official Liquidator, or otherwise, is not a party to the suit. The relief claimed in the suit is that the demarcation dated 26 August 2019 be declared illegal and that MIDC and defendant 2 be restrained from disturbing the use and occupation of plot 68/4, which according to the plaintiffs, is in its possession, and from restraining the defendants from preventing the plaintiffs from consuming and availing the live electricity supply from the transformer yard at the plot which is purchased by defendant 2 in auction sale. The grievance in the suit plaint does not pertain to the property of the company under liquidation and at any rate is not an issue which can be decided by the fora under the Act of 2013.

15. The grounds which are set out in the application seeking transfer of the civil suit to this Court, have no factual foundation whatsoever in the suit plaint. Indeed, as rightly argued by the learned Senior Counsel Mr.Anturkar, having obtained an exparte injunction from the civil court, the only attempt appears to be, to somehow or the other to prevent the civil court from deciding the injunction application on merits.

15. Defendant 2 has filed an affidavit in reply, the averments in which have gone rebutted. Defendant 2 purchased plot 68 in auction sale pursuant to order in Company Petition 492/2011. The MIDC executed the assignment deed in favour of defendant 2 which is duly registered.

Defendant 2 emphasised that in view of the sale of plot 68 in auction pursuant to order in the company petition, the suit property is not the subject matter of liquidation.

16. Defendant 2 then avers that after it applied for change in the name of the consumer, the MSEDCL conducted a survey and noticed an illegal electricity connection through plot 68 to plot 68/4 which according to the plaintiffs is in its possession. Defendant 2 then make a reference to several proceedings initiated in order to ensure that the illegal consumption of electricity from the transformer on plot 68 is stopped forthwith. The Electricity Ombudsman ruled in favour of defendant 2 and against the plaintiffs and the said order was challenged by the plaintiffs in writ petition which came to be dismissed/disposed of by this Court.

17. Defendant 2 has reproduced the observations of this Court in Writ Petition 3540/2021 which read thus :

> "I see no perversity in the order passed by the Ombudsman so as to warrant interference. The Petition is dismissed. However, in the interest of justice, it is clarified that in the event the Petitioner makes an application for grant of electricity connection for plot no. 68/4, the same be considered expeditiously by MSEDCL preferably within a period of 8 weeks from the date of the application. Further on the condition that the Petitioner clears all the electricity dues within one week from today, the Petitioner is permitted to utilise the electricity connection for a period of 8 weeks from today to enable the Petitioner to make alternate arrangement and even learned Senior Advocate for the Respondent No.2 does not object to this arrangement. Learned Counsel for Respondent No.3 – MSCDCL assures this Court that if an application for grant of electricity connection is made by the Petitioner in the prescribed form, the same will be considered expeditiously in accordance with Rules."

18. It is emphasised that all that the plaintiffs were permitted was to make an application for grant of electricity connection for plot 68/4 subject to certain conditions and as ad-hoc arrangements, the plaintiffs were permitted to utilise the plot 68 connection for a period of eight weeks to enable the plaintiffs to make alternate arrangement.

19. Defendant 2 then points out that the plaintiffs preferred a Review Petition 66/21 which came to be disposed of with the following observations :

> "It is then submitted by Shri Desai that a civil suit in respect of boundary dispute is pending before the competent civil court at Nashik. According to him, the findings of the Ombudsman and this Court will have bearing on the pending Suit. He submits that this Court may record that the observations made by this court and as regards those made by the Ombudsman be confined to the decision of this case and the same not to influence the pending proceedings before the competent civil Court. It is made clear that the petition is dismissed considering that no perversity was noticed in the impugned order passed by Ombudsman. It is open for the petitioner to raise appropriate contention before the competent civil court as regards the effect of the findings of the order of the Ombudsman if the occasion so arises which aspect be dealt with by the trial Court on its own merits and in accordance with law. Subject to the above observations, review petition is dismissed."

20. The learned Senior Counsel Mr.Anturkar would submit that in the suit plaint, there is no disclosure whatsoever of the order rendered by the Electricity Ombudsman and the findings and observations of the High Court while deciding Writ Petition 3540/2021 and Review Petition 66/2021. Mr.Anul Anturkar would submit that abuse of the process of law is writ large and the only intention is to over reach and circumvent the observations and findings rendered by the High Court.

21. Learned Counsel for the plaintiffs Mr.Bajaj would rely on the provisions of Section 430 of the Act of 2013 which reads thus :

> “**430. Civil Court not to have jurisdiction**
>
> No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.”

22. I am afraid that the reliance placed on the said provision is not only misplaced, but is counterproductive. If Mr.Bajaj is right in submitting that the said provision comes into play, then the civil court clearly has no jurisdiction to entertain the suit. Be that as it may, nothing is averred in the plaint as would suggest that the subject matter is required to be determined by the Tribunal or the appellate Tribunal. At any rate, and in any event, the question of transfer or withdrawal of the suit to this Court, just, does not arise.

23. In the context of the provisions of Section 430 of the Act of 2013, Section 280 which deals with the jurisdiction of the Tribunal may be noted. The said provision reads thus :

> “Section 280: Jurisdiction of Tribunal.
>
> The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of,—
>
> (a) any suit or proceeding by or against the company;

> (b) any claim made by or against the company, including claims by or against any of its branches in India;
>
> (c) any application made under section 233;
>
> (d) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company,
>
> whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made."

24. I have observed that the suit is neither by or against the company under liquidation nor does the suit raise any question which falls under Section 280(b)(c)(d) of the Act of 2013. I have no hesitation in reiterating that, having secured an exparte injunction order from the civil court which virtually nullifies the adjudication by the Electricity Ombudsman and the confirmatory orders, the plaintiffs are attempting to prevent the civil court from passing final order on the injunction application. Such an attempt must be deprecated.

25. The application is frivolous, vexatious and abuse of the process of law.

26. The application is dismissed.

27. Needless to observe that interim order shall stand vacated forthwith.

(ROHIT B. DEO, J.)