

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

WRIT PETITION NO.4033 OF 2022

United Spirits Limited

..Petitioner

Versus

Supra Medicate Private Limited and Ors.

..Respondents

Mr. Vikram Sathaye i/by Yogita Deshmukh - Chitnis, for the
Petitioner.

Mr. Satyajee Dighe, for the Respondent No.1.

CORAM : NITIN W. SAMBRE, J.

DATE : 7th APRIL, 2022

PC.

1. Heard.

2. This petition is by the defendant to Special Civil Suit No.331 of 2004 pending on the file of Civil Judge, Senior Division, Nashik for recovery of certain amount.

3. Petitioner moved an application Exh.513 in the aforesaid suit seeking stay to the further proceeding under Section 151 of the CPC on the ground that after the enactment of Micro and Small and Medium Enterprises Development Act, 2006 ("MSMED Act" for short), the maintainability of the suit is an issue subjudice before this Court. According to him, a reference to the Larger Bench to decide following issue is pending consideration :-

“54. We find that in Deltons case, this Court was not required to look into cardinal issues which may have made some difference on the outcome. Those issues are -

A. Whether in view of a more comprehensive scheme in MSMED Act and improvement made by it over Act no.32 of 1993, the jurisdiction of Civil Court is taken away by 2006 Act ?

B. Whether an incongruous situation perceived in paragraph 71 of its judgment by the Division Bench in *Delton's case* (supra) can emerge due to reading of Section 6 of Act no.32 of 1993, (not in force) and Section 18 of the MSMED Act ?”

4. In addition to above, the contentions are, the Court below committed an error in considering the application under Section 10 of the CPC, particularly when the prayer of the petitioner for staying the suit proceedings should have been considered under Section 151 of the CPC. As such, it is prayed that order impugned is liable to be quashed and set aside.

5. Mr. Satyajeet Dighe, learned counsel for the respondent /plaintiff would support the order impugned.

6. I have appreciated the aforesaid submissions.

7. If this Court appreciates the contention of learned counsel for the petitioner based on the reference made in the matter of *M/s. Sonali Power Equipment Vs. Chairman, Maharashtra State*

Electricity Board, Mumbai and Ors. reported in ***2018 SCC Online Bom. 2253***, what can be noticed is Division Bench of this Court while making reference has not stayed the proceedings which were initiated prior to the enactment of 2006. In the aforesaid background, if we appreciate the fact that the suit of which stay is sought was initiated in 2004 and the enactment was brought into force in 2006. Hence, the claim that the suit proceedings are required to be stayed is without any basis, particularly when the enactment of 2006 has no retrospective applicability. The petitioner/defendant had earlier taken out proceedings for rejection of plaint under Order VII Rule 11(d) of the CPC, which was rejected by the Trial Court. This Court had an occasion to deal with the said order at the behest of the present petitioner in CRA No.2 of 2019 in which single issue referred above was canvassed. The Court has already rejected the said contentions vide order dated 16th February, 2021 passed in the aforesaid revision.

8. In spite of above, the petitioner somehow wants to drag the suit proceedings by taking out such cause which are not germane for deciding the suit claim on merit.

9. Apart from above, even if reference to Section 10 of the CPC is made in the order impugned, that by itself will not vitiate or render the order illegal as the Court while passing the order has considered all facets while rejecting the prayer vide impugned order.

10. In the aforesaid background, I hardly see any reason which warrants interference in the order impugned.

11. The petition as such fails, dismissed.

12. The fact that the suit is pending since 2004 and there are repeated adjournments on the part of the petitioner so as to drag the proceedings for unreasonable cause, warrants this Court to dismiss the petition by saddling cost of Rs.25,000/- to be deposited in the Trial Court within a period of four weeks from today.

13. Once the cost is deposited, the same be transferred to the Bar Library of the Nashik District Bar Association.

[NITIN W. SAMBRE, J.]