

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

CRIMINAL APPLICATION NO. 984 OF 2021

Titan Company Limited (Formerly
Known As Titan Industries Limited)
Through Nirdosh J. Dhiyal

...Applicant

Versus

The State of Maharashtra And Anr.

...Respondents

....

Sheroy M. Bodhanwalla a/w Sakshi Sharma a/w Burjis Doctor i/by
M.S. Bodhanwalla And Co. Advocates and Solicitors, Advocate for the
Applicant.

Mr. Naveen Chomal, Advocate for Respondent No.2.

Mr. S.R. Agarkar, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 21st SEPTEMBER, 2022.

PER COURT:

1. The Applicant has challenged order dated 16th August, 2021 passed below Exhibit-12 in RCC No.684 of 2012 by Additional Chief Judicial Magistrate, Nashik rejecting the application preferred by the applicant for interim custody of articles.

2. The Applicant and Respondent No.2, the authorized partner of M/s. Valuable Jewels had entered into a Management Agent Agreement dated 15th December, 2004. The Respondent No.2 was to stock and sell gold, diamond and silver ornaments and other products owned by Applicant under the Applicant company's brand name Tanishq. In the night of 8th and 9th May, 2012 theft took

Digitally signed
by SUNNY
ANKUSHRAO
THOTE
Date:
2022.12.01
14:03:07 +0530

SUNNY
ANKUSHRAO
THOTE

place in the showroom of Respondent No.2 at premises Shop No.32 and 33, Dev's Arcade, Samarth Nagar, Nashik and diamonds, gold and silver ornaments worth Rs.1,61,37,733/-(One crore sixty one lakhs thirty seven thousand seven hundred thirty three) were stolen from the showroom. First Information Report (for short "FIR") dated 9th May, 2012, Bearing No.92 of 2012 was registered with Gangapur Police Station, Nashik. During the course of investigation accused were arrested and ornaments/property were recovered from the accused.

3. The Respondent No.2 preferred an application bearing C.M.A. No.989 of 2012 under Section 451 of Cr.P.C. for seeking custody of stolen ornaments/articles seized from the accused. By order dated 16th October, 2012, the application was rejected by the trial Court. The said order was challenged before the Sessions Court by preferring Criminal Revision Application No. 510 of 2012. Vide order dated 1st January, 2013, the learned Sessions Judge remanded the matter back to the trial Court. By order dated 12th August, 2013, the learned Magistrate allowed the application on certain terms and conditions. The police authorities were directed to handover the interim custody of the ornaments/articles mentioned in the Application No. 989 of 2012 to Respondent No.2 on execution of bond for amount of Rs.2,50,00,000/-(Two crores

fifty lakhs). The custody of ornaments was handed over to Respondent No.2.

4. The agreement executed between the Applicant company with firm of Respondent No.2 was cancelled w.e.f. 1st March, 2016. The ornaments were returned to Respondent No.2 by way of interim custody continued to be in their custody. The Applicant preferred an application before the trial Court for possession of the ornaments from Respondent No.2, in view of cancellation of agreement of agency. By order dated 16th August, 2021, the application was rejected.

5. The learned counsel for the Applicant submitted that Management Agent Agreement was executed between the Applicant company and firm of Respondent No.2 on 15th December, 2004. The ornaments/articles/jewelry were entrusted to the firm of Respondent No.2 as an agent. There was incident of theft. FIR was registered. Several articles were recovered during the investigation. The Respondent No.2 had preferred an application before the trial Court. The application was allowed by order dated 12th August, 2013. Thereafter, the agreement was terminated and hence, the Applicant is entitled for interim custody of the ornaments seized during the investigation.

6. The learned Advocate for Respondent No.2 has submitted that the articles are in possession of Respondent No.2 after grant of interim custody. The Advocate representing both sides have submitted identical list describing seized items belonging to the Applicant company. It is submitted that there is discrepancy 0.26 gms. pertaining to the actual loss of goods after melting. While comparing the list submitted by the Applicant and Respondent No.2, the Advocate representing both sides have submitted that since the difference in weight was negligible, the Applicant would proceed to take over and Respondent No.2 would handover the goods.

7. The learned Advocate for Applicant submitted that the list of Applicant company's product as recovered and melted ingot form together with bangles in their original state and list of Applicant company's valuables/articles stolen on 9th May, 2021 be handed over to applicant.

8. Undisputedly there was incident of theft in the showroom of Respondent No.2. There was an agreement of Management Agent between the Applicant and firm of Respondent No.2. Several articles/jewelry were entrusted to Respondent No.2. After seizure of articles the Respondent No.2 had preferred an application before

the trial Court which was allowed vide order dated 12th August, 2013 on a condition that the Respondent No.2 shall execute the Supurtnama with a bond in the sum of Rs.2,50,00,000/-(Two crores fifty lakhs). The articles be produced in the Court as and when required till the final decision in the case. The articles shall not be sold or transfered to any other person and no third party rights be created. Before handing over the articles Panchanama be recorded. Photographs of the property be taken. The photographs and Panchanama be produced in the Court. Since then the articles viz. gold ornaments described in the Panchanama are in custody of Respondent No. 2. Since the agreement executed between the Applicant company and the firm of Respondent No.2 was cancelled, Vide cancellation deed, the Applicants preferred an application before the learned Magistrate to return the property to them. The Investigating Officer had filed reply to the said application. The learned Magistrate rejected the said application. It was observed that the Applicant company has authorized and consented the Respondent No.2 at the earlier point of time to claim the interim custody of seized articles and that the Applicant is now approaching the Court on subsequent cause of action arising out of termination of contract of agency.

9. It is pertinent to note that there is no dispute about the entrustment of property by the Applicant company to Respondent No.2 vide the Management Agent Agreement dated 15th December, 2004. The Respondent No.2 has not disputed the said fact and had not objected before this Court the claim of the Applicant. Except the fact that there is difference of opinion between both the sides in respect to 0.26 gms. pertaining to actual loss of goods after melting. The Respondent No.2 is willing to handover the goods seized during the investigation of RCC No.684 of 2012.

10. Considering the aforesaid circumstances, the relief sought in this application can be granted hence, I pass the following order;

ORDER

i. The seized Muddemal property viz. gold ornaments and other articles which are subject matter of RCC No. 684 of 2012 pending before Court of learned Additional Chief Judicial Magistrate, Nashik be handed over to the Applicant company of executing Supurtnama/Bond in the sum of Rs.2,50,00,000/-(Two crores fifty lakhs).

ii. The Respondent No.2 shall handover the subject property to Applicant before the trial Court within a period of two week from the date of uploading this order.

iii. The representatives of Applicant and Respondent No.2 shall appear before the trial Court within two weeks from the date of uploading the order and the subject property be handed over to the Applicant, on Applicant executing the Supurtnama/Bond in the sum of Rs.2,50,00,000/-(Two crores fifty lakhs).

iv. The Bond executed by the Respondent No.2 in accordance with order dated 12th August, 2013 shall stands discharged after the subject property which was seized during the investigation of RCC No.684 of 2012 is handed over to the Applicant company.

v. The Panchanama of handing over the property to the Applicant be recorded by the Investigating Officer.

vi. The photographs of the property be taken by the Investigating Officer which would be useful for identification of property.

vii. Till the final decision in RCC No.684 of 2012, the Applicant shall not sale, transfer or create third party interest in respect to the subject property.

viii. The Panchanama and photographs be produced before the trial Court.

ix. Criminal Application No.984 of 2021 stands disposed off.

(PRAKASH D. NAIK, J.)