

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

11 CIVIL APPLICATION NO.11221 OF 2023
IN
COMMERCIAL APPEAL (ST) NO.26594/2023
WITH
CA/11223/2023 IN COMAPST/26594/2023

THE STATE OF MAHARASHTRA THROUGH THE PUBLIC WORKS
DEPARTMENT GOVERNMENT OF MAHARASHTRA MANTRALAYA
VERSUS
SWASTIK REALTY PVT LTD THROUGH THE MANAGING DIRECTOR
MR RAJENDRA LAXMAN WANI

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Mr. A. B. Girase, Govt. Pleader for the applicants.

Mr. S. J. Singh, Advocate for the Respondent Company

CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRAGADE, JJ.

DATE : 4th December, 2023

ORDER:

1. Heard the learned Advocates for the respective sides on the delay of 60 days caused in filing the Commercial Appeal.
2. For the reasons set out, **Civil Application No.11221 of 2023 is allowed.** The delay is condoned. The Commercial Appeal be registered.
3. By Civil Application No. 11223/2023, the Applicant/Appellant seeks interim relief in terms of prayer clause (B), which reads as under:

(B) Pending hearing and final disposal of the Commercial Appeal, the impugned Judgment and order dated 05.04.2023 passed by Commercial Court and District Judge-2, Jalgaon in

Commercial Suit No. 13/2019 may kindly be stated in the interest of justice."

4. By a judgment dated 05.04.2023, passed in Commercial Suit No. 13/2019, the Commercial Court has passed the following order:

"ORDER

1. Suit is allowed partly in view of particulars of claim and amounts mentioned in para-70 of the plaint as under :-

Claim No.1 -Allowed to the extent of Rs.29.22 Lacs.

Claim No.2- Allowed to the extent of Rs.17.90 Lacs.

Claim No.3- Allowed to the extent of Rs.12.46 Lacs.

Claim No.4- Allowed partly to the extent of Rs.281.60 Lacs.

Claim No.5- Allowed partly to the extent of Rs.156.95 Lacs.

Claim No.7- Allowed to the extent of Rs.142.55 Lacs.

Claim No.8- Allowed to the extent of Rs.3.30 Lacs.

Total :- Rs. 643.98 Lacs.

Prayer to the extent of Claim Nos.6 and 9 is rejected.

2. Plaintiff is entitled to recover interest @ 12% p.a. on amount of Rs.643.98 Lacs from the date of filing of the suit till realization of entire amount.

3. In pecuniary circumstances, the parties shall bear their own costs.

4. Decree be drawn up accordingly."

5. Pursuant to the above, the learned Government Pleader submits that the Company had raised it's bills and an amount of Rs. 12,88,07,100/- was paid to the satisfaction of the Bills. Thereafter, in a Summary Judgment, an amount of Rs.1,38,64,044/- was granted, which was also paid by the State.

6. By the present appeal, the grievance is with regard to the judgment of the Commercial Court which has granted Rs.2.81 crores towards losses, Rs.1.50 crores towards loss of business profit and Rs.1.42 crores towards loss of overheads, total amount being Rs.6,43,98,000/-. Interest @ 12% p.a. has been granted by the Commercial Court.

7. Issue notice to the Respondent in the Commercial Appeal as well as this Application. Mr. Singh, the learned Advocate waives service of notice on behalf of the sole Respondent.

8. By way of an interim order, we direct the State to deposit 50% of the decretal amount within a period of 8 weeks. On this condition, the judgment of the Commercial Court dated 05.04.2023 passed in Commercial Suit No. 13/2019, shall stand stayed

9. With this direction, **Civil Application No. 11223/2023 is disposed off.**

10. By consent of the parties, **the Appeal is Admitted.**

11. Call for record and proceedings.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)