

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.304 OF 2023

Dessai Logistics rep. by prop. Vilas
Rama Dessai

... Petitioner

Versus

Saeesh Enterprises rep. By its
Partners Santosh Bablo Gaonkar
And 3 Ors.

...Respondents

Mr S. S. Kantak, Senior Advocate *with Mr A. Kamat,*
Advocate for the Petitioner.

Mr Ashwin D. Bhoje and Ms Shaizeen B. Shaikh,
Advocate for Respondents.

Mr S. Samant, Advocate *for Respondent No.2.*

CORAM:
DATED :

PRAKASH D. NAIK, J
29th AUGUST 2023

ORDER:

1. Heard both sides.
2. The petitioner is aggrieved by order dated 19.05.2023 passed by the Commissioner's Court in Commercial Civil Suit No.1/2023 dismissing the application for intervention filed by petitioner.
3. The respondent No.1 is the original plaintiff and the respondent No.2 is the original defendant in Commercial Civil Suit No.1/2023. The respondent No.1 filed a suit for declaration,

permanent injunction and other consequential reliefs under Section 34 of the Specific Relief Act and Section 9 of the Code of Civil Procedure.

4. The case of the plaintiff/respondent No.1 is that the plaintiff is a partnership firm. The plaintiff deals with transport activities, operates earthmoving machineries and commercial vehicles. The plaintiff also undertakes work of collection of scrap material and purchasing the scrap material, iron ore, etc. The defendant company is not in operation since last 10 years and the premises were sealed. The gate of the company was closed. The retrenched workers and locals had staged a dharna in front of the gate of the company. The workers did not allow the officials of defendant company to enter the premises. The defendant company had undergone the proceedings under Insolvency and Bankruptcy Code 2016, before the National Company Law Tribunal (NCLT). Pursuant to the order of the NCLT, the defendant undertook necessary steps to implement the approved resolution plan. The defendant company was interested in disposing of the material lying in the factory premises which included scrap material, etc. Based on the offer letter of the plaintiff firm, the defendant company addressed a letter dated 14.08.2021 to the plaintiff stating that they are agreeable to consider the offer only if the plaintiff makes a payment of Rs.1 crore as advance. It was submitted that an amount of Rs.25 lakhs was already paid by the plaintiff. Based on the representation dated 14.08.2021 the plaintiff fulfilled the requirement by making advance payment of Rs.1 crore in favour of defendant company and the defendant issued proposed sale of

scrap material, etc, to the plaintiff vide order dated 04.09.2021 thereby confirming sale of scrap material for quoted amount of Rs.8 crores. The defendant company had acknowledged that the entire scrap material available at the factory unit was to be sold to the plaintiff. As per the letter of the defendant, plaintiff made arrangements for lifting the scrap material. Though it was the responsibility of the defendant to ensure and facilitate smooth flow for lifting of the goods, the defendant did not comply with the requirements. There was serious agitation and obstruction caused at the factory unit of the defendant by retrenched workers. The defendants altered its position although the amount of Rs.1 crore was parted to them. The plaintiffs were left with no other option but to arrange meetings with the workers which were conducted and all of them were convinced that before lifting the purchase material, compensation would be paid to them. It was mandatory to lift the material within two months from the issuance of the sale letter. The plaintiffs started to face difficulties from the locals and the retrenched workers. The defendant company advised the plaintiff to keep the work/lifting of scrap in abeyance and confirmed the extension of earlier agreed period of two months. The defendants granted extension for lifting the goods/scrap material. About 40% of of the goods/scrap material was lifted and an amount of Rs.5 crore was paid on 18.04.2022. The plaintiff then learnt that the defendants are on the lookout of prospective buyers to dispose of the goods/scrap. Suit was filed for declaration that contract between the plaintiff and defendant is legal, valid and subsists and binding on the parties and that the plaintiffs have a right to the material. The plaintiffs also

prayed for permanent injunction restraining the defendant company from removing the remaining goods/material/scrap material from the factory premises and a permanent injunction restraining respondents or other person from dealing/selling/creating third party rights in respect of the goods/scrap/scrap material.

5. The respondent No.1 pressed for ex parte relief restraining respondent No.2 from dealing/selling/creating any third party rights or disposing/lifting/removing the goods/material/scrap material from the factory site. Vide order dated 19.04.2023 ex-parte relief was granted to respondent no.1 restraining respondent No.2 from dealing/selling/creating any third party rights or disposing/lifting/removing the goods/material/scrap material from the factory site. The order was subsequently confirmed by order dated 26.05.2023.

6. The petitioner filed an application seeking intervention for joining as defendant in the suit on the ground that the respondent No.2 vide letter dated 25.11.2022 offered to purchase the scrap material lying at the factory site and that respondent No.2 has accepted the offer made by the petitioner. The petitioner had paid Rs.25 lakhs to the respondent No.2.

7. The petitioner filed an independent Commercial Civil Suit No. 2/2023/A before the same Court on 06.05.2023 against the respondent seeking declaration that the petitioner is entitled to deal with the scrap material and also to restrain the respondents

from creating any hurdles to the petitioner from removing the scrap material.

8. The respondent No.2 filed a written statement with a counter claim and reply to the suit and application for temporary injunction filed by respondent No.1.

9. The Commercial Court vide its order dated 19.05.2023, dismissed the application for impleadment preferred by the petitioner.

10. Learned senior advocate Mr Kantak appearing for the petitioner submitted that the Commercial Court failed to take into consideration that the petitioner had entered into a contract with respondent No.2 for purchase of goods/scrap material which was the subject matter of the suit and any decision or order in the suit would materially affect the petitioner and he was thus a necessary party to the suit. The contract for purchase of scrap material entered into between the petitioner and respondent No.2 was prior to the institution of the suit and after the respondent No.2 terminated its agreement with respondent No.1 and further by paying an advance of Rs.25 lakhs and also acting on the contract by getting the weighbridge of respondent No.2 repaired, the petitioner moved forward on the contract and acquired right and title in the scrap material belonging to respondent No.2 which is the subject matter of the suit and hence, the petitioner had become necessary party or atleast proper party to the suit. The petitioner would be financially and legally affected by any order passed by the Court. Hence, the

impugned order may be set aside and petitioner may be permitted to intervene in the commercial suit by directing the plaintiff/respondent No.1 to implead the petitioners as defendants in the commercial suit.

11. Learned advocate Mr Ashwin Bhobe appearing for respondent No.1 submitted that no interference is called for in the impugned order dated 13.05.2023. The Commercial Court after analysing the factual aspects in detail has rejected the application preferred by the petitioner. The petitioner had other than preferring application for impleadment, had independently filed a suit before the same Court seeking relief. The petitioner has preferred an application for ex-parte ad-interim order which has been refused vide order dated 19.04.2023. The question of allowing the petitioner to intervene and impleaded as defendant in the suit filed by the respondent No.1 does not arise. In the suit filed by the respondent No.1 no relief is sought against the petitioner. Both suits are pending in the same Court.

12. Perused impugned order dated 19.05.2023. The respondent No.1 was aggrieved by the acts of the respondent No.2 and filed a suit for the reliefs sought therein. The said suit refers to the privity of contract between the respondent No.1 and 2. The relief was sought only against the respondent No.2. No relief was sought against the petitioner. The petitioner has already filed a separate suit and application for interim relief has been refused to him. In the suit filed by the petitioner he had prayed for declaration that the plaintiff is entitled to deal with scrap material which is subject matter of the plaint. He also

prayed for permanent injunction restraining defendants therein or any other third party acting through them from creating any hurdles to the plaintiff in removing the material listed in the plaint. The order dated 19.05.2023 passed by the trial Court on the application preferred by the petitioner assigns reasons for rejecting the application for impleadment. In the pleadings of the defendant in the present suit, there is no statement that defendant has transferred the ownership of scrap material in favour of third party/application vide letter dated 28.12.2022 upon receipt of Rs.25 lakhs on the basis of which third party applicant is claiming interest in the subject matter of the suit. At condition XIV it is mentioned that the complete quantity of material/scrap shall be lifted and sale process shall be completed on or before 31.03.2023 and the sale letter concludes that with the words 'In case you are unable to lift the material before 31.03.2023, the approval stands cancelled and management will be at discretion to sell the material to any other party'. The Court further observed that there is no document produced by third party to prima facie show that the defendant company has granted extension of time beyond 31.03.2032. From the pleadings and the documents produced along with third party application it is seen that the third party applicant's right to the scrap material is not crystallized and he has to prove the same in the suit filed by him.

13. No case is made out to interfere in the impugned order. The petition is devoid of merits.

ORDER

Writ Petition is dismissed and disposed of.

PRAKASH D. NAIK, J.)

MARIA SUZANA REBELLO Digitally signed by MARIA SUZANA REBELLO
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