

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 737 OF 2023
IN
INTERIM APPLICATION NO. 15031 OF 2023

Umanath Devraj Shenoy and Ors.

...Appellants

V/s.

Shreeji Construction, Partnership

Firm and Ors.

....Respondents

Mr. Shreepad Murthy a/w. Mr. Sahil Wagh i/by. Mr. Abhishek Patil
for the Appellants.

Mr. D.D. Singh a/w. Mr. D.K. Shukla, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 28 November 2023.

P.C. :

1. By this Appeal, the Appellants challenge order dated 21 July 2023 passed by the City Civil Court to the limited extent of putting conditions of furnishing solvent surety and filing of an Undertaking for refund as a pre-condition for allowing withdrawal of

the amount deposited by the Plaintiffs in pursuance of order passed by this Court on 16 March 2023 in Appeal from Order No. 975 of 2022.

2. Plaintiffs have filed S.C. Suit No. 1753 of 2016, *inter-alia*, seeking a declaration that the Consent Terms dated 17 April 2014 and consequent Undertaking and Consent Decree dated 17 April 2014 is fraudulent and not binding on the Plaintiffs. In their suit, Plaintiffs took out Notice of Motion No. 231 of 2020 which came to be allowed by the City Civil Court by its order dated 18 August 2022. The order dated 18 August 2022 came to be challenged by the Defendants before this Court by filing Appeal from Order No. 975 of 2022. In that Appeal, this Court passed order dated 16 March 2023 recording a statement on behalf of the Plaintiffs that they would not alienate and/or create any third party rights in respect of four shops described in para-7 of the consent terms and would also pay the interim alternate accommodation charges to the Defendants. In view of the statement so made, this Court disposed of the Appeal directing the Plaintiffs to deposit sum of Rs.83,56,570/- in the City Civil Court in four installments. This Court further granted liberty to the Defendants to apply for withdrawal of the said amount.

3. After deposit of the amount, Defendants filed Notice of Motion No. 1808 of 2023 seeking withdrawal of the deposited amount. While the City Civil Court has allowed Notice of Motion in terms of prayer clause (a) and has thereby permitted the Defendants to withdraw the deposited amount, the City Civil Court has proceeded to

impose twin conditions of furnishing solvent surety of Rs.60,00,000/- and filing of an Undertaking that they would deposit the amount of Rs.60,00,000/- in the event of passing of decree against them in S.C. Suit No. 1753 of 2016. To this limited extent of putting conditions for withdrawal, the Appellants/Defendants have filed the present Appeal.

4. I have heard Mr. Murthy, the learned counsel appearing for the Appellants and Mr. Singh the learned counsel appearing for the Respondents.

5. Perusal of order dated 21 July 2023 passed by the City Civil Court would indicate that no reasons are recorded by the learned Judge for imposition of conditions of furnishing of solvent surety and filing of Undertaking. The City Civil Court has held that the Defendants are entitled to withdraw the deposited amount in view of order passed by this Court. However, while imposing the twin conditions of furnishing solvent surety and filing of Undertaking, no reasons are recorded by the City Civil Court.

6. Perusal of order dated 16 March 2023 passed by this Court in Appeal from Order No. 975 of 2022 would indicate that the Plaintiffs had infact shown willingness to pay the arrears of interim alternate accommodation charges to the Defendants. In this regard, para-7 of the order dated 16 March 2023, reads thus :

“7. In the circumstances, the learned Counsel for the Respondents/Plaintiffs, on instructions, submits that the Respondents/Plaintiffs would not alienate and/or create any third party rights in respect of the four shops described in paragraph 7 of the Consent Terms and would also pay arrears of interim alternate accommodation charges to the Appellants/Defendants.

7. Once the Plaintiffs had shown willingness ‘to pay’ the arrears of interim alternate accommodation charges to the Defendants, it is incomprehensible to how and why the City Civil Court could have imposed any conditions for allowing withdrawal of the amount of interim alternate accommodation charges. This Court directed deposit of the amount towards interim alternate accommodation charges in the City Civil Court on account of time for payment in the form of installments sought by the Plaintiffs. Since the amount was to be deposited in four installments, this Court directed the arrangement of deposit instead of making direct payment to the Defendants. Since the amounts were directed to be deposited in the City Civil Court, liberty was granted to the Defendants to apply for withdrawal thereof. This arrangement is made in view of express statement made by the Plaintiffs before this Court that they were willing ‘to pay’ the arrears of interim alternate accommodation charges to the Defendants. In that view of the matter and also in view of absence of any reasons being recorded for imposing the conditions of furnishing solvent surety and filing of Undertaking, the order passed by the City Civil Court qua Direction No.2 is clearly unsustainable.

8. Mr. Singh, the learned counsel appearing for the Respondents would raise an objection to the maintainability of the present Appeal. In my view, the said objection does not deserve any consideration in view of the fact that the impugned order dated 21 July 2023 has been passed by the City Civil Court in continuation of proceedings filed by the Plaintiffs under the provisions of Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (**Code**). This Court was required to pass order dated 16 March 2023 in Appeal filed challenging the order dated 18 August 2022, which was passed in application filed under the provisions of Order 39 Rules 1 and 2 of the Code. This Court could have permitted the Defendants to withdraw the deposited amount but since the deposit was to happen in installments, this Court granted liberty to the Defendants to apply for withdrawal of the same. In application filed for withdrawal, the City Civil Court has imposed conditions for such withdrawal. In my view therefore the Order dated 21 July 2023 is clearly in continuation of proceedings which arose out of application filed under Order 39 Rules 1 and 2 of the Code. The objection of maintainability of the Appeal therefore deserves rejection.

9. I am therefore of the view that the order passed by the Civil Civil Court dated 21 July 2023 to the extent of imposition of conditions in para-2 of the operation portion of the Order is clearly unsustainable. Accordingly, the Appeal succeeds. Direction No.2 requiring the Defendants to furnish solvent surety and filing of Undertaking is accordingly set aside. The rest of the order dated 21

July 2023 shall remain undisturbed. With the above directions, the Appeal is **allowed and disposed of**. The Interim Application also stands disposed of.

10. After the order is pronounced, the learned counsel appearing for the Respondents would pray for stay of the order for a period of eight weeks. The request is opposed by the learned counsel appearing for the Appellants. Considering the fact that Respondents/Plaintiffs had voluntarily expressed willingness 'to pay' the amount of interim alternate accommodation charges, request for stay is rejected.

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SANDEEP V. MARNE, J.