IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.14291 OF 2023
WITH
CIVIL WRIT PETITION NO.14293 OF 2023
WITH
CIVIL WRIT PETITION NO.14292 OF 2023

Bell and Co. Pvt. Ltd. ...Petitioner.

V/s.

Pan Asiatic Overseas Pvt. Ltd. ...Respondent.

Mr. Kaustubh Thipsay a/w. Mr. Shivraj Patne for the Petitioner.
Mr. Jaydeep Deo for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 30th NOVEMBER, 2023.

P.C.:-

1. The challenge in the petition is to the order dated 29/9/2023 passed by the appellate Bench of the Small Causes Court by which the Respondent, who is the appellant before the appellate Court has been permitted to deposit the amount directed under the provisions of Order 41 Rule 5 of the CPC as condition of stay either by cash or through Demand Draft from the advocate's account or through NEFT.

2. The facts of the case are that the respondent had suffered a

decree of eviction in respect of the suit premises as against which an Appeal was filed before the appellate Court being Appeal No.310/2015. By order dated 2/5/2017 the appellate Court granted stay to the execution of the decree, however as a condition of stay directed the appellant to deposit interim compensation at the rate of Rs.40,700/- p.m. from the date of the impugned judgment and decree till final disposal of the Appeal. The appellate Court directed the respondent to clear the arrears of compensation on or before 10/6/2017 and to continue to deposit the interim compensation from 1/6/2017 before 10th of each month. The order directed stay to be vacated if the appellant failed to deposit the amount.

3. Admitted position is that extension of time to deposit the amount was intermittently sought by the respondent. By application dated 8/9/2023 the respondent sought direction to the Cash department of the Small Causes Court to accept the Demand Draft which was rejected in view of the direction by the Registrar not to accept Demand Draft coming from a different Company. To this application, reply was filed on 28/9/2023 by the petitioner objecting to the maintainability of the Application for the reason that the Company has been struck off by the Registrar of Companies and as such the respondent was not existing in the eyes of law. It was further

pleaded that the bank account of respondent-Company was ordered to be closed by the Reserve Bank of India and that the amount was sought to be deposited in the Court through some third party account.

4. Heard Mr. Kaustubh Thipsay for the petitioner and Mr. Jaydeep Deo for the Respondent.

5. Mr. Thipsay, learned counsel appearing for the applicant submits that application itself was not maintainable as the certificate of incorporation was cancelled in the year 2018 and the name of the Company was struck off from the Registrar of Companies. He submits that the Company being a distinct juridical legal entity has no existence in the eyes of law upon the certificate of incorporation being cancelled and specific objection was taken in view of Section 250 of the Companies Act. According to him the application could not have been entertained and in fact Appeal should have been dismissed. He has invited the attention of this Court to the application filed by the respondent and would contend that same is bereft of any details. He submits that it was incumbent upon the respondent to state the necessary facts in the application and the appellate Court was required to apply its mind before permitting the respondent to

deposit the amount either in cash or through the bank account of some other entity. He further expresses apprehension that if the respondent is permitted to deposit the amount through a third entity, which is also his tenant, rights may be claimed by the third party in respect of the suit premises. He relies upon the decision of the Delhi High Court in the case of ***Rajendras Properties (Delhi) Pvt. Ltd. & Ors. vs. Ashok Bansal and Others, 2023 SCC Online Del 4971.***

6. *Per contra,* Mr. Deo, learned counsel for the respondent supports the impugned order and submits that what the respondent Company has done is to make arrangement for discharge of its liability which was imposed by the order of the appellate Court as a condition of stay. He would further submit that the certificate of incorporation came to be cancelled due to certain non-compliance which is now sought to be remedied by the respondent and appropriate application in that behalf is filed and pending before the NCLT.

7. Considered the submissions and perused the record.

8. The admitted position is that as a condition of stay under Order

41 Rule 5 of the Civil Procedure Code, respondent was directed to deposit certain amount towards interim compensation and to continue to pay the monthly interim compensation. It is not disputed that the respondent is seeking permission to comply with the condition imposed by the appellate Court and the request is that a direction be issued to the cash Department of the Court to accept the Demand Draft although the same is coming from a different Company. By the impugned order, the appellate Court has granted permission to the respondent to deposit the amount. The contention of learned counsel for the petitioner is that by reason of striking off of the name by Registrar of Companies, the Company has lost its existence in the eyes of law and as such can neither be permitted to make an application nor be permitted to comply with the order of the trial Court. In that respect if we peruse the provisions of Section 250 of the Companies Act, 2013, the same reads as under:

> *"Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company."*

9. Plain reading of the above provision would indicate that when a Company is dissolved under Section 248 of the Companies Act, 2013 from

the date mentioned in the notice under sub-section (5) of that Section, the Company ceases to operate as a Company and the certificate of incorporation is deemed to have been cancelled from such date, exception being that the existence of the Company continues for the purpose of realizing the amount due to the Company and for the payment or discharge of liabilities or obligations of the Company.

10. The contention of learned counsel for the petitioner that even for the purpose of discharge of the liability, the Company cannot be said to be in existence if accepted would in fact render the exception which has been carved out in Section 250 of the Companies Act redundant. Section 250 of the Act is very clear that the Company does not survive for the purpose of carrying out day to day business of the Company, however for the purpose of realizing the amount due to the Company and for the discharge of liability and obligations of the Company, the existence of the Company continues. In the present case, by the order of stay under Order 41 Rule 5 of Civil Procedure Code, there is a direction by this Court to deposit the amount as arrears of interim compensation and to continue to pay the same on month to month basis. There is no concession which has been sought by the respondents and what the respondent seeks is to comply

with this obligation and discharge the same by tendering the demand draft through some other entity. Same is also necessitated by the reason that the bank account of the respondent- Company has been closed and as such there is no other manner in which Company can discharge its liability.

11. The decision which has been relied upon in the case of Delhi High Court ***Rajendras Properties (Delhi) Pvt. Ltd.*** *(supra),* deals with the situation where at the hearing of the Appeal the provisions of Section 250 of the Companies Act were taken into consideration and it was held that the proceedings were neither for the purpose of realizing the amount nor for the payment of discharge of liability. In the present case, the facts are distinguishable inasmuch as the Petition is precisely for the purpose of ensuring the discharge of the liability of the respondent-Company.

12. In light of the above, there is no merit in the petition. Petition stands dismissed. It is clarified that although the payment may be made by respondent Company through third entity, the third entity will not be entitled to claim any equities by reason of payment made as the same is on account of respondent-Company. It is further clarified that the submissions on the aspect of Section 250 of the Companies Act is not foreclosed and at

the time of hearing of the Appeal both parties are permitted to raise all contentions.

(SHARMILA U. DESHMUKH, J.)